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

JESSI GUMM and ANNASTASIA
RODRIGUEZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

VONACHEN SERVICES INC., an Illinois
corporation,

Defendant.

Case No. 2019 CH 12773

Hon. Joel Chupack

Calendar 2

JESSI GUMM, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

VONACHEN SERVICES INC., an Illinois
corporation,

Defendant.

Case No. 2021 CH 05166

Consolidated with 2019 CH 12773

Hon. Joel Chupack

Calendar 2

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Plaintiffs Jessi Gumm and Anastasia Rodriguez, individually and on behalf of all other persons similarly situated, by their undersigned attorneys, as and for their Consolidated Amended Class Action Complaint for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.*, against Defendant Vonachen Services, Inc. (“VSI” or “Defendant”), allege on personal knowledge, due investigation of counsel, and, where indicated, on information and belief as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant in collecting, storing, using, disclosing, and redisclosing Plaintiffs' and other similarly situated individuals' biometric identifiers¹ and biometric information² (referred to collectively and interchangeably as "biometrics") without first developing the requisite data retention and destruction policies, making the required disclosures, and obtaining prior informed written consent, in direct violation of BIPA.

2. The Illinois Legislature has found that "[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information." 740 ILCS 14/15(c). "For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions." *Id.*

3. In recognition of these concerns over the security of individuals' biometrics the Illinois Legislature enacted BIPA, which regulates the entire lifecycle of biometrics, from capture and collection to use and disclosure.

4. BIPA provides, *inter alia*, that a private entity like Defendant may not obtain and/or possess an individual's biometrics unless it informs that person in writing that biometric identifiers or information will be collected or stored. *See* 740 ILCS 14/15(b).

5. BIPA further requires that entities collecting biometrics must inform those persons

¹ A "biometric identifier" is any personal feature that is biologically unique to an individual, such as retina or iris scans, fingerprints, and scans of hand or face geometry. 740 ILCS 14/10.

² "Biometric information" is any information based on a person's biometric identifier used to identify an individual. 740 ILCS 14/10.

in writing of the specific purpose and length of term for which such biometric identifiers or biometric information are being collected, stored and used. *See id.*

6. Moreover, entities who possess biometrics must publish publicly-available written retention schedules and guidelines for permanently destroying the biometrics. *See* 740 ILCS 14/15(a).

7. BIPA also prohibits private entities like Defendant from disclosing, redisclosing, or otherwise disseminating an individual's Biometrics unless: (1) the individual consents to the disclosure or redisclosure before it occurs; (2) the disclosure or redisclosure completes a financial transaction the individual requested or authorized; (3) the disclosure or redisclosure is required by State or federal law or municipal ordinance; or (4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction. *See* 740 ILCS 14/15(d).

8. Further, the entity must store, transmit and protect an individual's biometric identifiers and biometric information using the same standard of care in the industry and in a manner at least as protective as the means used to protect other confidential and sensitive information. *See* 740 ILCS 14/15(e).

9. Finally, the entity is expressly prohibited from selling, leasing, trading or otherwise profiting from an individual's biometrics. *See* 740 ILCS 14/15(c).

10. To remedy the serious but often intangible harms that accompany invasions of biometric privacy rights, BIPA creates a private right of action authorizing "[a]ny person aggrieved by a violation of" BIPA to sue and recover liquidated damages of \$1,000 "for each violation," or \$5,000 "for each violation" that is intentional or reckless, plus reasonable attorneys' fees and costs including expert witness fees and litigation costs, as well as injunctive relief. *See* 740 ILCS 14/20.

11. In direct violation of each of the foregoing provisions of §§ 15(a), 15(b) and 15(d)

of BIPA, Defendant captured, collected, stored, used, disclosed, and redisclosed—without first providing notice and the required information, obtaining informed written consent or publishing publicly-available data retention and destruction guidelines—scans of hand geometry, hand templates derived therefrom, and associated personally identifying information of hundreds of its employees (and former employees), who were required to “clock in” and “clock out” using those biometrics.

12. This practice of requiring employees to “clock in” and “clock out” of each work shift and break using scans of their hand geometry and hand templates was in place at least since 2014.

13. Plaintiff Gumm left Defendant’s employ in approximately October 2017 and was “clocking in” and “clocking out” using scans of her hand geometry and hand templates during her tenure of employment with Defendant.

