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Courtroom Number: 2502
Location: District 1 Court
Cook County, IL

12-Person Jury

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RISY, MARTINEZ
ATTORNEY NO. 58819
CIRCUIT CLERK
COOK COUNTY, IL
2021CH00758
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

ANDREW LAM, *individually and on behalf of
all others similarly situated,*

Plaintiff,

v.

VERIFICIENT TECHNOLOGIES, INC.,

Defendant.

Case No. 2021CH00758

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Andrew Lam, individually and on behalf of all other persons similarly situated, by and through his attorneys, makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to allegations specifically pertaining to himself and his counsel, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action suit brought against Defendant Verificent Technologies, Inc. ("Verificent" or "Defendant") for violations of the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.* Defendant develops, owns, and operates Proctortrack, an online proctoring software that collects biometric information.

2. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant in collecting, storing and using his and other similarly situated individuals' biometric identifiers¹ and biometric information² (referred to

¹ A "biometric identifier" is any personal feature that is unique to an individual, including fingerprints, iris scans, DNA and "face geometry", among others.

collectively at times as “biometrics”). Defendant failed to properly “store, transmit, and protect from disclosure” these biometrics in violation of 740 ILCS 14/15(e).

3. 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.*

4. In recognition of these concerns over the security of individuals’ biometrics the Illinois Legislature enacted BIPA, which provides, *inter alia*, that a private entity like Defendant that possesses biometrics must:

(1) store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within the private entity’s industry; and

(2) store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information.

See 740 ILCS 14/15(e).

5. In direct violation of the foregoing provisions of BIPA § 15(e), Defendant failed to “store, transmit, and protect from disclosure all biometric identifiers using the reasonable standard of care within” its industry, “and in a manner that is the same as or more protective than the manner in which” it collected other sensitive information.

² “Biometric information” is any information captured, converted, stored or shared based on a person’s biometric identifier used to identify an individual.

6. Plaintiff is a student who used Proctortrack from September-November 2020. During Plaintiff's use of the software, Proctortrack collected his biometrics, including eye movements and facial expressions (*i.e.*, face geometry).

7. Because Defendant did not take the proper steps to safeguard Plaintiff's biometrics, Defendant was subject to a data breach and biometric information was viewable by unauthorized employees.

8. BIPA confers on Plaintiff 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 have their biometrics stored using a reasonable standard of care and in a manner that is as protective if not more than the manner in which entities store other confidential information.

9. Yet, Defendant failed to take such reasonable safeguards to protect the biometrics of Plaintiff or the Class.

10. Plaintiff brings this action to prevent Defendant from further violating the privacy rights of Illinois residents and to recover statutory damages for Defendant's improper and lackluster collection, storage, and protection of these individuals' biometrics in violation of BIPA.

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over Defendant because the biometrics that give rise to this lawsuit (1) belonged to Illinois residents, and (2) were collected by Defendant at Illinois schools.

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

PARTIES

13. Plaintiff is, and has been at all relevant times, a resident and citizen of Morton Grove, Illinois.

14. Defendant Verificent Technologies, Inc. is a Delaware corporation with its principal place of business at 1250 Broadway, 36th Floor, New York, New York 10001. Defendant develops, owns, and operates Proctortrack, and online proctoring software that is used by schools throughout Illinois.

FACTUAL BACKGROUND

I. Illinois' Biometric Information Privacy Act.

15. The use of a biometric scanning system entails serious risks. Unlike other methods of identification, facial geometry is a permanent, unique biometric identifier associated with an individual. This exposes individuals to serious and irreversible privacy risks. For example, if a device or database containing individuals' facial geometry data is hacked, breached, or otherwise exposed, individuals have no means by which to prevent identity theft and unauthorized tracking.

16. Recognizing the need to protect citizens from these risks, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA") in 2008, to regulate companies that collect and store biometric information, such as facial geometry. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276.

