

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement" or "Settlement Agreement") is entered into by and between Plaintiffs Patricia McClain and Veronica Edwards ("Plaintiffs") individually and on behalf of the Settlement Class, and Defendant Wood Dale Memory Care, Inc. ("Defendant") and in the case of *McClain, et al. v. Wood Dale Memory Care, Inc. d/b/a The Radcliff*, Case No. 2020 L 000280, currently pending in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois (the "Underlying Action"). Plaintiffs and Defendant are each referred to as a "Party" and are collectively referred to herein as the "Parties."

I. FACTUAL BACKGROUND AND RECITALS

1. On March 6, 2020, Plaintiffs filed a class action complaint against Defendant alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1, *et seq.* ("BIPA") in the Circuit Court of DuPage County, Illinois ("Underlying Action").

2. On June 30, 2020, Defendant filed an answer to the complaint. Defendant denied and continues to deny liability for the claims made in the Underlying Action.

3. On June 30, 2021, Defendant also filed a third-party complaint against ADP, LLC ("ADP"). ADP moved to dismiss the third-party complaint, and the motion was fully briefed. On January 14, 2021, after oral argument, the Court dismissed Defendant's third-party complaint against ADP.

4. The Parties have exchanged information relevant to the putative class, including an estimate of the number of potential members of the Settlement Class and general information about the Biometric tracking system at issue,

3. Following arms-length negotiations, the Parties now seek to enter into this Settlement Agreement. Plaintiffs and Class Counsel have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class recognizing (1) the existence of complex and contested issues of law and fact, (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement, (4) the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever.

5. Defendant denies and continues to deny each and every allegation and all charges of wrongdoing or liability of any kind whatsoever that Plaintiffs or members of the Settlement Class presently have asserted in this Underlying Action or may in the future assert. Despite Defendant's belief that they are not liable for, and have good defenses to, the claims alleged in the Underlying Action, Defendant desires to settle the Underlying

Action, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of any action or proceeding relating to the matters being fully settled and finally put to rest in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed, or document created in relation to the Settlement Agreement or negotiation or discussion thereof is, or may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability.

6. The Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement.

7. In consideration of the covenants, agreements, and releases set forth here, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Underlying Action be settled and compromised, and that the Releasors release the Releasees of the Released Claims, without costs as to Releasees, Plaintiffs, Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

The following terms, as used in this Agreement, have the following meanings:

8. "Administrative Expenses" shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with Settlement Class Members, and disbursing payments to the proposed Settlement Class Members.

9. "Class," "Settlement Class," "Class Member," or "Settlement Class Member" shall mean each member of the settlement class, as defined in Section III of this Agreement, who does not timely elect to be excluded from the Settlement Class, and includes, but is not limited to, Plaintiffs.

10. "Class Counsel" shall mean David Fish, Mara Baltabols, or any other attorney from the Fish Potter Bolaños, P.C.

11. "Counsel" or "Counsel for the Parties" means both Class Counsel and Defendant's Counsel, collectively.

12. "Court" shall mean the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois and the Honorable Judge Bryan S. Chapman and their legal representatives, heirs, successors, and assigns, if any.

13. "Defendant" shall mean Wood Dale Memory Care, Inc.

14. "Defendant's Counsel" shall mean Daniel Shapiro or another attorney from the law firm of Shapiro & Associates Law.

15. "Effective Date" shall mean the date when the Settlement Agreement becomes Final.

16. "Fee Award" means the amount of attorneys' fees and reimbursement of expenses awarded by the Court to Class Counsel.

17. "Fee and Expense Application" shall mean the motion to be filed by Class Counsel, in which they seek approval of an award of attorneys' fees, costs, and expenses.

18. "Final" means the Final Approval Order has been entered on the docket, and (a) the time to appeal from such order has expired and no appeal has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (c) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

19. "Final Approval Hearing" means the hearing before the Court where the Plaintiffs will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving Incentive Awards to the Class Representatives.

20. "Final Approval Order" shall mean an order entered by the Court that:

- a. Certifies the Settlement Class pursuant to 735 ILCS 5/2-801;
- b. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;
- c. Dismisses the Plaintiffs' claims pending before it with prejudice and without costs, except as explicitly provided for in this Agreement;
- d. Approves the Release provided in Section VII and orders that, as of the Effective Date, the Released Claims will be released as to Releasees;
- e. Reserves jurisdiction over the settlement and this Agreement; and
- f. Finds that, pursuant to 735 ILCS 5/2-1301, there is no just reason for delay of entry of final judgment with respect to the foregoing.

21. "Incentive Award" shall have the meaning ascribed to it as set forth in Section XV of this Agreement.

22. "Underlying Action" or "Action" shall mean the lawsuit styled *McClain, et al. v. Wood Dale Memory Care, Inc d/b/a The Radcliff*, Case No. 2020 L 000280, currently pending in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois.

23. "Notice" shall mean the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Agreement and Exhibit A and is consistent with the requirements of Due Process.

24. "Objection/Exclusion Deadline" means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court, which shall be designated as a date approximately 60 days after entry of the Preliminary Approval Order, or such other date as ordered by the Court.

25. "Parties" shall mean the Defendant and Plaintiffs, collectively.

