

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

ERIKA MCCASKILL and SHATARA
BROOKS, individually and on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX CORPORATION and FEDEX
GROUND PACKAGE SYSTEM, INC.

Defendants.

2023CH07377
Case No.

CLASS ACTION COMPLAINT

Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiffs Erika McCaskill and Shatara Brooks (“**Plaintiffs**”), by their undersigned attorneys, on their own behalf and on behalf of all others similarly situated, upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters, bring this Class Action Complaint against FedEx Corporation (“**FedEx Corp**”), and FedEx Ground Package System, Inc. (“**FedEx Ground**” and collectively with FedEx Corp, “**Defendants**”) for their violations of Plaintiffs’ privacy rights guaranteed under the Illinois Genetic Information Privacy Act, 410 Illinois Compiled Statute (“**ILCS**”) 513 *et seq.* (hereinafter “**GIPA**”), and allege as follows:

NATURE OF THE ACTION

1. Unlocking the human genetic code came with it the potential for hitherto unfathomable medical development. It permitted individuals to learn in detail the possibilities that were hidden within their genome. For the first time, women can now learn whether they are predisposed to get breast cancer; families can trace their genetic lineage back thousands of years, and law enforcement can use DNA samples to identify criminals.

2. However, all of this information can only be obtained if people are willing to allow sharing of genetic information, and that is only possible if people know that their genetic information will not be used against them in future employment, insurance or other situations. For example, few women would want to learn about a predisposition to breast cancer if that meant that they could be barred from certain jobs or prevented from obtaining life insurance.

3. The Illinois Legislature enacted GIPA in 1998 with the goal to protect Illinois residents from having their genetic information being used against them in employment settings.

4. Consistent with this goal, GIPA provides strong legal protections to ensure that Illinois residents can take advantage of the knowledge that can be gained from obtaining personal genetic information, without fear that this same information could be used by employers to discriminate against them.

5. Among its other valuable protections, GIPA prohibits employers from learning or using genetic information in making employment decisions. GIPA bars employers from asking about employees or potential employees' genetic information, prevents employers from obtaining this information from third parties, and forbids employers from using such information to affect the terms and conditions of employment.

6. To accomplish this goal, GIPA employs a comprehensive definition of "genetic information" that includes information regarding an individual's family medical history.

7. Despite GIPA's prohibitions, some companies in Illinois still ask their employees or applicants to provide protected family medical history when making hiring determinations and job assignments in blatant violation of the law.

8. Defendants chose to repeatedly disregard Illinois' genetic privacy laws by asking their employees to provide genetic information in the form of family medical history to assist the companies in making employment decisions.

9. Accordingly, Plaintiffs seek on behalf of themselves, and all of Defendants' other similarly situated employees in the state, an order: (i) requiring Defendants to cease the unlawful activities discussed herein; and (ii) awarding actual and/or statutory damages to Plaintiffs and the members of the proposed Class.

PARTIES

10. Plaintiff Erika McCaskill was at all relevant times employed by FedEx Ground and is an individual citizen of the State of Illinois. Ms. McCaskill currently resides in Belleville, Illinois.

11. Plaintiff Shatara Brooks was at all relevant times employed by FedEx Ground and was an individual citizen of the State of Illinois. Ms. Brooks currently resides in Indianapolis, Indiana.

12. Defendant FedEx Corporation ("**FedEx Corp**") is a Delaware corporation with its headquarters located in Memphis, Tennessee. FedEx Corp is an American multinational conglomerate holding company focused on transportation and shipping services and conducts business throughout this County, the State of Illinois, and the United States. Upon information and belief, FedEx Corp. employs individuals within the State of Illinois.

13. Defendant FedEx Ground Package System, Inc. ("**FedEx Ground**") is a Delaware corporation and is a wholly owned subsidiary of FedEx Corp. FedEx Ground is headquartered in Pittsburgh, Pennsylvania and conducts business throughout this County, the State of Illinois, and the United States. Upon information and belief, FedEx Ground employs approximately 200,000

total employees, including over 1,000 employees within the State of Illinois. FedEx Ground operates throughout Illinois across numerous locations, including distribution centers at 1101 Busse Drive, Elk Grove Village, IL 60007 (“**the Chicago Center**”), 1602 Vincent Drive, Sauget, IL 62206 (“**the Sauget Center**”) and at 145 S. Pinnacle Drive, Romeoville, IL 60446 (“**the Romeoville Center**”).