17. BIPA requires that a private entity in possession of biometrics must:

(1) store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within the private entity's industry; and

(2) store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than

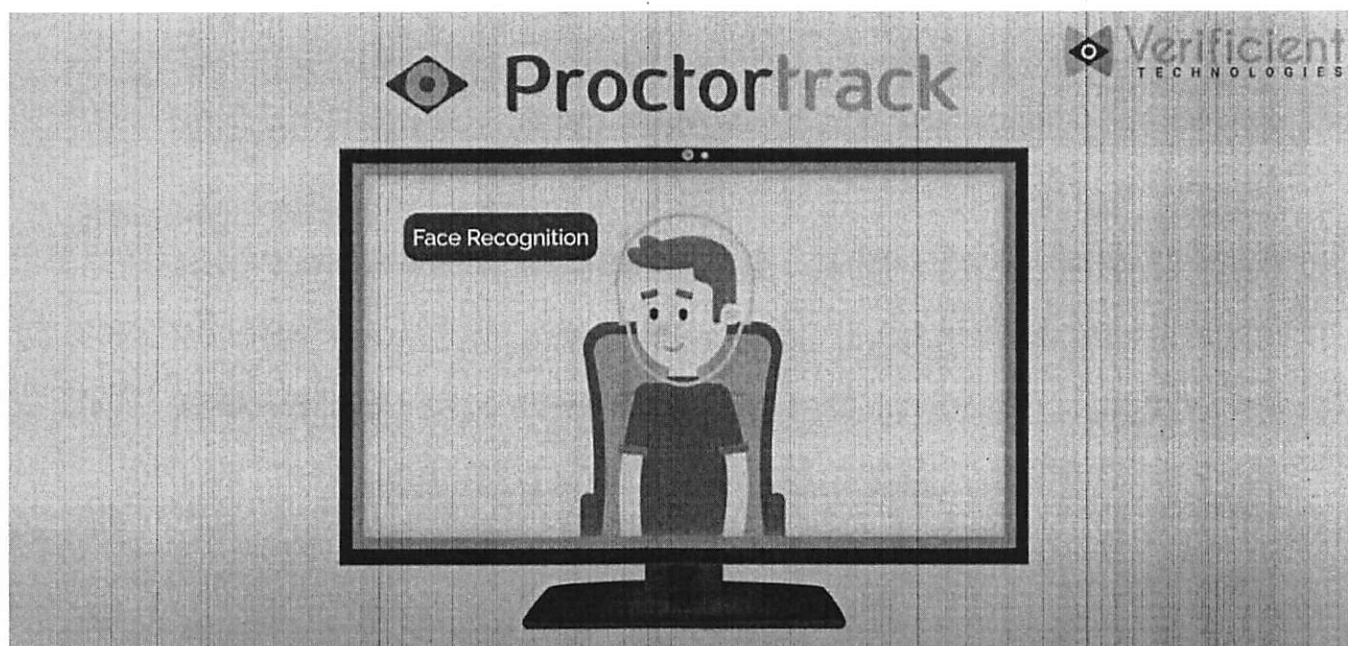
the manner in which the private entity stores, transmits, and protects other confidential and sensitive information.

See 740 ILCS 14/15(e).

18. As alleged below, Defendant violated BIPA § 15(e) by:
- (a) Failing to store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within Defendant's industry; and
 - (b) Failing to store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which Defendant stores, transmits, and protects other confidential and sensitive information.

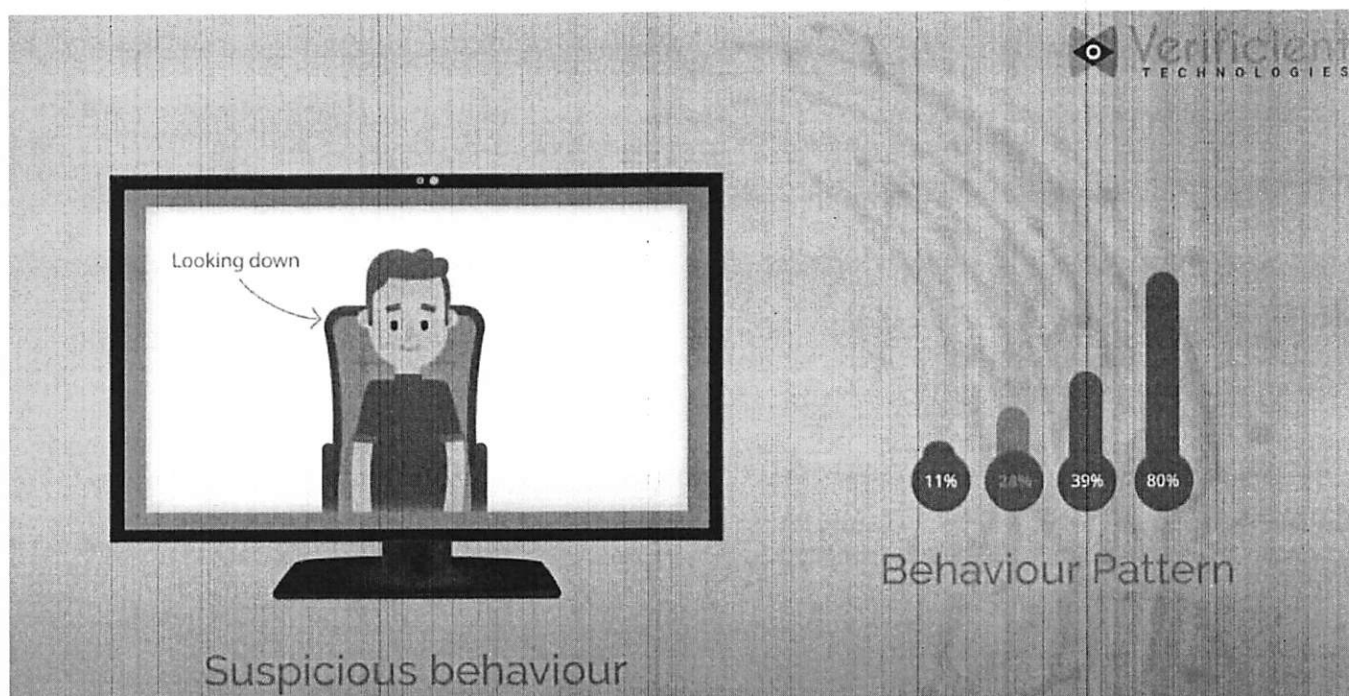
II. Defendant Violates Illinois' Biometric Information Privacy Act.