26. "Plaintiffs" or "Class Representatives" shall mean the named class representatives, Patricia McClain and Veronica Edwards, and their heirs, successors and assigns.

27. "Preliminary Approval Order" shall mean an order of the Court preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Agreement.

28. "Related Actions" shall mean any proceedings, other than the Underlying Action, that allege that Defendant violated BIPA or any related statutes or common law claims, that were or could have been brought by a Plaintiffs who would be a Class Member.

29. "Released Claims" shall mean any and all Biometric Information Privacy Act claims against the Released Parties, and all attorneys' fees and costs, expenses, and interest and all claims relating to or arising from the allegations in the Complaint filed in the case or which could have been alleged in the Complaint filed in the case relating in anyway whatsoever to the collection of biometric information. For the avoidance of doubt, the released claims are intended to be as broad as possible with respect to any Biometric Information Privacy Act claims which were or could have been alleged against the Released Parties regardless of the legal theory used to allege such claims and regardless of whether it was a biometric timekeeping system or a biometric turnstile system.

30. "Releasees" shall refer, jointly and severally, and individually and collectively, to Defendant and its past, current, future and former owners, affiliates, parents, holding companies, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, benefit plans (and the trustees, administrators, fiduciaries,

agents, representatives, insurers and reinsurers of such plans), predecessors, and successors, but exclude Defendant's third-party vendors for the biometric system at issue.

31. "Releasors" shall refer, jointly and severally, individually and collectively, to Plaintiffs, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them, but will not include any Settlement Class Member omitted from the Class List.

32. "Settlement Administrator" means, subject to Court approval Analytics LLC the entity mutually selected and supervised by the Parties to administer the settlement.

33. "Settlement Fund" means a cash settlement fund from which the Settlement Administrator will establish from funds by Defendant in the amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) or a gross amount of \$1,000 per person, based upon an estimated Settlement Class size of 100 individuals. The Settlement Fund is the maximum amount that Defendant shall be obligated to pay under this settlement, unless the number of Class Members is more than 110, in which case the Settlement Fund shall be increased \$1,000 for each Class Member added above 110. The Settlement Administrator will distribute from the Settlement Fund all payments contemplated by this Agreement, including: (a) Incentive Awards to the Plaintiffs; (b) a Fee Award; and (c) the costs of administration of the Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses; (d) an equal share of the remaining Settlement Fund to each Settlement Class Member; and (e) if applicable, any remaining uncashed funds to *cy pres* recipient Prairie State Legal Services.

34. "Biometric System" shall mean the biometric technology used by Defendant at any time from March 6, 2015 through the date of entry of the Preliminary Approval Order, which utilized a scan of a portion of Plaintiffs' and the other Settlement Class Members' fingers or biometric information.

III. SETTLEMENT CLASS CERTIFICATION

35. For the purposes of the Settlement only, the Parties stipulate and agree that: (1) the Class shall be certified in accordance with the definition contained herein; (2) Plaintiffs shall represent the Class for settlement purposes and shall be the Class representatives; and (3) Plaintiffs' Counsel shall be appointed as Class Counsel.

36. Defendant does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter Final Approval of the Settlement, or if for any other reason final approval of the Settlement does not occur, is successfully objected to, or challenged on appeal, any certification of any Class will be vacated and the Parties will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that Final Approval of the Settlement is not achieved: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be

used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of a Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

37. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes: "All individuals who used a biometric finger, hand scanner or biometric based tracking system at Wood Dale Memory Care, Inc. facilities in Illinois between March 6, 2015 and the date of preliminary approval without first signing a biometric consent form."

38. Excluded from the Settlement Class are all persons who elect to exclude themselves from the Settlement Class and the legal representatives, heirs, successors or assigns of any such excluded persons, and the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

39. If for any reason the Settlement is not granted preliminary and/or final approval, Defendant's agreement to certification of the Settlement Class shall not be used for any purpose, including in any request for class certification in the Underlying Action or any other proceeding.

IV. SETTLEMENT OF UNDERLYING ACTION AND ALL CLAIMS AGAINST RELEASEES

40. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of Plaintiffs and the Settlement Class, the Underlying Action, any Related Actions, and the Released Claims and any other claims that have been brought, could have been brought, or could be brought now or at any time in the future against the Releasees by the Releasors in the Underlying Action, Related Actions, or any other proceeding arising out of, in any manner related to, or connected in any way with the Released Claims.

V. SETTLEMENT AMOUNT AND ALLOCATION

41. Establishment of Settlement Fund

a. Within sixty (60) days of the entry of the Preliminary Approval Order, Defendant shall pay the total sum of the Settlement Fund to the Settlement Administrator. Provided that this Agreement is finally approved by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to satisfy all payments contemplated by this Agreement in exchange for a release and the covenants set forth in this Agreement, including, without limitation, a full, fair and complete release of all Releasees from Released Claims, and dismissal of the Underlying Action with prejudice.

b. The funds provided by Defendant to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 et seq. of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.

c. If the Settlement Agreement is not finally approved, the Settlement Fund belongs to Defendant, less any Administrative Expenses paid to date. Plaintiffs shall have no financial responsibility for any Administrative Expenses paid out of the Settlement Fund in the event that the Settlement Agreement is not finally approved.

d. The Settlement Fund shall be used to pay (i) Approved Claims to the Settlement Class Members; (ii) Incentive Awards to the Class Representatives; (ii) the Fee Award; and (iv) costs of administration of the Agreement to the Settlement Administrator, including without limitation payment of Administrative Expenses. Any remaining funds will be paid as provided for in paragraph 43(c) below.

e. Administrative Expenses, and any award of attorneys' fees or any other fees, costs, or benefits otherwise awarded in connection with the Settlement Agreement, shall be payable solely out of the Settlement Fund.

f. The Settlement Fund represents the total extent of the Releasees' monetary obligations under the Settlement Agreement. Defendant's contribution to the Settlement Fund shall be fixed under this Section and be final. Releasees shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the settlement beyond the Settlement Fund.