14. FedEx Corp and its affiliates, such as FedEx Ground, are major employers in the State of Illinois. Upon information and belief, these subsidiaries share certain resources, and are ultimately controlled by FedEx Corp, which sets policies for the entire company through its contractual relationships with each and by other means.

JURISDICTION AND VENUE

15. This Court has jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 of the Illinois Code of Civil Procedure because Defendants conduct business transactions in Illinois and have committed tortious acts in Illinois.

16. Venue is proper in Cook County because Defendants operate throughout this County and “reside” in Cook County within the meaning of 735 ILCS 5/2-102(a).

ILLINOIS GENETIC INFORMATION PRIVACY ACT (“GIPA”)

17. During the 1990’s the U.S. government poured billions of dollars into the Human Genome Project in an attempt to map the entire human genetic code. When President Clinton announced the first successful “rough draft” of the Project in 2000, he hailed it as one of the great achievements of human history, and said: “Today we are learning the language with which God created life[.]”¹

¹ *Scientists Complete Rough Draft of Human Genome* (N.Y. Times June 26, 2000) available at <https://archive.nytimes.com/www.nytimes.com/library/national/science/062600sci-human-genome.html?amp;sq=francis%252520collins&st=cse&scp=23>.

18. However, like any great leap in human understanding, learning the meaning of people's genetics came with many concerns. One movie released around this time, the dystopian science fiction movie *Gattaca*, attempted to show how this new technology could be abused. The movie conjured a not-too-distant future where genetic discrimination was rampant. In the movie, companies segregated people based on their genetic profiles, those with better genetic profiles (i.e., genetically engineered humans) were eligible for professional employment, while others with less desirable genetics (e.g., susceptibility to heart disease or cancer) were unemployable or relegated to menial jobs. Since its release, the film has been regularly used in schools to show the possible misuses of genetic information.²

19. Illinois stood at the forefront of protecting its citizens from the abuse of this technology when it first passed GIPA in 1998. According to the Illinois Legislature, the intent of GIPA is to protect an individual from their genetic information (such as family medical history) being used against them in a discriminatory manner. Limiting the use or requests for protected genetic information is a key component of health information privacy. 410 ILCS 513/5(1)-(5).

20. The Illinois Legislature amended GIPA in 2008 to increase its protections and harmonize Illinois state law with the then-recently passed Federal Genetic Information Nondiscrimination Act of 2008 (“GINA”), 110 P.L. 233; *see also* 42 U.S.C. § 2000ff. The 2008 amendments to GIPA sought to further prohibit discriminatory practices of employers through the use of genetic information of employees, including such employees' family medical history.

² *What Do People Who Work in Genetics Think About Gattaca 25 Years After Its Release* (Slate Aug. 15, 2022) available at <https://slate.com/technology/2022/08/gattaca-25th-anniversary-genetics-crispr.html>.

21. During discussions of the 2008 GIPA amendments, the Illinois Legislature recognized the importance of safeguarding family medical history due to the fact that it is akin to knowledge of genetic predispositions:

I hope the [legislature] understands the importance of [family medical history]; it's becoming more and more important. Back in '96 or '97, I had a third generation ovarian cancer survivor that came to me with this issue. ... If a woman has ... the gene that causes breast cancer, she can have up to an 84 percent probability that she will develop breast cancer sometime in her life ... it's important that we help people be able to know that information and know they won't be discriminated against in their employment Quite honestly, with genetic information we have today, we could identify a pool of people that ... no one would want to employ. [GIPA] helps guarantee that we don't have that kind of discrimination occur.

Illinois House Transcript, 2008 Reg. Sess. No. 276, pp. 33-34.

22. To accomplish the Illinois Legislature's goal of ensuring that genetic information is not used to discriminate against employees, GIPA adopted Congress' definition of "genetic information" that includes not just the narrow results of an individual's genetic tests, but also information regarding "[t]he manifestation of a disease or disorder in family members of such individual[.]" 410 ILCS 513/10; *see* 45 C.F.R. § 160.103.