14. Plaintiff Rodriguez left Defendant’s employ in approximately November 2017 and was “clocking in” and “clocking out” using scans of her hand geometry and hand templates during her tenure of employment with Defendant.

15. If Defendant’s database of digitized hand templates were to fall into the wrong hands, by data breach or otherwise, the employees to whom these sensitive and immutable biometric identifiers and/or biometric information belong could have their identities stolen, among other serious issues.

16. BIPA confers on Plaintiffs and all other similarly situated Illinois residents a right to know of such risks, which are inherently presented by the collection and storage of biometrics, and a right to know how long such risks will persist after termination of their employment.

17. Despite BIPA having been the law for more than a decade, Defendant never

adequately informed Plaintiffs or the Class of its biometrics collection practices, never obtained the requisite written consent from Plaintiffs or the Class regarding its biometric practices, and never provided any data retention or destruction policies to Plaintiffs or the Class.

18. Plaintiffs bring this action to prevent Defendant from further violating the privacy rights of people residing or employed in Illinois and to recover statutory damages for Defendant's unauthorized collection, storage, use, and disclosure of these individuals' biometrics in violation of BIPA.

JURISDICTION AND VENUE

19. This Court has personal jurisdiction over Defendant because the biometrics that give rise to this lawsuit were (1) collected by Defendant at facilities in Illinois, (2) stored by Defendant at facilities in Illinois, (3) used by Defendant at facilities in Illinois, and (4) disclosed by Defendant from Illinois.

20. Venue is proper in this County pursuant to 735 ILCS 5/2-101 because Defendant conducts its usual and customary business in this County. 735 ILCS 5/2-102(a).

PARTIES

21. Plaintiffs are, and have been at all relevant times, residents and citizens of Illinois.

22. Defendant Vonachen Services, Inc. is a corporation organized under the laws of Illinois and conducts business throughout the State of Illinois including in Cook County.

FACTUAL BACKGROUND

I. Illinois' Biometric Information Privacy Act.

23. In 2008, Illinois enacted BIPA due to the "very serious need [for] protections for the citizens of Illinois when it [comes to their] biometric information." Illinois House Transcript, 2008 Reg. Sess. No. 276. BIPA makes it unlawful for a company to, *inter alia*, "collect, capture,

purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

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

740 ILCS 14/15(b).

24. Section 15(a) of BIPA also provides:

A private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first.

740 ILCS 14/15(a).

25. In addition, BIPA makes it unlawful for a company in possession of a biometric identifier or information to disclose, redisclose, or otherwise disseminate the biometric identifier or information unless:

- (1) the subject of the biometric identifier or information consents to the disclosure or redisclosure;
- (2) the disclosure or redisclosure completes a financial transaction requested or authorized by the subject of the biometric identifier or information;
- (3) the disclosure or redisclosure is required by State or federal law or municipal ordinance; or
- (4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction.

740 ILCS 14/15(d).

26. As alleged below, Defendant's practices of capturing, collecting, storing and using individuals' biometric identifiers (specifically, scans of hand geometry and hand templates) and associated biometric information (specifically, converted hand templates) without prior informed written consent violated BIPA § 15(b). Defendant's disclosure and redisclosure of those biometric identifiers and information to a third-party vendor without prior informed consent violated BIPA § 15(d). And Defendant's failure to develop a publicly-available written policy establishing Defendant's retention schedule and guidelines for the permanent destruction of individuals' biometric identifiers and biometric information, and Defendant's failure to permanently destroy those biometric identifiers and information within the required timeframes, violated BIPA § 15(a).

II. Defendant Violated Illinois' Biometric Information Privacy Act.

27. During the enrollment process for each employee of Defendant, Defendant's time clock assigns the employee a unique pin number that is associated with the employee's personally identifying information.

28. Defendant's time clock then scans the employee's hand and captures various geometric measurements of the size, structure, and shape of the hand, including the length, width, thickness, surface area, and distance between various points or landmarks, and uses that information to create a three-dimensional image of the employee's hand (*i.e.* a "hand template"), which is associated with the employee's pin number and stored in a biometric database in the time clock.

29. Accordingly, that information constitutes a scan of hand geometry and each hand template constitutes a "biometric identifier." *See* 740 ILCS 14/10.

30. Much like fingerprints, voiceprints, and retinal patterns, each scan of hand geometry and hand template is unique to, and can be used to identify, a particular person.

31. Defendant's time clock then converts the employee's hand template into a separate hand template that is based on the scan of the employee's hand geometry (*i.e.* a "converted hand template") and stores each employee's converted hand template in a biometric database in the time clock.