42. Procedure for Approving Settlement.

a. Unopposed Motion for Preliminary Approval of the Settlement by the Court.

i. Plaintiffs will file an unopposed motion for an order conditionally certifying the Class, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Unopposed Motion for Preliminary Approval").

ii. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Unopposed Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing the Class Representative and Class Counsel; approving the forms of notice to the Class of the Settlement; and setting the Final Approval Hearing.

iii. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be

conditionally certified in accordance with the definition contained above, that Plaintiffs shall be conditionally appointed class representatives for the Class, and that Plaintiffs' Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve any aspect of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

43. Direct Checks Without a Claims Process.

a. Settlement Class Members do not need to submit a claim form or any information to participate in the Settlement or to otherwise receive payments from the Settlement Fund.

b. The Settlement Administrator shall notify the Parties that Settlement Class Members have been paid within five (5) business days of the last such payment.

c. In the event that checks sent to Settlement Class Members are not cashed within 120 days from the date of issuance, whether because the checks were not received or otherwise, those checks will become null and void, and 50% of such funds shall be distributed *cy pres* to Prairie State Legal Services, and the other 50% shall be distributed to Defendant, subject to approval of the Court. For any Class Member who timely opts out of the settlement and does not receive a payment, those funds will revert to the Defendant.

VI. PROSPECTIVE RELIEF

44. Without admitting any liability or that it is required by law to do so, Defendant agrees that to undertake the following practices: Defendant agrees that, on or before the Effective Date, they shall implement procedures to comply with BIPA should they continue to utilize the "Biometric System" in Illinois or unless/until BIPA is found by a court or the legislature to no longer be in effect or to be otherwise unenforceable. Alternatively, Defendant agrees that, on or before the Effective Date, they shall discontinue the use of the "Biometric System" in the state of Illinois and implement procedures for the destruction of the biometric data previously collected in compliance with BIPA.

VII. RELEASE

45. In addition to the effect of any final judgment entered in accordance with this Agreement, upon final approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all Released Claims.

46. As of the Effective Date, and with the approval of the Court, all Releasors hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Releasees. As of the Effective Date, all Releasors will be forever barred and enjoined from prosecuting any action against the Releasees asserting any and/or all Released Claims.

47. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.

VIII. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

48. This Settlement shall be subject to approval of the Court. The Parties shall have the right to withdraw from the Settlement if the Court does not approve the Settlement.

49. Plaintiffs, through Class Counsel, shall submit this Agreement, together with its Exhibits, to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representatives, and entry of the Preliminary Approval Order, substantially in the form of Exhibit B, which order shall seek a Final Approval Hearing date and approve the Notices for dissemination in accordance with the Notice Plan.

50. At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final Approval Hearing approximately ninety (90) days after entry of the Preliminary Approval Order and approve the settlement of the Underlying Action as set forth herein.

51. At least seven (7) days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiffs will move for (i) final approval of the Settlement; (ii) final appointment of the Class Representatives and Class Counsel; and (iii) final certification of the Settlement Class, including for the entry of a Final Order and Judgment identical in all material respects to the proposed Final Order and Judgment attached hereto as Exhibit C, and file a memorandum in support of the motion for final approval.

IX. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS

52. Class List

a. Defendant, with the assistance of the Settlement Administrator as appropriate, shall create a Class List, based on readily available information already within their possession ("Class List").

b. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendant will provide an Excel spreadsheet with Class Members' contact information, including names, addresses, dates of employment, social security numbers (if available), cell phone numbers (if available), and personal email addresses (if available). Defendant will provide a declaration from Defendant's employee who compiled the Class List, if requested by Plaintiffs' counsel, that this is a full and complete list of every person in the Settlement Class. The Parties will discuss and mutually agree to the representations that need to be in the declaration. Defendant agrees to verify data upon request of Class Counsel

and add Class Members on a pro rata basis to the Settlement Class if any individual has been erroneously omitted from the Class List.

53. Type of Notice Required

a. The Notice, which shall be substantially in the form of Exhibit A hereto, shall be used for the purpose of prior to the Final Approval Hearing, informing proposed Settlement Class Members that there is a pending settlement and advise them regarding how to: (a) protect their rights regarding the settlement; (b) request exclusion from the Settlement Class and the proposed settlement, if desired; (c) object to any aspect of the proposed settlement, if desired; and (d) participate in the Final Approving Hearing, if desired. The Notice shall make clear the binding effect of the settlement on all persons who do not timely request exclusion from the Settlement Class.

b. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties and shall be substantially in the forms attached as Exhibit A hereto.

c. Individual Notice (substantially in the form of Exhibit A shall) be sent via U.S. Mail to the current address Defendant has on file for Settlement Class Members who are current employees, and the last known address for Settlement Class Members who are former employees. If Notice is returned with a forwarding address, it shall be re-mailed. If Notice is returned without a forwarding address, the Settlement Administrator will cross-reference the names and addresses with the USPS's National Change of Address Database and re-send notice per the address (if any) in the USPS database.