23. GIPA bars employers from directly or indirectly requesting or using genetic information in hiring, firing, demoting, or in determining work assignment or classifications of applicants or employees. Specifically, GIPA states: "An employer ... shall not directly or indirectly do any of the following:

- (1) solicit, request, require or purchase genetic testing or genetic information of a person or a family member of the person, ... as a condition of employment, preemployment application...;
- (2) affect the terms, conditions, or privileges of employment, preemployment application, ... or terminate the employment, ... of

any person because of genetic testing or genetic information with respect to the employee or family member...;

- (3) limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee because of genetic testing or genetic information with respect to the employee or a family member, ...; and
- (4) retaliate through discharge or in any other manner against any person alleging a violation of this Act or participating in any manner in a proceeding under this Act.

410 Ill. Comp. Stat. 513/25(c). Nor may an employer or prospective employer enter into an agreement with a person to take a genetic test. 410 ILCS 513/25(d).

24. Even if an employer otherwise obtains genetic information lawfully, it still may not use or disclose the genetic information in violation of GIPA. 410 ILCS 513/25(j).

25. In order to enforce these and other requirements, GIPA provides individuals with a broad private right of action, stating: “Any person aggrieved by a violation of this Act shall have a right of action ... against an offending party.” 410 ILCS 513/40(a). Under this private right of action, a party may recover, for each violation: (a) \$2,500 or actual damages, whichever is greater, for a negligent violation, or \$15,000 or actual damages, whichever is greater, for a willful violation; (b) reasonable attorneys’ fees; and (c) “[s]uch other relief, including an injunction, as the ... court may deem appropriate.” *Id.*

26. Plaintiffs are not required to allege or prove actual damages in order to state a claim under GIPA, and they can seek statutory damages under GIPA as compensation for the injuries caused by Defendant. *See Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186, at ¶ 40, 432 Ill. Dec. 654, 129 N.E.3d 1197 (holding by the Illinois Supreme Court that “an individual need not

allege some actual injury or adverse effect, beyond violation of his or her rights under [the Illinois Biometric Privacy Act (“**BIPA**”)] in order to qualify as an ‘aggrieved person’ under BIPA); *see also Bridges v. Blackstone Grp., Inc.*, 2022 U.S. Dist. LEXIS 121205, at *8 (S. D. Ill. July 8, 2022) (holding that it is appropriate to apply BIPA’s definition of “aggrieved person” used by the *Rosenbach* court to alleged violations of GIPA).

27. Thus, GIPA provides valuable privacy rights, protections, and benefits to the citizens of Illinois and provides those citizens with the means to aggressively enforce those rights.

PLAINTIFF SPECIFIC ALLEGATIONS

PLAINTIFF ERIKA McCASKILL

28. On or around August 20, 2018, Ms. McCaskill submitted an application for the full-time, permanent position of Delivery Driver at the Sauget Center.

29. On or around August 20, 2018, during the application and hiring process, FedEx Ground, pursuant to a FedEx Corp policy, directly or indirectly solicited, requested, or required Ms. McCaskill to disclose her family medical history as a condition of employment with FedEx Ground.

30. Specifically, on or around August 20, 2018, an individual who upon information and belief was an employee of FedEx Ground directly solicited, requested, or required Ms. McCaskill to disclose her family medical history during an interview. As part of the hiring process, Ms. McCaskill was required to meet with the FedEx Ground employee at the Sauget Center for an interview after receiving a conditional offer for employment. During the interview, the FedEx Ground employee verbally asked Ms. McCaskill questions about her family medical history. When asking these questions, the FedEx Ground employee had a file in front of them on their desk and made handwritten notes on the papers in the file as they asked these questions.

31. In response, Ms. McCaskill disclosed genetic information, including conditions that her family members had been diagnosed with. Ms. McCaskill would not have volunteered her family members' medical histories if the FedEx Ground employee had not asked Ms. McCaskill to do so.

32. This interview was a condition of employment and/or preemployment application because FedEx Ground required Ms. McCaskill to attend this interview in order to be hired.

33. Also, in or around August 2018, Ms. McCaskill was required to submit to a pre-employment physical as a requirement of the hiring process. The physical was conducted by a third-party medical provider. During the physical, the physician verbally requested Ms. McCaskill to disclose her family medical history.

34. The physician conducting the physical asked Ms. McCaskill to prepare handwritten responses to paperwork which asked about her medical history, including hypertension and heart-related issues, among other ailments. After completing the paperwork, Ms. McCaskill met with the physician one-on-one in a physical examination room within the medical offices at the physician's office.

35. During this examination, the physician tested Ms. McCaskill's eyesight and the flexibility of various body parts. After completing the physical portions of the examination, the physician verbally asked Ms. McCaskill questions about her medical conditions and history. When asking these questions, the physician had a file in front of him on his desk and made handwritten notes on the papers in the file as he asked these questions.