32. Defendant transmits, sends, and discloses each employee's converted hand template information to Central Time Clock, Inc., Defendant's third-party time clock vendor, for storage purposes to enable Defendant to transfer each employee's converted hand template from one job site to another, and for recovery purposes to populate Defendant's employees' data into a new time clock if a time clock in use must be replaced.

33. Each time an employee "clocks in" or "clocks out," Defendant's time clock scans the hand and captures the same geometric measurements of the size, structure, and shape of the hand as are captured during the enrollment process, uses that information to create a hand template which it then converts into a converted hand template and compares against the previously-captured and stored hand template to determine whether they match, thereby using the hand templates to identify the employee.

34. Accordingly, the converted hand template and information derived from the hand template constitutes "biometric information." *See* 740 ILCS 14/10.

35. Unbeknown to the average person, and in direct violation of § 15(b)(1) of BIPA, Defendant scanned and collected, and then indefinitely stored in an electronic database, digital copies of the scans of each employee's hand geometry and/or hand templates during the employee onboarding process from at least approximately 2014 to at least approximately November 2017, and on each occasion an employee clocks in or out of one of Defendant's Illinois-based facility – all without ever informing anyone of this practice in writing.

36. In direct violation of §§ 15(b)(2) and 15(b)(3) of BIPA, from at least approximately 2014 to at least approximately November 2017, Defendant never informed Illinois employees who had their hand geometry scans and hand templates captured and collected of the specific purpose and length of time for which their biometric identifiers or information would be collected, stored and used, nor did Defendant obtain a written release from those individuals.

37. In violation of BIPA § 15(d), Defendant disclosed and redisclosed its Illinois employees' biometric identifiers and biometric information to Central Time Clock, Inc., a third-party, without first informing the employees and obtaining their consent.

38. In direct violation of § 15(a) of BIPA, from at least 2014, Defendant did not have written, publicly-available policies identifying its retention schedules or guidelines for permanently destroying any of these biometric identifiers or biometric information, and Defendant did not permanently destroy its employees' biometric identifiers and biometric information within the statutorily-mandated timeframes.

III. Plaintiffs' Experience.

Plaintiff Jessi Gumm

39. Plaintiff Gumm began working for Defendant in or around April 2016.

40. At the beginning of Ms. Gumm's employment, Defendant required her to place her hand on the scanner of Defendant's time clock, at which point Defendant scanned and captured various geometric measurements of the size, structure, and shape of her hand as detailed above, which it used to create a hand template it converted into a converted hand template, and collected and stored in an electronic database those digital copies of the scans of Ms. Gumm's hand geometry and hand templates.

41. Ms. Gumm worked for Defendant until approximately October 2017. During her

employment tenure, Ms. Gumm was required to place her hand on the scanner of Defendant's time clock, which scanned, captured, collected, and stored scans of her hand geometry and her hand templates as described above each time she "clocked" in and out as part of the timekeeping system.

42. Each time, Defendant's hand geometry matching technology compared Ms. Gumm's scanned hand template against the hand template and/or biometric information previously stored in Defendant's biometric database.

43. On each occasion of "clocking in," Ms. Gumm was granted access to Defendant's job site in order to begin work.

44. Upon her leaving Defendant's employ in approximately October 2017, Ms. Gumm's hand templates and biometric information Defendant captured and collected were no longer necessary in order for her to "clock" in or out of work at Defendant's job sites.

Plaintiff Anastasia Rodriguez

45. Plaintiff Rodriguez began working for Defendant in or around December 2016.

46. At the beginning of Ms. Rodriguez's employment, Defendant required her to place her hand on the scanner of Defendant's time clock, at which point Defendant scanned and captured various geometric measurements of the size, structure, and shape of her hand as detailed above, which it used to create a hand template it converted into a converted hand template, and collected and stored in an electronic database those digital copies of the scans of Ms. Rodriguez's hand geometry and hand templates.

47. Ms. Rodriguez worked for Defendant until approximately November 2017. During her employment tenure, Ms. Rodriguez was required to place her hand on the scanner of Defendant's time clock, which scanned, captured, collected, and stored scans of her hand geometry and her hand templates as described above each time she "clocked" in and out as part of the

timekeeping system.

48. Each time, Defendant's hand geometry matching technology compared Ms. Rodriguez's scanned hand template against the hand template and/or biometric information previously stored in Defendant's biometric database.

