

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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COMPUTERSHARE INC.,  
Plaintiff

v.

KATHYANN PACE,  
Defendant

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**AMENDED COMPLAINT**

Plaintiff, Computershare Inc. (“Computershare” or “Plaintiff”), brings the following civil action to seek redress against Defendant, Kathyann Pace (“Pace” or “Defendant”), for injunctive and monetary relief, because of Defendant’s violations of the Computer Fraud and Abuse Act, 18 U.S.C. 1030 et seq. (“CFAA”), conversion, and breach of contract.

Defendant, a former Computershare employee, wrongfully retained possession of a Computershare laptop computer, in clear violation of company policies of which she was well aware and had agreed to follow, after she separated from employment with the company, and refused to turn it over, despite repeated requests from the company. The laptop contained Computershare’s highly confidential information pertaining to risk and audit documentation and analyses. Ultimately, the laptop was produced only under the threat of litigation. A forensic review of the laptop revealed that Defendant downloaded from the laptop onto her personal computer and onto two portable USB memory devices highly confidential electronic information of the company and of its clients’ shareholders.

This Amended Complaint is filed as a result of Defendant’s unlawful possession of and delay in turning over to Computershare this information, which required Computershare to retain legal counsel and forensic computer consultants to create image copies of computer hard drives

and to purge Computershare confidential information from Defendant's electronic devices. By bringing this action, Computershare seeks, among other things, to recover its costs associated with Pace's unlawful conduct, including but limited to forensic computer consultant fees and legal fees. Because Computershare cannot be certain Defendant is not still in possession of Computershare's confidential information or has forwarded that information to third parties, the company also seeks an order preventing Defendant from ever using or disclosing to anyone any of the confidential information that was or may still be in her possession.

### **PARTIES**

1. Plaintiff, Computershare Inc., is a corporation incorporated under the laws of Delaware with an office at 250 Royall Street, Canton, MA 02021.

2. Defendant, Pace, is an individual who resides at 37 Whitten Street, Dorchester, Massachusetts

### **JURISDICTION AND VENUE**

3. Jurisdiction is invoked pursuant to 28 U.S.C. §1331 because a claim arises under the CFAA, 18 U.S.C. §1030 et seq. Supplemental jurisdiction is invoked pursuant to 28 U.S.C. §1367.

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because the acts complained of occurred in this judicial district and division. Computershare's offices are located at 250 Royall Street, Canton, MA 02021, and Pace is a resident and citizen of Suffolk County, Massachusetts.

## **BACKGROUND**

### **Description of Computershare**

5. Computershare is a global leader in transfer agency and share registration, employee equity plans, proxy solicitation and stakeholder communications; it provides services to over 2,700 corporate and business clients and 15,000,000 shareholders in the United States. Computershare is known for its expertise in data management, high volume transaction processing, payments, and stakeholder engagement, which help organizations maximize relationships with their investors, employees, creditors, members, and customers. Computershare Limited, the parent to Computershare Inc., is listed on the Australia stock exchange (ASX:CPU) and has a substantial business presence in the United States.

### **Pace's Employment With Computershare**

6. Pace was employed in Computershare's Enterprise Risk Management and Internal Audit department as a Risk Analyst from 2007 through September 21, 2010, when she voluntarily resigned.

7. On or about April 23, 2007, Pace executed Computershare's Confidentiality Agreement (the "Agreement") (attached hereto as **Ex. A**). The Agreement states in relevant part as follows:

2. **EMPLOYEE'S NON-DISCLOSURE OBLIGATION.** Employee shall maintain Confidential Information in strict confidence at all times and shall not, without the written consent of the President of the Company, (i) divulge Confidential Information to any unauthorized person or entity, or (ii) use or allow another to use Confidential Information in any unauthorized manner, either during the term of employment or for as long as the Confidential Information remains confidential. Employee's obligation to maintain Confidential Information in strict confidence is not limited to any single state or other jurisdiction.

3. **COMPANY PROPERTY.** All materials and copies thereof (whether related to Confidential Information or not) created or held by Employee during employment with the Company, its parent, subsidiaries, affiliates, predecessors and successors concerning the Company's business are the sole and exclusive property of the Company and will be promptly delivered to the Company upon request by the Company or the termination of Employee's employment for any reason. All computer files concerning the Company's business and maintained on a computer owned by Employee shall, upon request of the Company or termination of Employee's employment, be downloaded to a disk(s) and returned to the Company and permanently deleted from any form of media retained by the employee.