36. Among other questions, the physician verbally asked Ms. McCaskill to provide her family medical history. The physician listed various medical conditions and asked Ms. McCaskill to respond by stating whether Ms. McCaskill had any of those conditions, or whether any family

members on Ms. McCaskill's maternal or paternal bloodlines had these conditions. These medical conditions included cardiac health and cancer.

37. In response, Ms. McCaskill disclosed genetic information, including conditions that her family members had been diagnosed with. Ms. McCaskill would not have volunteered her family members' medical histories if the physician had not asked Ms. McCaskill to do so.

38. Ms. McCaskill was not directed by the physician, or anyone else from FedEx Ground, either verbally or in writing, to not disclose the solicited genetic information. Nor did Ms. McCaskill provide prior, knowing, voluntary, and written authorization to FedEx Ground for the use of her genetic information in furtherance of a workplace wellness program.

39. This physical was a condition of employment and/or preemployment application because FedEx Ground required Ms. McCaskill to attend this physical in order to be hired.

40. Ms. McCaskill was required to disclose her genetic information at the interview and the physical examination as a condition of employment with FedEx Ground.

41. Ms. McCaskill's family medical history was used by FedEx Ground to affect the terms and conditions of her employment.

42. Ms. McCaskill was hired by FedEx Ground for the Delivery Driver position after completing all required steps in the hiring process. Ms. McCaskill's job duties involved strenuous physical labor. Her job duties included picking up and moving packages weighing up to approximately one hundred and fifty (150) pounds, reviewing the package manifest for her route that day, organizing and scanning the packages as she loaded them onto her delivery truck, and delivering approximately 100 to 150 packages daily.

43. Ms. McCaskill left FedEx Ground's employment at the Sauget Center in or around 2020.

PLAINTIFF SHATARA BROOKS

44. In or around October 2018, Plaintiff Shatara Brooks submitted an application to FedEx Ground for the position of Delivery Driver at the Romeoville Center.

45. In or around October 2018, during the application and hiring process, FedEx Ground directly or indirectly solicited, requested, or required Ms. Brooks to disclose her family medical history pursuant to a FedEx Corp policy.

46. Specifically, in or around October 2018, an individual who upon information and belief was an employee of FedEx Ground directly solicited, requested, or required Ms. Brooks to disclose her family medical history during an interview. During the hiring process, after receiving a conditional offer for employment, Ms. Brooks was required to meet with the FedEx Ground employee at the Romeoville Center. During the interview, the FedEx Ground employee verbally asked Ms. Brooks questions about her family medical history. When asking these questions, the FedEx Ground employee had a file in front of them on their desk and made handwritten notes on the papers in the file as they asked these questions.

47. In response, Ms. Brooks disclosed genetic information, including conditions that her family members had been diagnosed with. Ms. Brooks would not have volunteered her family members' medical histories if the FedEx Ground employee had not asked Ms. Brooks to do so.

48. This interview was a condition of employment and/or preemployment application because FedEx Ground required Ms. Brooks to attend this interview in order to be hired.

49. Also, in or around October 2018, Ms. Brooks was required to submit to a pre-employment physical as a requirement of the hiring process. The physical was conducted by a third-party medical provider. During the physical, the physician conducting the physical verbally solicited Ms. Brooks' family medical history.

50. The physician conducting the physical asked Ms. Brooks to prepare handwritten responses to paperwork which asked about her medical history, including hypertension and heart-related issues, among other ailments. After completing the paperwork, Ms. Brooks met with the physician one-on-one in a physical examination room within the medical offices at the physician's office.

51. During this examination, the physician tested Ms. Brooks' eyesight and the flexibility of various body parts. After completing the physical portions of the examination, the physician verbally asked Ms. Brooks questions about her medical conditions and history. When asking these questions, the physician had a file in front of them on their desk and made handwritten notes on the papers in the file as they asked these questions.

52. Among other questions, the physician verbally asked Ms. Brooks to provide her family medical history. The physician listed various medical conditions and asked Ms. Brooks to respond by stating whether Ms. Brooks had any of those conditions, or whether any family members on Ms. Brooks' maternal or paternal bloodlines had these conditions. These medical conditions included cardiac health and cancer.