49. On each occasion of "clocking in," Ms. Rodriguez was granted access to Defendant's job site in order to begin work.

50. Upon her leaving Defendant's employ in approximately November 2017, Ms. Rodriguez's hand templates and biometric information Defendant captured and collected were no longer necessary in order for her to "clock" in or out of work at Defendant's job sites.

51. Defendant also disclosed and redisclosed Plaintiffs' and its other employees' hand templates and biometric information to Defendant's third-party time clock vendor for storage and recovery purposes.

52. Plaintiffs never consented, agreed or gave permission—written or otherwise—to Defendant for the capture, collection, storage, disclosure, or redisclosure of their unique biometric identifiers or biometric information.

53. Further, Defendant never provided either Plaintiff with, nor did either Plaintiff ever sign, a written release allowing Defendant to capture, collect, store, or use that Plaintiff's unique biometric identifiers or biometric information.

54. Likewise, Defendant never provided Plaintiffs with the requisite statutory disclosures nor an opportunity to prohibit or prevent the capture, collection, storage or use of their unique biometric identifiers or biometric information.

55. Defendant did not obtain Plaintiffs' prior informed consent to disclose or redisclose their biometric identifiers or biometric information.

56. By capturing, collecting, storing, using, and disclosing Plaintiffs' unique biometric identifiers and biometric information without their consent, written or otherwise, Defendant invaded Plaintiffs' statutorily-protected right to privacy in and control over their biometrics.

57. Finally, Defendant never provided Plaintiffs with a retention schedule and/or guideline for permanently destroying their biometric identifiers and biometric information.

CLASS ALLEGATIONS

58. **Class Definition:** Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on behalf of a class of similarly situated individuals, defined subject to amendment as follows (the "Class"):

All individuals who, while employed or residing in the State of Illinois, had scans of their hands geometry or biometric information collected, captured, received or otherwise obtained, and/or stored, and/or disclosed, redisclosed or otherwise disseminated, by Defendant at any time from November 1, 2014 through the date of trial.

59. **Numerosity:** Pursuant to 735 ILCS 5/2-801 (1), the number of persons within the Class is substantial, believed to amount to hundreds of persons. It is, therefore, impractical to join each member of the Class as a named Plaintiff. Further, the size and relatively modest value of the claims of the individual members of the Class renders joinder impractical. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation. Moreover, the Class is ascertainable and identifiable from Defendant's records.

60. **Commonality and Predominance:** Pursuant to 735 ILCS 5/2-801(2), this action involves well-defined common questions of fact and law that exist as to all members of the Class and that predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from Class member to Class member, and

which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

- (a) whether Defendant captured, collected or otherwise obtained Plaintiffs' and the Class' biometric identifiers and/or biometric information;
- (b) whether Defendant possessed Plaintiffs' and the Class members' biometric identifiers or biometric information;
- (c) whether Defendant disclosed, redisclosed, or otherwise disseminated Plaintiffs' and the Class members' biometric identifiers or biometric information;
- (d) whether Defendant properly informed Plaintiffs and the Class that it captured, collected, used, stored, disclosed, and redisclosed their biometric identifiers and/or biometric information;
- (e) whether Defendant obtained a signed written release (as defined in 740 ILCS 1410) to collect, use, and store each Plaintiff's and Class member's biometric identifiers or biometric information;
- (f) whether Defendant received prior informed consent to disclose or redisclose Plaintiffs' and the Class members' biometric identifiers or biometric information;
- (g) whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of their last interaction, whichever occurs first;
- (h) whether Defendant complied with any such written policy;
- (i) whether Defendant permanently destroyed Plaintiffs' and the Class members' biometric identifiers and biometric information;
- (j) whether Defendant used Plaintiffs' and the Class' biometric identifiers and/or biometric information to identify them;
- (k) whether Defendant violated BIPA; and
- (l) whether Defendant's violations of BIPA were committed intentionally, recklessly, or negligently.

61. **Adequate Representation:** Pursuant to 735 ILCS 5/2-801 (3), Plaintiffs have retained and is represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiffs and their undersigned counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiffs are able to fairly and adequately represent and protect the interests of such a Class. Neither Plaintiffs nor their undersigned counsel has any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiffs have raised viable statutory claims or the type reasonably expected to be raised by members of the Class, and will vigorously pursue those claims. If necessary, Plaintiffs may seek leave of this Court to amend this Class Action Complaint to include additional Class representatives to represent the Class, additional claims as may be appropriate, or to amend the Class definition.