54. Notice Deadline

a. Within 21 days of entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate by U.S. Mail the Notice in the form of Exhibit A to Settlement Class Members identified on the Class List and Class Counsel shall post a Notice of the settlement (substantially in the form of Exhibit A) on their/its firm website at www.fishlawfirm.com/wooddale.

X. EXCLUSIONS

55. Exclusion Period

a. Settlement Class Members will have up to and including sixty (60) days following the Preliminary Approval Order to exclude themselves from the Settlement in accordance with this Section. If the Settlement is finally approved by the Court, all Settlement Class Members who have not opted out by the end of the Objection/Exclusion Deadline will be bound by the Settlement and will be deemed a Releasor as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

56. Exclusion Process

a. A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice.

b. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name, address, and telephone number; the name and number of this case, a statement that they wish to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified shall be invalid and the person serving such a request shall be considered member of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved.

c. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by any order or the Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. A member of the Settlement Class who requests to be excluded from the Settlement Class also cannot object to the Settlement.

d. The request for exclusion must be personally signed by the person requesting exclusion. So-called "mass" or "class" exclusion requests shall not be allowed.

e. Within three (3) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a written list reflecting all timely and valid exclusions from the Settlement Class with copies of each such request for exclusion.

f. A list reflecting all individuals who timely and validly excluded themselves from the Settlement shall also be filed with the Court at the time of the motion for final approval of the settlement.

g. If the number of valid exclusions is more than 10% of the Settlement Class, the Parties agree that there is no settlement and they will consider whether to negotiate a new settlement.

XI. OBJECTIONS

57. The Notices shall advise Settlement Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices 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, the person making an objection shall file notice of their intention to do so and at the same time: (i) file copies of such papers they propose to submit at the Final Approval Hearing with the

Clerk of the Court; and (ii) send copies of such papers via United States mail, hand delivery, or overnight delivery to both Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator will establish to receive requests for exclusion or objections, and any other communication relating to this Settlement.

58. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (i) their full name, address, and current telephone number; (ii) the case name and number of this Underlying Action; (iii) the date range during which he/she was employed by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections they have filed, or has had filed on their behalf, in any other class action cases in the last four years; and (vi) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of their counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, they must state as such in the written objection, and must also identify any witnesses they may call to testify at the Final Approval Hearing and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

59. Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

60. The Parties will request that the Court, within its discretion, exercise its right to deem any objection as frivolous and award appropriate costs and fees to the Parties opposing such objection(s).

XII. FINAL APPROVAL HEARING

61. The Parties will jointly request that the Court hold a Final Approval Hearing. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to 735 ILCS § 5/2-801 for settlement and, if so, (i) consider any properly-filed objections, (ii) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith, and (iii) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

XIII. FINAL APPROVAL ORDER

62. The Parties shall jointly seek entry of a Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions or stipulation to

implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waiving any rights of appeal.

63. The Parties shall jointly submit to the Court a proposed order, substantially in the form attached hereto as Exhibit C, that, without limitation:

- a. Approves finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of 735 ILCS 5/2-801 and directing its consummation according to its terms;
- b. Dismisses, with prejudice, all claims of the Settlement Class against Defendant in the Underlying Action, without costs and fees except as explicitly provided for in this Agreement; and
- c. Reserves continuing and exclusive jurisdiction over the settlement and this Agreement, including but not limited to the Underlying Action, the Settlement Class, the Settlement Class Members, Defendant, and the settlement for the purposes of administering, consummating, supervising, construing and enforcing the Settlement Agreement and the Settlement Fund.

64. Class Counsel shall use their best efforts to assist Defendant in obtaining dismissal with prejudice of the Underlying Action and take all steps necessary and appropriate to otherwise effectuate all aspects of this Agreement.

XIV. TERMINATION OF THE SETTLEMENT

65. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, this Settlement Agreement shall be terminated and canceled within ten (10) days of any of the following events:

- a. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;
- b. The Court refuses to grant Preliminary Approval of this Agreement;
- c. The Court refuses to grant final approval of this Agreement in any material respect; or
- d. The Court refuses to enter a final judgment in this Underlying Action in any material respect.

66. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the status quo ante as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Underlying Action.

XV. ATTORNEYS' FEES, COSTS AND EXPENSES, AND INCENTIVE AWARDS

67. Defendant agrees not to oppose attorneys' fees by Class Counsel in an amount not more than thirty-five percent (35%) of the Settlement Fund and an award of their/its reasonable costs and expenses. Class Counsel, in turn, agrees not to seek or accept attorneys' fees in excess of this amount from the Court.

68. Notwithstanding any contrary provision of this Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Agreement or be deemed material thereto.