53. In response, Ms. Brooks disclosed genetic information, including conditions that her family members had been diagnosed with. Ms. Brooks would not have volunteered her family members' medical histories if the physician had not asked Ms. Brooks to do so.

54. This physical was a condition of employment and/or preemployment application because FedEx Ground required Ms. Brooks to attend this physical in order to be hired.

55. Ms. Brooks was not directed by FedEx Ground, either verbally or in writing, to not disclose the solicited genetic information. Nor did Ms. Brooks provide prior, knowing, voluntary,

and written authorization to FedEx Ground for the use of her genetic information in furtherance of a workplace wellness program.

56. Ms. Brooks was required to disclose her genetic information at the interview and the physical examination as a condition of employment with FedEx Ground.

57. Ms. Brooks' family medical history was used by FedEx Ground to affect the terms and conditions of her employment.

58. Ms. Brooks was hired by FedEx Ground for the Delivery Driver position after completing all required steps in the hiring process. Ms. Brooks' job duties involved strenuous physical labor. Her job duties included picking up and moving packages weighing up to approximately one hundred and fifty (150) pounds, reviewing the package manifest for her route that day, organizing and scanning the packages as she loaded them onto her delivery truck, and delivering approximately 100 to 150 packages daily.

59. Ms. Brooks left her employment with FedEx Ground at the Romeoville Center in or around 2019.

FEDEX CORPORATION DIRECTED ITS AFFILIATES TO COLLECT GENETIC INFORMATION FROM PROSPECTIVE EMPLOYEES

60. FedEx Corp is a large public company with many subsidiaries. Upon information and belief, these subsidiaries share certain resources, and are ultimately controlled by FedEx Corp, which sets policies for the entire company as well as third-party affiliates.

61. Among other things, FedEx Corp maintains certain companywide policies. Some of these policies are publicly available on its web site, including its Code of Conduct, which "applies to every officer, director, manager and employee ... of FedEx Corporation and its subsidiary companies. Certain sections of this Code also apply to third parties performing services

on behalf of FedEx,” Ground Service Providers are identified as an example of the third parties bound by FedEx Corp’s Code of Conduct.³ These policies are implemented directly by FedEx Corp upon FedEx Ground and third-party affiliates: “Our Board of Directors periodically reviews all aspects of our governance policies and practices, including our Corporate Governance Guidelines (the “Guidelines”) and our Code of Conduct ...”⁴

62. FedEx Corp’s public securities filings describe the company’s central oversight of its subsidiaries’ corporate policies and programs, including those that pertain to onboarding for new employees. For example, the company’s Form 10-K for 2022 stated that the company “launched a new, enterprise-wide culture framework ... [t]hese fundamental values apply to all roles and operating companies within FedEx” and “[t]he Governance, Safety, and Public Policy Committee of our Board of Directors oversees our safety strategies, policies, programs, and practices.”⁵ “Training and development begins with our enterprise-wide content for new employees—Core New Employee Orientation—which provides a consistent onboarding experience across our operating companies.”⁶

63. Consistent with FedEx Corp.’s central control of hiring policies and procedures, upon information and belief, FedEx Corp.’s employees or agents directed FedEx Ground to implement policies and practices regarding the preemployment physicals and interviews, including but not limited to, the solicitation of family medical histories from individuals undergoing the

³ FedEx Corporation, Code of Conduct, *available at* https://www.fedex.com/content/dam/fedex/us-united-states/cic/CodeConduct_English.pdf at p. 5.

⁴ FedEx Corporation, Form 10-K, p.11 (May 31, 2022) *available at* <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001048911/68a6290d-91f2-4e75-b3c6-df952bf4cd17.pdf>.

⁵ *Id.* at p. 6.

⁶ *Id.* at p. 8.

physicals, as well as the post-offer interviews conducted at FedEx Ground's facilities throughout Illinois.

FEDEX VIOLATES GIPA AS A MATTER OF COURSE

64. Based on Plaintiffs' experience, they believe that, during the hiring process, FedEx Ground asks employees and/or prospective employees to provide family medical histories as a condition of employment and/or as part of its hiring process.

65. Plaintiffs understand, on information and belief, that FedEx Ground, or agents on its behalf, requests this family medical history information for the purpose of evaluating the risk that the individual may have inherited genetic conditions from family members, and then improperly uses that information when making its hiring decisions and staffing assignments.

