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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

RICKY COCHRAN and ALAIN BERREBI,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

THE KROGER CO. and ACCELLION, INC.,

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Ricky Cochran and Alain Berrebi (“Plaintiffs”), individually and on behalf of all others similarly situated, upon personal knowledge of facts pertaining to himself and on information and belief as to all other matters, by and through undersigned counsel, brings this Class Action Complaint against Defendants Accellion, Inc. (“Accellion”) and The Kroger Co. (“Kroger”) (together, “Defendants”).

### NATURE OF THE ACTION

1  
2 1. Plaintiffs bring this class action on behalf of themselves and all other individuals (“Class  
3 Members”) who had their sensitive personal information—including but not limited to names, email  
4 addresses, phone numbers, home addresses, dates of birth, Social Security numbers (SSN), bank account  
5 and routing information, information used to process health insurance claims, and prescription  
6 information<sup>1</sup> (collectively, “Personal Information”)—disclosed to unauthorized third parties during a  
7 data breach compromising Accellion’s legacy File Transfer Appliance software (the “Data Breach”).

8 2. Accellion made headlines in late 2020/early 2021 (and continues to receive a raft of  
9 negative publicity) following its December 23, 2020 disclosure to numerous clients that criminals  
10 breached Accellion’s client-submitted data via a vulnerability in its represented “secure” file transfer  
11 application.<sup>2</sup>

12 3. Accellion is a software company that provides third-party file transfer services to clients.  
13 Accellion makes and sells a file transfer service product called the File Transfer Appliance (“FTA”).  
14 Accellion’s FTA is a 20-year-old, obsolete, “legacy product” that was “nearing end-of-life”<sup>3</sup> at the time  
15 of the Data Breach, thus leaving it vulnerable to compromise and security incidents.

16 4. During the Data Breach, unauthorized persons gained access to Accellion’s clients’ files  
17 by exploiting a vulnerability in Accellion’s FTA platform.

18 5. On February 19, 2021, Kroger publicly confirmed that the Personal Information of  
19 Kroger pharmacy customers, along with “certain associates’ HR data . . . and certain money services  
20 records,” was compromised in the well-publicized Data Breach of its file transfer software vendor,  
21 Accellion.

22  
23 <sup>1</sup> Rich Barak, *NEW: Kroger data breach investigation continues*, ATLANTA. NEWS. NOW. (Feb. 21,  
24 2021), <https://www.ajc.com/news/breaking-kroger-advises-customers-of-data-breach-affecting-pharmacy/R44FKCSVLNDTJHA53ON36HO2CA/> (last visited Mar. 11, 2021).

25 <sup>2</sup> Lucas Ropek, *The Accellion Data Breach Seems to Be Getting Bigger*, GIZMODO (Feb. 11, 2021,  
26 8:47 P.M.), <https://gizmodo.com/the-accellion-data-breach-seems-to-be-getting-bigger-1846250357>  
(last visited Mar. 11, 2021).

27 <sup>3</sup> ACCELION, *Accellion Responds to Recent FTA Security Incident* (Feb. 1, 2021),  
28 <https://www.accellion.com/company/press-releases/accellion-provides-update-to-recent-fta-security-incident/> (last visited Mar. 11, 2021).

6. In a press release, Kroger identified that, inter alia, customers of Kroger Health and Money Services were impacted.<sup>4</sup> Little information is available about the disclosure of Kroger employee and money service customer records, but reports indicate more specifically that pharmacy customers of The Little Clinic, Kroger Pharmacies, and Kroger's family of pharmacies operated by Ralphs Grocery Company and Fred Meyer Stores Inc. are all potentially impacted by the Data Breach. Other affiliated pharmacies possibly impacted by the Data Breach include Jay C Food Stores, Dillon Companies, LLC, Baker's, City Market, Gerbes, King Soopers, Quality Food Centers, Roundy's Supermarkets, Inc., Copps Food Center Pharmacy, Mariano's Metro Market, Pick 'n Save, Harris Teeter, LLC, Smith's Food and Drug, Fry's Food Stores, Healthy Options, Inc., Postal Prescription Services, and Kroger Specialty Pharmacy.<sup>5</sup>

7. On January 23, 2021, Accellion informed Kroger that Kroger's files and information were impacted by the Data Breach. Specifically, Accellion notified Kroger that an unauthorized person gained access to certain Kroger files by exploiting a vulnerability in Accellion's FTA platform.

8. At the time of the Data Breach, Kroger, along with reportedly thousands of others, was a client of Accellion. Accellion's services to Kroger, and the other customers, included the use of Accellion's outdated and vulnerable FTA platform for large file transfers. The Personal Information of Kroger's pharmacy customers, employees, and money service customers, among others, was accessed by and disclosed to criminals without authorization because who were able to exploit vulnerabilities in Accellion's FTA product.