19. Defendant develops, owns, and operates, Proctortrack, an online proctoring software.
20. One of the ways in which Proctortrack monitors students is by collecting and



monitoring their facial geometry:

21. By using its “proprietary facial-recognition software” and “behavior detection algorithms, Proctortrack can check for “suspicious behavior.” For instance, if a student looks down from their computer screen into their lap (e.g., because a student is looking up an answer on his or her phone), Proctortrack will detect this facial movement and record it as a possible



instance of cheating:

22. Defendant uses biometrics to create an “identity profile” for students and to confirm students’ identities during testing so as to prevent cheating.

23. Online proctoring companies like Defendant have seen a significant uptick in light of the COVID-19 pandemic, which has caused institutions to move exams online. This has led to significant privacy implications for students.

24. For instance, some students taking the Bar Exam were forced to urinate while being monitored, because if they “broke eye contact,” their exams would be terminated.³

25. Other students have broken down in tears during exams, recorded on video by online proctoring companies.⁴

26. Students have also published numerous petitions across the country to ask school administrators to cease using online proctoring tools.⁵

27. Perhaps aware of these controversies, Defendant has included a “Privacy Pledge” on Proctortrack’s website.⁶

28. Among other things, the Privacy Pledge promises that Defendant will “[m]aintain a comprehensive security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information against risks – such as unauthorized access or use, or unintended or inappropriate disclosure – through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information.”

29. However, Defendant has not lived up to its Privacy Pledge.

30. In late September 2020, Proctortrack was subject to a data breach when “what appeared to be Proctortrack’s source code—the underlying programming for its proctoring

³ Staci Zaretskym *Law Students Forced To Urinate While Being Watched By Proctors During Remote Ethics Exam*, ABOVE THE LAW, Aug. 18, 2020, <https://abovethelaw.com/2020/08/law-students-forced-to-urinate-while-being-watched-by-proctors-during-remote-ethics-exam/>.

⁴ Thomas Germain, *Poor Security at Online Proctoring Company May Have Put Student Data at Risk*, CONSUMER REPORTS, Dec. 10, 2020, <https://www.consumerreports.org/digital-security/poor-security-at-online-proctoring-company-proctortrack-may-have-put-student-data-at-risk/>.

⁵ Jason Kelley, *Students Are Pushing Back Against Proctoring Surveillance Apps*, ELECTRONIC FRONTIER FOUNDATION, Sept. 25, 2020, <https://www.eff.org/deeplinks/2020/09/students-are-pushing-back-against-proctoring-surveillance-apps>

⁶ PRIVACY PLEDGE, <https://www.proctortrack.com/students/privacy-pledge/>.

system—was leaked online ... Hackers later disabled the company website and sent offensive emails, which they wrote, from official Proctortrack email addresses.⁷

31. Subsequent to this data breach, Proctortrack's leaked source code was examined by Patrick Jackson, the chief technology officer for the cybersecurity firm Disconnect, on behalf of Consumer Reports.⁸

32. Mr. Jackson found evidence that Proctortrack "ignored basic data security practices" and that the code "was a ticking time bomb."⁹