8. The Agreement also states,

6. **REMEDIES.** Employee acknowledges that failure to comply with the terms of this Agreement will cause irreparable damage to the Company. Therefore, Employee agrees that the Company is entitled to specific performance or injunctive relief against Employee to prevent such failure or damage. Employee further agrees to pay reasonable attorney fees incurred by the Company in any proceeding relating to the enforcement of this Agreement or to any alleged breach thereof in which the Company shall prevail in whole or in part. Further, nothing in this Agreement is intended to preclude the Company from exercising any other rights or remedies relating to the protection of confidential or trade secret information.

9. While employed by Computershare, Pace was assigned, for her business use, a laptop computer (specifically, an IBM/Lenovo Thinkpad T60 with serial number L3-9B1G6) which is owned by Computershare (the "Computershare laptop"). Although required to do so, Pace did not return the Computershare laptop when she resigned. Despite numerous written requests to her and her legal counsel, Pace did not return the company laptop to Computershare until almost three weeks after her resignation.

**Pace's Theft of Computershare Confidential Information From The Laptop Computer**

10. After the Computershare laptop was finally delivered by Pace to counsel for Computershare, Computershare hired StoneTurn Group LLP ("StoneTurn") to make forensic image copies of the hard drive and to analyze the data on such drive.

11. StoneTurn's review and analysis of the Computershare laptop revealed that Pace did the following on October 8, 2010, three weeks after she had resigned but before returning the Computershare laptop to Computershare's counsel:

- a. Attached a SanDisk Cruzer USB Thumb Drive (the "SanDisk Thumb Drive") to the Computershare Laptop. The Thumb Drive contained highly confidential and proprietary Computershare documents. The files included on the SanDisk Thumb Drive included a replica of all email (and those confidential audit documents and reports she had either received or sent as e-mail attachments) Pace had on the Computershare Exchange Server;
- b. On the Computershare laptop, opened several of the highly confidential and proprietary Computershare files stored on the SanDisk Thumb Drive directly from such SanDisk Thumb Drive; and
- c. Attempted to delete at least 24 files from the Computershare Laptop.

12. StoneTurn provided a list of the names of the Computershare documents it determined were located on the SanDisk Thumb Drive. The audit and risk documents and reports that Pace downloaded to the SanDisk Thumb Drive contained highly sensitive, confidential and proprietary Computershare risk and audit analyses, including information that could compromise the company's competitive position in the market as well as highlight and disclose commercial business practices that are proprietary to the company and which have been

uniquely designed to protect client and shareholder private data and accurate money movements across the globe.

13. For example, Pace downloaded a document that detailed the business and operational processes of certain of the Company's major United States business lines, the inherent risks they face, their management risk rating, the likelihood and consequence of risks to those business lines, a documentation of controls that are in place that have been designed to mitigate their risk, a management residual risk rating (ranking after consideration of how their controls currently in place have addressed those risks), recommendations on how the subsidiary could further mitigate risk, due dates and responsible parties for these business lines.

14. Pace also downloaded an Internal Audit Report across all of Computershare's United States businesses which describes in detail the company's efforts to maintain and preserve shareholder and institutional privacy and confidentiality, specific audit findings, ratings and rankings, detailed resolution strategies, due dates and responsible individuals.

15. Additionally, Pace also took a risk analysis of Computershare's core transfer agency business, which included a summary of its proprietary methodology, a calculation of residual risks based on specific data points and a detailed spreadsheet setting forth all of the risks associated with this Transfer Agency business.

16. Of additional concern, Pace downloaded to the SanDisk Thumb Drive all of her e-mails, attached to which are copies of dozens of reports and analyses she and the department produced and discussed during her three years with Computershare. Included in these emails are personally identifiable information of shareholders, including account numbers, names and holdings.

17. Described above is only a brief summary of the thousands of pages of highly sensitive, confidential and proprietary information that was wrongfully taken by Pace.