69. Class Counsel shall provide the Settlement Administrator with its completed IRS Form W-9 at least seven (7) business days prior to the payment of the Fee Award is due. Within three (3) business days after the Effective Date, the Settlement Administrator shall pay to Class Counsel from the Settlement Fund the amount awarded by the Court in the Fee Award. Any payment of the Fee Award shall be paid via paper check or by electronic wire transfer to an account designated by Class Counsel.

70. Prior to or at the same time as Plaintiffs seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for an Incentive Award for each Class Representative in an amount not to exceed Four Thousand Dollars and Zero Cents (\$4,000.00) a piece, and Defendant agrees that it will not oppose such a request. The Incentive Awards shall be paid solely from the Settlement Fund by check written by the Settlement Administrator within seven (7) days of the Effective Date. If the Court does not approve any Incentive Award for the Class Representatives, or if the Court approves Incentive Awards in amounts less than Four Thousand Dollars and Zero Cents (\$4,000.00) for each Class Representative, the remaining amount(s) shall be distributed to the remaining Settlement Class Members.

71. In no event will Defendant's liability for attorneys' fees, expenses, and costs, settlement administration costs, and/or Incentive Awards exceed its funding obligations set out this Agreement. Defendant shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Defendant shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class.

Defendant will have no responsibility, obligation or liability for allocation of fees and expenses among Class Counsel.

XVI. MISCELLANEOUS REPRESENTATIONS

72. The Parties agree that the Settlement Agreement provides fair, equitable and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

73. The Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement, and (ii) 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 Agreement. Class Counsel and Defendant's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

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

75. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Releasees, and Settlement Class Members any right or remedy under or by reason of this Agreement. Each of the Releasees is an intended third-party beneficiary of this Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her or its favor against all Releasors.

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

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

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

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

80. This Agreement may not be amended, modified, altered, or otherwise changed in any manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

81. The Parties agree that Exhibits A through C to this Settlement Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

82. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Agreement.

83. Except as otherwise provided herein, each Party shall bear its own costs.

84. Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Releasees to any other person or party.

85. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.

86. The Parties specifically acknowledge, agree and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of Illinois Rules of Evidence Rule 408, and any other equivalent or similar rule of evidence, and shall not (1) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Underlying Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

87. The Parties also agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.

88. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto shall be inadmissible as evidence of any liability or

wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.

89. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (1) to enforce the terms and provisions hereof or thereof, (2) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (3) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (4) in connection with any motion to enjoin, stay or dismiss any other action, or (5) to obtain Court approval of the Settlement Agreement.

90. This Agreement may be executed in one or more counterparts exchanged by mail or as an electronic mail attachment. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement all exchange signed counterparts.

91. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Releasees.

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

93. This Agreement shall be governed by and construed in accordance with the laws of the state of Illinois.

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

95. Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and shall be sent by electronic mail or hand delivery, postage prepaid, as follows:

<p>If to Class Counsel:</p> <p>David Fish Fish Potter Bolaños, P.C. 200 East Fifth Avenue, Suite 123 Naperville, Illinois 60563 admin@fishlawfirm.com</p>	<p>If to Defendant's Counsel:</p> <p>Daniel C. Shapiro Shapiro & Associates Law 618 Academy Dr, Suite B Northbrook, IL 60062 dshapiro@shapiroassociateslaw.com</p>
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96. This Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.


IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

For Patricia McClain and Veronica Edwards, individually and as the Class Representatives.

By: 

David Fish
dfish@fishlawfirm.com
Mara Baltabols
mara@fishlawfirm.com
Fish Potter Bolaños, P.C.
200 E 5th Ave, Suite 123
Naperville, IL 60563
(312) 861-1800

For Defendant Wood Dale Memory Care, Inc.

By: 

Daniel C. Shapiro
dshapiro@shapiroassociateslaw.com
Shapiro & Associates Law
618 Academy Dr, Suite B
Northbrook, IL 60062
(312) 763-9640

YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU WERE REQUIRED TO PROVIDE YOUR FINGERPRINT OR OTHER BIOMETRIC INFORMATION FOR TIMEKEEPING PURPOSES TO WOOD DALE MEMORY CARE INC. D/B/A THE RADCLIFF AT ANY TIME BETWEEN MARCH 6, 2015 AND [INSERT DATE PRELIMINARY APPROVAL]

This is a court-authorized notice of a proposed class action settlement. This is not a solicitation from a lawyer and is not notice of a lawsuit against you.

What is this Notice About?

A proposed settlement has been reached in a class action lawsuit against Wood Dale Memory Care, Inc. d/b/a The Radcliff (“Defendant”) regarding timekeeping devices used by Defendant from March 6, 2015 through [preliminary approval date], which required employees to provide biometric information (e.g. fingerprints etc.) for timekeeping purposes, allegedly in violation of the Illinois’ Biometric Information Privacy Act (“BIPA”). The case is entitled *McClain, et al. v. Wood Dale Memory Care, Inc. d/b/a The Radcliff*, Case No. 2020 L 000280, pending in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois. The proposed settlement is not an admission of wrongdoing by Defendant, and Defendant denies that it violated the law. The Court has not decided who is right or wrong. Rather, to save the time, expense, and distraction of litigation, the parties have agreed to settle the lawsuit. The settlement has been preliminarily approved by a court in Wheaton, Illinois.

Am I a Member of the Settlement Class?