62. **Superiority:** Pursuant to 735 ILCS 5/2-801(4), a class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is impracticable. Even if every member of the Class could afford to pursue individual litigation, the Court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Class. Plaintiffs anticipate no difficulty in the management of this action as a class action. Class-wide relief is essential to compliance with BIPA.

**COUNT I – FOR DAMAGES AGAINST DEFENDANT
VIOLATION OF 740 ILCS 14/15(a) – FAILURE TO INSTITUTE, MAINTAIN, AND ADHERE TO
PUBLICLY AVAILABLE RETENTION SCHEDULE**

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

64. BIPA mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention – and, importantly, deletion – policy. Specifically, those companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data (at most three years after the company’s last interaction with the individual); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

65. Defendant failed to comply with either of these BIPA mandates.

66. Defendant is a company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

67. Plaintiffs and the Class are individuals who had her “biometric identifiers” and/or “biometric information” possessed by Defendant, as explained in detail in above. *See* 740 ILCS 14/10.

68. Plaintiffs’ and the Class’s biometric identifiers and/or biometric information were used to identify them and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

69. Defendant failed to provide a publicly-available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified by BIPA. *See* 740 ILCS 14/15(a).

70. Upon information and belief, Defendant lacked retention schedules and guidelines for permanently destroying Plaintiffs’ and the Class’s biometric data and did not destroy Plaintiffs’

and the Class's biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the individual's last interaction with the company.

71. By failing to destroy Plaintiffs' and the Class members' biometric identifiers and biometric information, Defendant unlawfully retained their Biometrics.

72. Defendant's conduct intentionally or recklessly violated BIPA with respect to Plaintiffs and the Class members.

73. In the alternative, Defendant's conduct negligently violated BIPA with respect to Plaintiffs and the Class members.

74. On behalf of themselves and the Class, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendant to comply with BIPA's requirements for the collection, capture, storage, and use of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

**COUNT II – FOR DAMAGES AGAINST DEFENDANT
VIOLATION OF 740 ILCS 14/15(b) – FAILURE TO OBTAIN INFORMED WRITTEN CONSENT AND
RELEASE BEFORE OBTAINING BIOMETRIC IDENTIFIERS OR INFORMATION**

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

76. BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, BIPA makes it unlawful for any private entity to “collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers or biometric information unless [the entity] first: (1) informs the subject...in

writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject...in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; **and** (3) receives a written release executed by the subject of the biometric identifier or biometric information....” 740 ILCS 14/15(b) (emphasis added).

77. Defendant failed to comply with these BIPA mandates.

78. Defendant is a company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

79. Plaintiffs and the Class are individuals who have had their “biometric identifiers” and/or “biometric information” collected and/or captured by Defendant, as explained in detail above. *See* 740 ILCS 14/10.

80. Plaintiffs’ and the Class’s biometric identifiers and/or biometric information were used to identify them and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

81. Defendant systematically and automatically collected, captured, used, and stored Plaintiffs’ and the Class’s biometric identifiers and/or biometric information without first obtaining the signed written release from each of them required by 740 ILCS 14/15(b)(3).

82. Defendant never informed Plaintiffs, and never informed any member of the Class at least not prior to November 2017, in writing that their biometric identifiers and/or biometric information were being collected, captured, stored, and/or used, nor did Defendant inform Plaintiffs and the Class in writing of the specific purpose(s) and length of term for which their biometric identifiers and/or biometric information were being collected, stored, and used as required by 740 ILCS 14/15(b)(1)-(2).

83. By collecting, capturing, storing, and/or using Plaintiffs' and the Class's biometric identifiers and/or biometric information as described herein, Defendant violated Plaintiffs' and the Class's rights to maintain the privacy of and control over their biometric identifiers and/or biometric information as set forth in BIPA. *See* 740 ILCS 14/1, *et seq.*

84. Defendant's conduct intentionally or recklessly violated BIPA with respect to Plaintiffs and the Class members.

85. In the alternative, Defendant's conduct negligently violated BIPA with respect to Plaintiffs and the Class members.

86. On behalf of themselves and the Class, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendant to comply with BIPA's requirements for the collection, capture, storage, and use of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