18. In light of the sensitivity of these documents and information, Computershare took steps to confirm that Pace had not retained or distributed such information to any third parties. The privacy and financial records of millions of shareholders were potentially at risk.

19. At no time during or after her employment by Computershare was Pace authorized to copy, transfer, download or store any Computershare information on any electronic device owned or possessed by her.

20. At no time after her employment at Computershare was Pace authorized to access a Computershare computer or computers and obtain information from any such computer. Pace's access and copying of certain Computershare electronic information exceeded whatever access she was permitted on any Computershare computer systems.

**Pace's Refusal to Return Computershare's Stolen Information and Untruthful Affidavit**

21. After receiving StoneTurn's forensic analysis, on January 21, 2011, counsel for Computershare sent a letter to Pace's counsel demanding the return of the SanDisk Thumb Drive and all electronic media in Pace's possession in order to determine the extent of her use, access and/or disclosure of Computershare's confidential and proprietary information. In response to this letter, counsel for Computershare and counsel for Pace exchanged email correspondence.

22. In an email sent at 7:12 P.M. on Wednesday, January 26, 2011, Pace's counsel stated that Pace "will provide the thumb drive" to Computershare. As a result of this promise, Computershare delayed the filing of its Complaint against Pace.

23. On Monday, January 31, 2011, Computershare's counsel received a letter from Pace's counsel, along with an affidavit from Pace, claiming that she could not locate the SanDisk Thumb Drive.

24. In her affidavit, Pace admits to copying from the Computershare laptop to the SanDisk Thumb Drive her "personal information" and Computershare company emails concerning communications between her and her manager at Computershare. She also claims to have "never removed or copied from the laptop any of Computershare's confidential or proprietary information." Based on the information provided by StoneTurn and described above, this statement in Pace's affidavit is false.

25. On Tuesday, February 1, 2011, Computershare's counsel sent an email to Pace's counsel reiterating Computershare's earlier request for a forensic review of Pace's personal electronic devices, especially in light of her failure to provide the Thumb Drive after her counsel promised she would do so and her untruthful affidavit.

26. As a result of Defendant's failure to provide the SanDisk Thumb Drive or any other electronic devices in her possession, Computershare filed its Complaint on or about February 4, 2011, and sought an order requiring Defendant, among other things, to immediately surrender the SanDisk Thumb Drive and permit Computershare to make forensic image copies of her electronic devices.

27. Upon the filing of Computershare's Complaint and restraining order, Defendant finally agreed to allow Computershare's forensic vendor to make forensic image copies of her electronic devices. These devices included an iMac computer, as well as a Lexar USB thumb drive ("Lexar Thumb Drive"). However, the Lexar Thumb Drive Defendant produced was not the SanDisk Thumb Drive. Defendant now maintained that she lost the SanDisk Thumb Drive.



28. On or about February 10, StoneTurn made forensic image copies of Defendant's devices.

29. From on or about February 14 to February 18, StoneTurn conducted a forensic analysis of her iMac computer and the Lexar Thumb Drive.

30. The forensic analysis revealed that Defendant was in possession of and had accessed a disturbingly broad range of Computershare's confidential information, including but not limited to the following:

- a. On or about January 27, Defendant accessed a document entitled "2008 Internal Audit Stock Options Report," which contains confidential Computershare information. Upon information and belief, the file was accessed from the SanDisk Thumb Drive. This access occurred the day before(?) Defendant signed an affidavit stating she had lost the SanDisk Thumb Drive.
- b. Confidential Computershare documents were downloaded to the Lexar Thumb Drive on February 9, after Computershare filed its Complaint, and one day prior to the making of forensic image copies by StoneTurn.
- c. Computershare files were also located on Defendant's iMac computer.

31. As a result of Defendant's unlawful possession of, downloading and access of Computershare's confidential information, purging of this information from Defendant's devices was required. The purging was completed by StoneTurn on or about March 11.

32. Defendant now continues to maintain that she lost the SanDisk Thumb Drive.

**COUNT I**

**Computer Fraud and Abuse Act**

33. Computershare realleges and incorporates by reference the allegations contained in paragraphs 1 through 32 above.

34. Pace's Computershare laptop computer was a "protected computer" within the meaning of the Computer Fraud and Abuse Act. Pace worked out of Computershare's office in Massachusetts. Pace regularly used the Computershare laptop computer assigned to her to communicate with third-party members outside of Massachusetts and to access the Internet. Pace used her computer in interstate and foreign commerce.