You are a member of the Settlement Class if, at any time between March 6, 2015 through [preliminary approval date], you were required to provide your fingerprint for timekeeping purposes to Wood Dale Memory Care, Inc. d/b/a The Radcliff within the state of Illinois.

What Can I Get From the Proposed Settlement?

Defendant has agreed to create a fund totaling \$100,000.00 from which all payments contemplated by the Settlement Agreement will be paid, including: (a) Incentive Awards to Plaintiffs, Patricia McClain and Veronica Edwards, in an amount up to \$4,000 each; (b) reasonable attorneys’ fees to Class Counsel not to exceed 35% percent of the Settlement Fund plus reimbursement of reasonable costs; (c) costs incurred by or on behalf of the Settlement Administrator in administering the settlement; (d) an equal share of the remaining Settlement Fund to each Settlement Class Member; and (e) if applicable, any remaining amounts distributed to *cy pres* recipient Prairie State Legal Services. Defendant has also agreed to alter its biometric timekeeping practices, as explained in the detailed Settlement Agreement at the website www.fishlawfirm.com/wooddale.

The Settlement Administrator will issue a check to each Class Member who does not otherwise exclude themselves following the final approval of the settlement. It is believed that each Class Member will receive approximately \$_____ from the Settlement Fund, but the exact amount is not yet known and could be more or less.

Who Represents the Class?

The Court has approved the following attorney to represent the Settlement Class, who is referred to as “Class Counsel,” Fish Potter Bolaños, P.C., 200 E. 5th Ave Ste. 123, Naperville, IL 60563, admin@fishlawfirm.com, (312) 861-1800. You will not be charged for this lawyer. If you want to be represented by your own lawyer instead, you may hire one at your own expense.

What Are Your Options?

1. If you want to participate in the settlement and receive a settlement payment, do nothing. A check will be mailed to you if the Court grants final approval of the settlement.
2. If you do not want to be legally bound by the settlement, you must exclude yourself by [60 days from preliminary approval]. To do so, you must mail your written request for exclusion to the Settlement Administrator, Analytics, at _____. Your written request for exclusion must identify the name of the case and case number, *McClain, et al. v. Wood Dale Memory Care, Inc. d/b/a The Radcliff*, Case No. 2020 L 000280 (DuPage County), include your full name and current address, a statement that you wish to be excluded from the settlement and must be personally signed by you. If you exclude yourself, you will not receive money from this settlement, but you will retain your legal rights regarding any claims that you may have against Defendant.
3. You may object to the settlement by [60 days from preliminary approval] if you have not already excluded yourself from the settlement. If you want to object to the settlement, you must file the objection with the Clerk of the Court in DuPage County and mail or e-mail a copy of the written statement to Class Counsel and Defendant’s Counsel at the addresses below by [60 days from preliminary approval].

Class Counsel David Fish Fish Potter Bolaños, P.C. Fifth Avenue Station 200 E. 5th Avenue, Suite 123 Naperville IL 60563 admin@fishlawfirm.com	Defendant’s Counsel Daniel C. Shapiro Shapiro & Associates Law 618 Academy Dr, Suite B Northbrook, IL 60062 dshapiro@shapiroassociateslaw.com
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The written objection must include the case name and number, *McClain, et al. v. Wood Dale Memory Care, Inc. d/b/a The Radcliff*, Case No. 2020 L 000280 (DuPage County), your full name and current address, the specific grounds for the objection, all information you wish for the Court to consider, the name and contact information of your attorney, if any, and a statement indicating whether you intend to appear at the Final Approval hearing. No Class Member will be entitled to object to the settlement unless written notice of the Class Member’s intention has been mailed to the Clerk of the Court by [60 days from preliminary approval], and copies provided to Class Counsel and Defendant’s Counsel.

How do I update my Contact Information?

You must notify the Settlement Administrator of any changes in your mailing address so that your settlement award will be sent to the correct address. To update your address, contact Analytics the Settlement Administrator, at the address listed below.

When is the Final Approval Hearing?

The Court will hold a hearing in this case on _____, **2022 at 9:00 a.m.**, in Courtroom 2010 of the Circuit Court of DuPage County, 505 N. County Farm Road, Wheaton, Illinois 60187 and via Zoom link available at <https://www.18thjudicial.org/>, to consider, among other things, (1) whether to approve the Settlement; (2) a request by the lawyers representing all class members for an award of no more than 35% of the settlement fund plus costs; and (3) a request for a service award of \$4,000 for each Class Representative McClain and Edwards. You may appear at the hearing, but you are not required to do so.