9. Defendants were well aware of the data security shortcomings in Accellion's FTA product. Nevertheless, Defendants continued to use FTA, putting Kroger's customers and employees at risk of being impacted by a breach.

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<sup>4</sup> The Kroger Co., *Accellion Security Incident Impacts Kroger Family of Companies Associates and Limited Number of Customers*, CISION PR NEWSWIRE (Feb. 19, 2021, 4:05 P.M.), <https://www.prnewswire.com/news-releases/accellion-security-incident-impacts-kroger-family-of-companies-associates-and-limited-number-of-customers-301231891.html> (last visited Mar. 9, 2021).

<sup>5</sup> Chris Mayhew, *Kroger advises customers of a data breach affecting pharmacy and Little Clinic*, CINCINNATI.COM | THE ENQUIRER (Feb. 19, 2021, 8:34 P.M.), <https://www.cincinnati.com/story/news/2021/02/19/kroger-warns-customers-medical-prescriptions-data-breach/4514664001/> (last visited Mar. 11, 2021).

10. Defendants' failures to ensure that the file transfer services and products used by Kroger were adequately secure fell far short of their obligations and Plaintiffs' and Class Members' reasonable expectations for data privacy, jeopardized the security of Plaintiffs' and Class Members' Personal Information, and put Plaintiffs and Class Members at serious risk of fraud and identity theft.

11. As a result of Defendants' conduct and the resulting Data Breach, Plaintiffs and Class Members' privacy has been invaded, their Personal Information is now in the hands of criminals, and they face a substantially increased risk of identity theft and fraud. Accordingly, these individuals now must take immediate and time-consuming action to protect themselves from such identity theft and fraud.

### **PARTIES**

12. Plaintiff Ricky Cochran is a citizen of the state of Georgia and resides in Covington, Georgia. Believing Kroger would implement and maintain reasonable security and practices to protect his Personal Information, Mr. Cochran routinely provided his Personal Information to a Kroger pharmacy location on Salem Road in Covington, Georgia, in connection with having prescriptions filled. On or about February 19, 2021, Kroger sent Plaintiff Cochran, and Plaintiff Cochran received, a letter confirming that his personal information was impacted by the Data Breach. In the letter, Kroger identified that the nature of the information involved includes "names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers, information to process insurance claims, prescription information such as prescription number, prescribing doctor, medication names and dates, medical history, as well as certain clinical services . . . ."

13. Plaintiff Alain Berrebi is a citizen of the state of California and resides in Los Angeles, California. Believing Kroger would implement and maintain reasonable security and practices to protect his Personal Information, Mr. Berrebi routinely provided his Personal Information to a Ralphs pharmacy location on West 9th Street in downtown Los Angeles, California, in connection with having prescriptions filled. On or about March 11, 2021, Kroger sent Plaintiff Berrebi, and Plaintiff Berrebi received, a letter confirming that his personal information was impacted by the Data Breach. In the letter, Kroger identified that the nature of the information involved includes "names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers, information to process insurance

1 claims, prescription information such as prescription number, prescribing doctor, medication names and  
2 dates, medical history, as well as certain clinical services . . . .”

3 14. Defendant Accellion Inc. is a Delaware corporation with corporate headquarters located  
4 at 1804 Embarcadero Road, Suite 200, Palo Alto, California 94303.

5 15. Defendant The Kroger Co. is an Ohio corporation with its corporate headquarters located  
6 at 1014 Vine Street, Cincinnati, Ohio 45202.

### 7 JURISDICTION AND VENUE

8 16. This Court has subject matter jurisdiction over this action pursuant to the Class Action  
9 Fairness Act of 2005, 28 U.S.C. § 1332(a) and (d), because the matter in controversy, exclusive of  
10 interest and costs, exceeds the sum or value of five million dollars (\$5,000,000.00) and is a class action  
11 in which one or more Class Members are citizens of states different from Defendants.

12 17. The Court has personal jurisdiction over Defendants because Accellion has a principal  
13 office in California, Defendants conduct significant business in California, and Defendants otherwise  
14 have sufficient minimum contacts with and intentionally avail themselves of the markets in California.

15 18. Venue properly lies in this judicial district because, *inter alia*, Accellion has a principal  
16 place of business in this district; Defendants transact substantial business, have agents, and are otherwise  
17 located in this district; and a substantial part of the conduct giving rise to Plaintiffs’ claims occurred in  
18 this judicial district.

### 19 FACTUAL ALLEGATIONS

#### 20 **A. Accellion and its Unsecure File Transfer Platform, FTA**

21 19. Accellion is a Palo Alto-based software company that makes, markets, and sells file  
22 transfer platforms and services.

23 20. Accellion touts its products and services as “prevent[ing] data breaches”<sup>6</sup> and as being  
24 secure. On its website, Accellion states:  
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28 <sup>6</sup> ACCELLION, *About Accellion*, <https://www.accellion.com/company/> (last visited Mar. 9, 2021).

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