35. Weeks after her employment with Computershare had ended, Pace intentionally accessed the Computershare laptop computer assigned to her and downloaded Computershare information to the SanDisk Thumb Drive without authorization or in excess of her authorization. She used the Computershare laptop computer assigned to her to copy onto the SanDisk Thumb Drive Computershare information for the purpose of retaining this information, in breach of her Confidentiality Agreement and applicable law, thus she did not have authorization or exceeded her authorization in such use of Computershare's laptop computer.

36. Pace's intentional and unlawful conduct caused damages and losses in excess of \$5,000.00. Specifically, Computershare's damages include, but are not limited to, the fact that Computershare was forced to hire a forensic expert to analyze and assess the Computershare laptop computer assigned to Pace, Pace's iMac, and the Lexar Thumb Drive, and to purge the iMac and Lexar Thumb Drive of Computershare's confidential information, and has incurred legal fees relating to her unauthorized downloading and removal of Computershare information, and has lost many hours away from day-to-day responsibilities of Computershare employees,

including but not limited to its Global Head of Enterprise Risk Management and Internal Audit and Corporate Counsel, all well in excess of \$5,000.00.

WHEREFORE, Computershare respectfully requests that the Court order Pace to immediately return all property, confidential information and/or proprietary information, including all copies, electronic and otherwise that belong to Computershare, and not to disclose any Computershare confidential information at any time. . Computershare also demands judgment in its favor and against Pace on the claim set forth in this count as a result of Pace's unlawful conduct and for any actual, consequential damages (including but not limited to forensic computer analysis expenses and lost employee hours), to the extent ascertainable, in an amount to be determined at trial, and other such relief as this Court shall deem just and appropriate.

**COUNT II (Conversion)**

37. Computershare realleges and incorporates by reference the allegations contained in paragraphs 1 through 36 above.

38. Pace wrongfully exercised dominion and control over information in the possession of and belonging to Computershare, including confidential and proprietary information which Pace has converted without legal justification or privilege.

39. Computershare repeatedly requested the return of such information; however Pace refused, and still has not turned over the SanDisk Thumb Drive.

40. As a result of Pace's conduct, Computershare has been and/or will be damaged.

WHEREFORE, Computershare respectfully requests that the Court order Pace to immediately return all property, confidential information and/or proprietary information, including all copies, electronic and otherwise that belong to Computershare located on the SanDisk Thumb Drive or any other device in her possession. Computershare also demands judgment in its favor and against Pace on the claim set forth in this count as a result of Pace's unlawful conduct and for any actual, consequential damages, to the extent ascertainable, in an amount to be determined at trial, and other such relief as this Court shall deem just and appropriate.

**COUNT III**

**(Breach Of Express Contract)**

41. Computershare realleges and incorporates by reference the allegations contained in paragraphs 1 through 40 above.

42. By virtue of the foregoing conduct, Pace has violated the terms of the Confidentiality Agreement.

43. As a consequence of the foregoing, Computershare has suffered and/or will suffer substantial and egregious harm as a result of Pace's conduct.

WHEREFORE, Computershare demands judgment in its favor and against Pace on the claim set forth in this count for any actual and/or consequential damages, to the extent ascertainable, in an amount to be determined at trial, and other such relief as this Court shall deem just and appropriate, including attorneys fees, as specifically provided in the Confidentiality Agreement.

**COUNT IV**

**(Injunctive Relief)**

44. Computershare realleges and incorporates by reference the allegations contained in paragraphs 1 through 43 above.

45. Unless Pace is enjoined from continuing to possess Computershare's confidential and/or proprietary information, Computershare, and potentially, millions of shareholders, will be irreparably harmed by the disclosure, whether directly or indirectly, of Computershare's trade secrets, proprietary information and/or confidential information; and/or economic loss which is unascertainable at this time and may never be ascertainable, as well as future economic loss which is also presently incalculable.