If you have any questions or for more information, contact the Settlement Administrator or Class Counsel at:

Settlement Administrator XXXXX XXXXX XXXXX	Class Counsel David Fish Fish Potter Bolaños, P.C. Fifth Avenue Station 200 E. 5th Avenue, Suite 123 Naperville IL 60563 (312) 861-1800
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**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

PATRICIA MCCLAIN AND VERONICA
EDWARDS, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WOOD DALE MEMORY CARE, INC. d/b/a
THE RADCLIFF,

Defendant,

Case No.: 20-L-280

[PROPOSED] PRELIMINARY APPROVAL ORDER

This matter having come before the Court on Plaintiffs’ Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (the “Motion”), the Court having reviewed in detail and considered the Motion and Memorandum in support of the Motion, the Class Action Settlement Agreement (“Settlement Agreement”) between Plaintiffs, Patricia McClain and Veronica Edwards (“Plaintiffs” or “Class Representatives”) and Defendant, Wood Dale Memory Care, Inc. d/b/a The Radcliff (“Defendant”) (together, “the Parties”), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises, IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was

EXHIBIT B

negotiated at arms-length between the Parties, who were represented by experienced counsel.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure — including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims — have been preliminarily satisfied.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of:

All individuals who used a biometric finger, hand scanner or biometric based tracking system at Wood Dale Memory Care, Inc. facilities in Illinois between March 6, 2015 and the date of preliminary approval without first signing a biometric consent form.

5. For settlement purposes only, Plaintiffs Patricia McClain and Veronica Edwards are hereby appointed as Class Representatives.

6. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

David Fish
Mara Baltabols
Fish Potter Bolaños, P.C.
200 East Fifth Avenue, Suite 123
Naperville, Illinois 60563

7. The Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and litigation resumes, this Court's preliminary findings regarding the propriety of class

certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Notice, attached to the Settlement Agreement as Exhibit A finds that it meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfy Due Process.

9. The Court finds that the planned notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and constitutes the best notice practicable under the circumstances, where Class Members are current or former employees of Defendant and may be readily ascertained by Defendant's records, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. Analytics LLC, or such other entity that the parties mutually agreed upon, is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement do not need to take any affirmative action to claim their pro rata share of the Settlement Fund.

13. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against the Defendant or the Releasees relating to the claims released under the terms of the Settlement Agreement.

14. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request in a written exclusion request. Such exclusion requests must be received by the Settlement Administrator in written form, by first class mail, postage prepaid, and postmarked, no later than **[insert 60 days from the date of the Preliminary Approval Order]** _____ 2021.

15. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name, address, telephone number, the name and number of the case, a statement that they wish to be excluded from the Settlement Class, and must be personally signed by the person requesting exclusion. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the

Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

16. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by any orders or the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement.

17. The Court preliminarily approves Prairie State Legal Services and as the *cy pres* recipient, including the distribution set forth in the Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees plus reasonable their costs and expenses, as well as an Incentive Award of four thousand dollars and zero cents (\$4,000.00) for each Class Representative, no later than **[insert date seven days prior to Final Approval Hearing]** _____, 2021.

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intend to seek and the payment of the Incentive Award to the Class Representatives, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 19 of this Order, with the Clerk of the Court, and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than **[insert date approximately 60 days following the date of the Preliminary Approval Order]** _____ 2021.

20. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for

any such objection(s), and must also state in writing: (i) their full name, address, and telephone number; (ii) the case name and number of this Litigation; (iii) the date range during which they were employed by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections they have filed, or have had filed on their behalf, in any other class action cases in the last four years; and (vi) the objector's signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of an Incentive Award, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Plaintiffs' Counsel's Fee and Expense Application and/or the request for an Incentive Award to the Class Representative are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates their

intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in their written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

23. All papers in support of the final approval of the proposed settlement shall be filed no later than seven (7) before the Final Approval Hearing.

24. A hearing (the “Final Approval Hearing”) shall be held before the Court on **[Insert date]**_____, 2021 at **[insert time]** _____ a.m./p.m. in Courtroom 2010 (or at such other time or location as the Court may without further notice direct) for the following purposes:

(a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;

(b) to determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;

(d) to consider the application for an award of attorneys' fees, costs and expenses of Class Counsel;

(e) to consider the application for an Incentive Award to the Class Representative;

(f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and

(g) to rule upon such other matters as the Court may deem appropriate.

25. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

26. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

27. All discovery and other proceedings in the Litigation as between Plaintiffs and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

IT IS SO ORDERED.

ENTERED:

Honorable Judge Bryan S. Chapman

Date

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

PATRICIA MCCLAIN AND VERONICA
EDWARDS, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WOOD DALE MEMORY CARE, INC. d/b/a
THE RADCLIFF,

Defendant,

Case No.: 20-L-280

[PROPOSED] FINAL ORDER AND JUDGMENT

This matter coming to be heard on Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement (“the Motion”), due and adequate notice having been given to the Settlement Class, and the Court having considered the papers filed and proceedings in this matter, and being fully advised in the premises, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

1. Unless otherwise noted, all capitalized terms in this Final Order and Judgment shall have the same meaning as ascribed to them in the Settlement Agreement between Plaintiffs, Patricia McClain and Veronica Edwards (“Plaintiffs” or “Class Representatives”) and Defendant, Wood Dale Memory Care, Inc. (“Defendant”) (together, “the Parties”).

2. This Court has jurisdiction over the subject matter of the Litigation and personal jurisdiction over all parties to the Litigation, including all Settlement Class Members.

3. The Court preliminarily approved the Settlement Agreement by Preliminary

EXHIBIT C

Approval Order dated _____, 2021, and the Court finds that adequate notice was given to all members of the Settlement Class pursuant to the terms of the Preliminary Approval Order.

4. The Court has read and considered the papers filed in support of this Motion for Final Approval, including the Settlement Agreement and exhibits thereto and supporting declarations.