66. On information and belief, FedEx Ground requests this family medical history information as part of an effort to avoid risk and/or liability for workplace injuries and/or deaths caused by genetic conditions, including but not limited to hypertension, cancer, heart conditions, diabetes, and stroke, which FedEx Ground believes could be inherited and that could be exacerbated by workplace conditions, especially if these conditions are high-stress and/or physically demanding.

67. FedEx Ground was or should have been aware of its obligations under GIPA. Nevertheless, FedEx Ground intentionally and/or recklessly captured, collected, and/or retained Plaintiffs' genetic information in the form of their family medical histories in violation of Illinois law.

68. As a result, FedEx Ground's violations were willful because it knew, or reasonably should have known, that it was failing to comply with the above-described requirements of GIPA.

CLASS ACTION ALLEGATIONS

69. **Proposed Class Definition:** Plaintiffs bring this action pursuant 735 ILCS 5/2-801 on behalf of themselves and the following class (the “**Class**”) of similarly situated individuals, defined as follows:

70. The Class brought by Plaintiffs consists of:

All individuals in Illinois, within five years prior to the date of class certification of this action, (1) who applied for employment with Defendants or were employed by Defendants, and (2) from whom Defendants, or an agent acting on behalf of Defendants, requested and/or obtained genetic information, including family medical history, in connection with the person’s application for employment or the person’s employment with Defendants.

Excluded from the class are Defendants’ officers and directors, Plaintiffs’ counsel, and any member of the judiciary presiding over this action.

71. Plaintiffs reserve the right to modify this class definition as they obtain relevant information, including employment records, through discovery.

72. **Numerosity:** The exact number of class members is unknown and is not available to Plaintiffs at this time, but Defendants employ over one thousand people in Illinois, and it is believed that all or most of those individuals will fall within the proposed Class. Therefore, it is clear that individual joinder in this case is impracticable. Proposed Class members can easily be identified through Defendants’ employment records.

73. **Common Questions:** There are several questions of law and fact common to the claims of Plaintiffs and the proposed Class members, and those questions predominate over any questions that may affect individual proposed Class members. Common questions include, but are not limited to, the following:

a. whether Defendants, or an agent acting on behalf of Defendants, solicited,

- requested, captured or collected family medical history of prospective employees;
- b. whether Defendants, or an agent acting on behalf of Defendants, solicited, requested, captured or collected family medical history of existing employees;
- c. whether Defendants obtained genetic information from Plaintiffs and the Class by asking for family medical history;
- d. whether Defendants' solicitation, request, collection, or use of genetic information constituted a violation of GIPA; and
- e. whether FedEx Corp directed and controlled the policies and procedures of its wholly owned subsidiary, FedEx Ground, with respect to the pre-employment physicals and post-offer interviews of employees or potential employees who are residents of Illinois.

74. **Typicality:** Plaintiffs' claims are typical of the claims of the proposed Class members. Plaintiffs would only seek individual or actual damages if class certification is denied. In addition, Plaintiffs are entitled to relief under the same causes of action and upon the same facts as the other members of the proposed Class.

75. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the Class and have retained competent counsel experienced in complex litigation and class action litigation. Plaintiffs have no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiffs.

76. **Appropriateness:** Class proceedings are also superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. Even if proposed Class members were able or willing to pursue such individual litigation, a class action would still be preferable due to the fact that a multiplicity of individual actions would likely increase the expense and time of litigation given the complex legal and factual controversies presented in this Class Action Complaint. A class action, on the other hand, provides the benefits of fewer management difficulties, single adjudication, economy of scale, and

comprehensive supervision before a single court, and would result in reduced time, effort and expense for all parties and the Court, and ultimately, the uniformity of decisions.

COUNT I
VIOLATION OF 410 ILCS 513/25
SOLICIT, REQUEST AND/OR REQUIRE GENETIC INFORMATION OF A PERSON
OR A FAMILY MEMBER OF A PERSON AS A CONDITION OF EMPLOYMENT OR
PREEMPLOYMENT APPLICATION

77. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

78. Defendants are corporations that directly or indirectly employ individuals within the State of Illinois and therefore meet the definition of an “employer” under 410 ILCS 513/10.

79. Family medical history includes the “manifestation or possible manifestation of a disease or disorder in a family member of [an] individual” and is incorporated into the definition of “genetic information” under 410 ILCS 513/10 and 45 C.F.R. § 160.103.