WHEREFORE, Computershare respectfully requests that the Court issue an Order:

- A. Enjoining Defendant, or anyone acting on her behalf, from directly or indirectly, possessing, accessing, using or disclosing at any time in the future Computershare's confidential and/or proprietary information;
- B. Enjoining Defendant, or anyone acting on her behalf, from deleting, altering, destroying, copying, transferring, or disclosing any Computershare information or documents from her electronic devices, or destroying any Computershare documents until agreement of the Parties or further order of the Court; and
- C. Requiring Defendant to immediately return (and neither retain nor destroy) all of Computershare's property, including without limitation, the SanDisk Thumb Drive and any other thumb drives or other devices containing Computershare information still in her possession.

**Computershare requests a trial by jury on all counts.**

Respectfully Submitted,

COMPUTERSHARE INC.,  
By its attorney,

/s/ Stephen T. Paterniti  
Stephen T. Paterniti BBO #  
paternis@jacksonlewis.com  
Jackson Lewis LLP  
75 Park Plaza  
Boston, MA 02116  
(617) 367-0025

Dated: March 23, 2011

**CERTIFICATE OF SERVICE**

This is to certify that on this 23<sup>rd</sup> day of March 2011, a copy of the foregoing document was electronically filed with the U.S. District Court for the District of Massachusetts through its Electronic Case Filing System.

/s/ Stephen T. Paterniti

Stephen T. Paterniti

# EXHIBIT A



## **CONFIDENTIALITY AGREEMENT**

This Agreement ("Agreement") is made between Computershare and the employee whose name appears below ("Employee").

WHEREAS, the Company, at great expense, develops and maintains Confidential Information (as defined below) and customer relationships, and is willing to disclose Confidential Information and customer relationships to Employee solely for use by Employee in accordance with the terms of this Agreement and in reliance on Employee's undertakings in this Agreement;

NOW THEREFORE, in consideration of Employee's employment or continued employment by the Company, and of compensation paid and payable, it is mutually agreed that:

**1. DEFINITIONS.** The terms set forth below shall have the following meanings:

- (a) "Confidential Information" shall mean all information including, but not limited to, trade secrets known by Employee as a consequence of Employee's employment by the Company. Such trade secrets may concern the products, processes or services of the Company or its parent, subsidiaries, predecessors and successors, as applicable. Such trade secrets may be embodied as, but are not limited to: (i) computer programs; (ii) unpatented inventions, discoveries or improvements; (iii) marketing, manufacturing, or organizational research and development, or business plans; (iv) sales forecasts; (v) personnel information, including the identity of other employees of the Company, their responsibilities, competence, abilities, and compensation; (vi) pricing and financial information; (vii) current and prospective customer lists and information on customers or their employees; (viii) information concerning planned or pending acquisitions or divestitures; and (ix) information concerning purchases of major equipment or property.

Confidential Information shall not include information which is: (1) currently or hereafter becomes publicly known through no fault of Employee; (2) obtained by Employee from a third party having the legal right to use and disclose the same; or (3) in the lawful possession of Employee prior to receipt from the Company (as evidenced by Employee's written records pre-dating the date of employment with the Company and its predecessors). Confidential Information also does not include Employee's general skills and experience as defined under the governing law of this Agreement.

- (b) "Intellectual Property" shall mean all discoveries, inventions, improvements, formulas, ideas, devices, writings or other similar things embodied in any form, which Employee shall: (i) conceive in the course of or within the scope of Employee's employment with the Company, its parent, subsidiaries, affiliates, predecessors and successors, or (ii) which relates directly to the business of the Company or the Company's actual or anticipated research and development, or (iii) which was conceived or created using the Company's material or facilities.