5. The Court held a Final Approval Hearing on _____, 2021, at which time the Parties and all other interested persons were afforded the opportunity to be heard in support of and in opposition to the Settlement.

6. Based on the papers filed with the Court and the presentations made to the Court by the Parties and other interested persons at the Final Approval Hearing, the Court now gives final approval to the Settlement and finds that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class. The complex legal and factual posture of the Litigation, and the fact that the Settlement Agreement is the result of arms-length negotiations, further support this finding.

7. Pursuant to 735 ILCS 5/2-801 and 2-802, the Court finally certifies, for settlement purposes only, the following Settlement Class:

All individuals who used a biometric finger, hand scanner or biometric based tracking system at Wood Dale Memory Care, Inc. facilities in Illinois between March 6, 2015 and the date of preliminary approval without first signing a biometric consent form.

8. The persons who are listed on Exhibit 1 to this order, if any, have made timely and valid requests for exclusion and are excluded from the Settlement Class and are not bound by this Final Order and Judgment.

9. For settlement purposes only, the Court confirms the appointment of Plaintiffs Patricia McClain and Veronica Edwards as Class Representatives of the Settlement Class.

10. For settlement purposes only, the Court confirms the appointment of the following counsel as Class Counsel, and finds they are experienced in class litigation and have adequately represented the Settlement Class:

David Fish
Mara Baltabols
Fish Potter Bolaños P.C.
200 East Fifth Avenue, Suite 123
Naperville, Illinois 60563

11. The Court approves Prairie State Legal Services and as the *cy pres* recipient, including the distribution set forth in the Settlement Agreement.

12. With respect to the Settlement Class, this Court finds, for settlement purposes only, that: (a) the Settlement Class defined above is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class, and those common questions predominate over any questions affecting only individual members; (c) the Class Representatives and Class Counsel have fairly and adequately protected, and will continue to fairly and adequately protect, the interests of the Settlement Class; and (d) certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of this controversy.

13. The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the

requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.

14. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The terms of the Settlement Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.

15. The Court dismisses the Litigation with prejudice and without costs (except as otherwise provided herein and in the Settlement Agreement) as to Plaintiffs and all Settlement Class Members' claims against Defendant. The Court adjudges that the Released Claims and all of the claims described in the Settlement Agreement are released against the Releasees.

16. The Court adjudges that the Plaintiffs and all Settlement Class Members who have not opted out of the Settlement Class shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees, as defined under the Settlement Agreement.

17. The Court further adjudges that, upon entry of this Order, the Settlement Agreement and the above-described release of the Released Claims will be binding on, and have *res judicata* preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members who did not validly and timely exclude themselves from the Settlement, and their respective predecessors, successors, heirs, executors, administrators, and assigns, as set forth in the Settlement Agreement. The Releasees may file the Settlement Agreement and/or this Final Order and Judgment in any action or proceeding that may be brought against them in order

to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. Plaintiffs and Settlement Class Members who did not validly and timely request exclusion from the Settlement are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims or any of the claims described in the Settlement Agreement against any of the Released Parties.

19. The Court approves payment of attorneys' fees, costs and expenses to Class Counsel in the amount of \$ _____. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement. The Court, having considered the materials submitted by Class Counsel in support of final approval of the Settlement and their request for attorneys' fees, costs and expenses and in response to any timely filed objections thereto, finds the award of attorneys' fees, costs and expenses appropriate and reasonable for the following reasons: First, the Court finds that the Settlement provides substantial benefits to the Settlement Class. Second, the Court finds the payment fair and reasonable in light of the substantial work performed by Class Counsel. Third, the Court concludes that the Settlement was negotiated at arms-length without collusion, and that the negotiation of the attorneys' fees only followed agreement on the settlement benefits for the Settlement Class Members. Finally, the Court notes that the Class Notice specifically and clearly advised the Settlement Class that Class Counsel would seek an award in the amount sought.

20. The Court approves the incentive awards in the amount of Four Thousand Dollars and Zero Cents (\$4,000.00) for each Class Representative McClain and Edwards,

and specifically finds such amount to be reasonable in light of the services performed by Plaintiffs for the Settlement Class, including taking on the risks of litigation and helping achieve the results to be made available to the Settlement Class. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

21. Neither this Final Order and Judgment, nor the Settlement Agreement, nor the payment of any consideration in connection with the Settlement shall be construed or used as an admission or concession by or against Defendant or any of the Releasees of any fault, omission, liability, or wrongdoing, or of the validity of any of the Released Claims. This Final Order and Judgment is not a finding of the validity or invalidity of any claims in this Litigation or a determination of any wrongdoing by Defendant or any of the Releasees. The final approval of the Settlement does not constitute any position, opinion, or determination of this Court, one way or another, as to the merits of the claims or defenses of Plaintiffs, the Settlement Class Members, or Defendant.

22. Any objections to the Settlement Agreement are overruled and denied in all respects. The Court finds that no reason exists for delay in entering this Final Order and Judgment. Accordingly, the Clerk is hereby directed forthwith to enter this Final Order and Judgment.

23. The Parties, without further approval from the Court, are hereby permitted to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with the Final Order and Judgment and do not limit the rights of the Settlement Class Members.

IT IS SO ORDERED.

ENTERED:

Honorable Judge Bryan S. Chapman

Date