80. Plaintiffs were individually asked to provide, and did provide, their family medical history as a condition of employment during the application and hiring process to work for Defendants.

81. Defendants, or an agent acting on their behalf, solicited, requested, or required Plaintiffs to disclose family medical history as a condition of employment during the application and hiring process to work for Defendants.

82. Defendants directly solicited or requested Plaintiffs to disclose family medical histories during a pre-employment physical and interview as a condition of employment during the application and hiring process to work for Defendants.

83. Defendants failed to direct Plaintiffs, either verbally or in writing, not to provide genetic information when requested to provide their family medical history.

84. Plaintiffs and the proposed Class members were aggrieved by Defendants' violations of their statutorily protected rights to privacy in their genetic information, as set forth in GIPA, when Defendants directly or indirectly solicited or requested them to disclose their genetic information as a condition of ongoing employment or a condition of a pre-employment application.

85. By indirectly or directly soliciting or requesting Plaintiffs and the proposed Class members to provide their genetic information as described herein, Defendants violated Plaintiffs' and the proposed Class members' rights to privacy in their genetic information as set forth in GIPA.

86. FedEx Corp directed and controlled the policies and procedures of its wholly owned subsidiary, FedEx Ground, with respect to the interviews conducted at FedEx Ground's facilities throughout the State of Illinois and the pre-employment physicals conducted by third party medical providers, and therefore it is vicariously liable for the GIPA violations of its wholly owned subsidiaries.

87. 'Because Defendants knew, or reasonably should have known, that soliciting or requesting family medical history from an employee in Illinois violated GIPA, their actions in violating GIPA were willful.

88. On behalf of themselves and the proposed Class members, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the proposed Class by requiring each Defendant to comply with GIPA as described herein; (3) statutory damages of \$15,000 or actual damages, whichever is greater, for each intentional and/or reckless violation of GIPA pursuant to 410 ILCS 513/40(2) or, in the alternative, statutory damages of \$2,500 or actual damages, whichever is greater, for each negligent violation

of GIPA pursuant to 410 ILCS 513/40(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 410 ILCS 513/40(3).

PRAYER FOR RELIEF

Wherefore, Plaintiffs, individually and on behalf of the proposed Class of similarly situated individuals, pray for an Order as follows:

- A. Finding this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801 and certifying the proposed Class as defined herein;
- B. Designating and appointing Plaintiffs as representatives of the proposed Class and Plaintiffs' undersigned counsel as Class Counsel;
- C. Declaring that Defendants' actions, as set forth above, violate GIPA;
- D. Awarding Plaintiffs and the proposed Class members statutory damages of \$15,000 or actual damages, whichever is greater, for *each* intentional and/or reckless violation of GIPA pursuant to 410 ILCS 513/40(2), or statutory damages of \$2,500 or actual damages, whichever is greater, for *each* negligent violation of GIPA pursuant to 410 ILCS 513/40(1);
- E. Declaring that Defendants' actions, as set forth above, were intentional or reckless and/or declaring that Defendants' actions, as set forth above, were negligent;
- F. Awarding injunctive and other equitable relief as is necessary to protect the interests of Plaintiffs and the proposed Class, including an Order prohibiting Defendants from soliciting, requesting and/or requiring genetic information as a condition of employment or in a pre-employment application pursuant to GIPA;
- G. Awarding Plaintiffs and the proposed Class members reasonable attorneys' fees and costs incurred in this litigation pursuant to 410 ILCS 513/40(3);
- H. Awarding Plaintiffs and the proposed Class pre- and post-judgment interest, to the extent allowable; and
- I. Granting all such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a jury trial on all issues so triable.

Dated: August 11, 2023

Respectfully submitted,

/s/ Edward Wallace

Edward A. Wallace

Mark R. Miller

Molly C. Wells

WALLACE MILLER

150 N. Wacker Drive, Suite 1100

Chicago, IL 60606

T. (312) 261-6193

E. eaw@wallacemiller.com

mrm@wallacemiller.com

mcw@wallacemiller.com

Firm ID: 65958

Elizabeth A. Brehm*

Kyle McLean (SBN 6344126)

SIRI & GLIMSTAD LLP

745 Fifth Avenue, Suite 500

New York, NY 10151

T. (212) 532-1091

E. ebrehm@sirillp.com

kmclean@sirillp.com

COUNSEL FOR PLAINTIFFS AND THE PROPOSED CLASS

*(*Pro Hac Vice* To Be Filed)