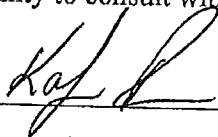
2. **EMPLOYEE'S NON-DISCLOSURE OBLIGATION.** Employee shall maintain Confidential Information in strict confidence at all times and shall not, without the written consent of the President of the Company, (i) divulge Confidential Information to any unauthorized person or entity, or (ii) use or allow another to use Confidential Information in any unauthorized manner, either during the term of employment or for as long as the Confidential Information remains confidential. Employee's obligation to maintain Confidential Information in strict confidence is not limited to any single state or other jurisdiction.
3. **COMPANY PROPERTY.** All materials and copies thereof (whether related to Confidential Information or not) created or held by Employee during employment with the Company, its parent, subsidiaries, affiliates, predecessors and successors concerning the Company's business are the sole and exclusive property of the Company and will be promptly delivered to the Company upon request by the Company or the termination of Employee's employment for any reason. All computer files concerning the Company's business and maintained on a computer owned by Employee shall, upon request of the Company or termination of Employee's employment, be downloaded to a disk(s) and returned to the Company and permanently deleted from any form of media retained by the employee.
4. **INTELLECTUAL PROPERTY.** All Intellectual Property developed during employment with the Company, its parent, subsidiaries, affiliates, predecessors and successors shall be the sole and exclusive property of the Company without further compensation. Any Intellectual Property based upon Confidential Information and developed at any time either during or after the term of Employee's employment shall be the sole and exclusive property of the Company. Employee shall maintain, as the sole and exclusive property of the Company, complete written records of all Intellectual Property, including any information reasonably required by the Company to document said Intellectual Property. Employee shall assign to the Company or its designates, Employee's entire right, title and interest in said Intellectual Property. Whether during Employee's employment or after such employment terminates, Employee shall at the Company's request and expense: (i) make applications for domestic or foreign patents and execute all documents necessary thereto; (ii) assist in securing, defending or enforcing any such title and right thereto; and (iii) assist in any other claims or litigation concerning the Company, its parent, subsidiaries, affiliates, predecessors and successors.
5. **INCONSISTENT OBLIGATIONS.** Employee agrees that during the term of employment with the Company, its parent, subsidiaries, affiliates, predecessors and successors, Employee has not accepted, nor will assume, any obligation that will be inconsistent with any obligation in this Agreement or with Employee's employment by the Company without the written consent of the Company. Employee further represents that Employee's performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by Employee in confidence or in trust prior to Employee's employment with the Company, and that Employee will not disclose to the Company or induce the Company to

use any confidential or proprietary information or material belonging to any previous employer or others.

6. **REMEDIES.** Employee acknowledges that failure to comply with the terms of this Agreement will cause irreparable damage to the Company. Therefore, Employee agrees that the Company is entitled to specific performance or injunctive relief against Employee to prevent such failure or damage. Employee further agrees to pay reasonable attorney fees incurred by the Company in any proceeding relating to the enforcement of this Agreement or to any alleged breach thereof in which the Company shall prevail in whole or in part. Further, nothing in this Agreement is intended to preclude the Company from exercising any other rights or remedies relating to the protection of confidential or trade secret information.
7. **SEVERABILITY.** If any of the provisions in this Agreement is adjudicated to be excessively broad as to area or time or otherwise, the parties authorize the court to reduce such provision to whatever extent is reasonable and to enforce such provision as reduced or to eliminate such provision. Any provisions of this Agreement not so reduced or eliminated shall remain in full force and effect.
8. **ASSIGNMENT.** Neither this Agreement nor any benefits hereunder are assignable by Employee, but the terms and provisions hereof shall inure to the benefit of the Company, its parents, subsidiaries, affiliates, successors and assigns, and shall be binding upon Employee's heirs, executors, administrators or other legal representatives.
9. **GOVERNING LAW.** This Agreement shall be interpreted and enforced in accordance with the internal laws of the Commonwealth of Massachusetts without regard to conflicts of law principles.
10. **MISCELLANEOUS PROVISIONS.** Covenants contained in this Agreement shall remain in force and effect beyond the termination of Employee's employment, including Employee's transfer to any affiliate or subsidiary. Following the termination of employment for any reason, Employee shall give notice of the existence of this Agreement to any prospective employer where it is anticipated that Employee will perform duties similar to those performed for that employer.
11. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Company and employee with respect to the subject matter herein, except that it shall not in any way affect, supersede, or alter any previous agreements in which the Company has specifically released rights in any intellectual property. It may not be changed or modified except by written instrument signed by both parties.

I hereby acknowledge that I have read in its entirety and understand the foregoing Agreement, have had the opportunity to consult with counsel prior to signing this Agreement, and I agree to be bound by its terms.

EMPLOYEE:



Date:

4/23/07

Printed Name:

Kathryn Price