**COUNT III – FOR DAMAGES AGAINST DEFENDANT
VIOLATION OF 740 ILCS 14/15(d) – FAILURE TO OBTAIN INFORMED CONSENT BEFORE
DISCLOSING AND REDISCLOSING BIOMETRIC IDENTIFIERS OR INFORMATION**

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

88. BIPA requires private entities such as Defendant to obtain consent from individuals before disclosing their Biometrics. Specifically, BIPA makes it unlawful for any private entity to “disclose, redisclose, or otherwise disseminate a person’s or a customer’s biometric identifier or biometric information unless: (1) the subject of the biometric identifier or biometric information

or the subject's legally authorized representative consents to the disclosure or redisclosure; (2) the disclosure or redisclosure completes a financial transaction requested or authorized by the subject of the biometric identifier or the biometric information or the subject's legally authorized representative; (3) the disclosure or redisclosure is required by State or federal law or municipal ordinance; or (4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction." 740 ILCS 14/15(d).

89. Defendant is a company registered to do business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS 14/10.

90. Plaintiffs and the Class members are individuals whose "biometric identifiers" and/or "biometric information," as defined by the BIPA—including, without limitation, their hand templates and biometric information—were disclosed, redisclosed, and/or otherwise disseminated by Defendant to its third-party time clock vendor, Central Time Clock., Inc., for storage and recovery purposes.

91. Plaintiffs and the Class members did not consent to Defendant disclosing, redisclosing, or otherwise disseminating their biometric identifiers or biometric information, nor did their legally authorized representatives.

92. The disclosure or redisclosure of Plaintiffs' and the Class members' biometric identifiers and biometric information was not to complete a financial transaction they, or their legally-authorized representatives, requested or authorized.

93. The disclosure or redisclosure of Plaintiffs' and the Class members' biometric identifiers and biometric information was not required by State or federal law or municipal ordinance.

94. The disclosure of Plaintiffs' and the Class members' biometric identifiers and biometric information was not required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction.

95. Defendant violated BIPA by disclosing, redisclosing, and/or otherwise disseminating Plaintiffs' and the Class members' biometric identifiers and biometric information without first obtaining prior informed consent from each of them. *See* 740 ILCS 14/15(d).

96. In so doing, Defendant deprived Plaintiffs and the Class of their statutory right to maintain the privacy of and control over their biometric identifiers and biometric information.

97. Defendant's conduct intentionally or recklessly violated BIPA with respect to Plaintiffs and the Class members.

98. In the alternative, Defendant's conduct negligently violated BIPA with respect to Plaintiffs and the Class members.

99. Accordingly, Plaintiffs, on behalf of themselves and the Class, seek: (1) declaratory relief; (2) statutory damages of \$5,000 for each intentional or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation pursuant to 740 ILCS 14/20(1); (3) injunctive and other equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendant to comply with BIPA's requirements for the disclosure, redisclosure, and other dissemination of biometric identifiers and biometric information, as described herein; and (4) reasonable attorney's fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Jessi Gumm and Anastasia Rodriguez, on behalf of themselves and the proposed Class, respectfully request that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiffs as representative of the Class, and appointing Keogh Law, Ltd. as Class Counsel;
- B. Declaring that Defendant's actions, as set out above, violate BIPA, 740 ILCS 14/1, *et seq.*;
- C. Awarding statutory damages of \$5,000.00 for each and every intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or alternatively, statutory damages of \$1,000.00 for each and every violation pursuant to 740 ILCS 14/20(1) if the Court finds that Defendant's violations were negligent;
- D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an Order requiring Defendant to comply with BIPA's requirements for the capture, collection, storage, use, possession, disclosure, redisclosure, and other dissemination of biometric identifiers and biometric information, and to permanently destroy all copies of Plaintiff's and the Class members' biometric identifiers and biometric information to the extent they have not already been permanently destroyed;
- E. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- F. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- G. Awarding such other and further relief as equity and justice may require.

Dated: June 28, 2023

Respectfully submitted,

JESSI GUMM AND ANNASTASIA RODRIGUEZ,
individually and on behalf of all others similarly
situated, Plaintiffs

By: /s/ Keith J. Keogh
Keith J. Keogh
Theodore H. Kuyper
KEOGH LAW, LTD.
55 W. Monroe Street, Suite 3390
Chicago, Illinois 60603
(312) 726-1092
Firm No. 39042
keith@keoghlaw.com
tkuyper@keoghlaw.com

*Interim Class Counsel for Plaintiffs and the
Putative Class*