33. Mr. Jackson also found that "[v]ideos of students taking tests may have been accessible to unauthorized employees at Proctortrack, along with facial recognition data, contact information, digital copies of ID cards, and more."¹⁰

34. These videos were accessible because "the source code contained what appeared to be many of the company's own usernames and passwords ... The passwords appeared to grant any programmer working on the company's software access to all the sensitive user data students uploaded to the service," including the facial scans from videos of students' rooms. This is a "poor privacy practice" because "[t]ypically, only a select number of employees can access personal data held by a company."¹¹

35. Mr. Jackson's findings were corroborated by Sarah Zatko, a security expert and chief scientist at the Cyber Independent Testing Lab. Ms. Zatko also stressed that Proctortrack

⁷ Thomas Germain, *Poor Security at Online Proctoring Company May Have Put Student Data at Risk*, CONSUMER REPORTS, Dec. 10, 2020, <https://www.consumerreports.org/digital-security/poor-security-at-online-proctoring-company-proctortrack-may-have-put-student-data-at-risk/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

has not “given anything technical that could be verified by an outside party” to show that any security flaws have been fixed, and therefore, “there’s little evidence ... that the problems have all been fixed now.”¹²

36. Thus, in direct violation of BIPA § 15(e)(1), from at least approximately September 2020 through present, Defendant has failed to “store, transmit, and protect from disclosure all” biometrics in its possession using a “reasonable standard of care.”

37. In addition, in direct violation of BIPA § 15(e)(2), from at least September 2020 through present, Defendant has failed to “store, transmit, and protect from disclosure all” biometrics in its possession information in a manner that is the same as or more protective than the manner in which [it] stores, transmits, and protects other confidential and sensitive information.”

III. Experience of Plaintiff Andrew Lam.

38. Plaintiff is a resident of Illinois and a student at Loyola University Chicago.

39. Plaintiff used Proctortrack to takes online exams in one of his classes between September-November 2020.

40. When Plaintiff used Proctortrack, his facial geometry, including his eye movements and facial expressions, was collected by Defendant.

41. Each time Plaintiff logged onto Proctortrack, his facial geometry would be matched up to the biometrics he provided to Defendant to ensure he was the individual who was supposed to be taking an exam.

¹² *Id.*

42. When Plaintiff provided his biometrics to Defendant, and upon information and belief, the biometrics were not stored, transmitted, or protected from disclosure using a “reasonable standard of care.”

43. When Plaintiff provided his biometrics to Defendant, and upon information and belief, the biometrics were not stored, transmitted, or protected from disclosure “in a manner that is the same as or more protective than the manner in which [Defendant] stores, transmits, and protects other confidential and sensitive information.”

44. Thus, when Plaintiff provided his biometrics to Defendant, Defendant collected said biometrics in violation of BIPA § 15(e).

CLASS ALLEGATIONS

45. **Class Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801 on behalf of a class of similarly situated individuals, defined as follows (the “Class”):

All students at Loyola University Chicago who had their facial geometry collected, captured, received, or otherwise obtained and/or stored by Defendant.

46. **Numerosity:** Pursuant to 735 ILCS 5/2-801 (1), the number of persons within the Class is substantial. There are approximately 16,500 students at Loyola University Chicago. 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.

47. **Commonality and Predominance:** Pursuant to 735 ILCS 5/2-801(2), there are 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 collected or otherwise obtained Plaintiff's and the Class' biometric identifiers and/or biometric information;
- (b) whether Defendant used a reasonable standard of care when collecting, storing, and protecting from disclosure the biometrics of Plaintiff and the Class;
- (c) whether Defendant collected, stored, and protecting from disclosure the biometrics of Plaintiff and the Class in a manner that that is as protective if not more than the manner in which Defendant collects other biometric information;
- (d) whether Defendant's violations of BIPA were committed intentionally, recklessly, or negligently.

48. **Adequate Representation:** Pursuant to 735 ILCS 5/2-801 (3), Plaintiff has retained and is represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiff is able to fairly and adequately represent and protect the interests of such a Class. Neither Plaintiff nor his counsel has any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiff has 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, Plaintiff 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 to address any steps that Defendant took.

49. **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. Plaintiff anticipates 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(E)(1) – FAILURE TO EMPLOY A REASONABLE
STANDARD OF CARE IN STORING, TRANSMITTING, AND PROTECTING FROM
DISCLOSURE BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION**

50. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

51. BIPA mandates that companies in possession of biometric data “store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within the private entity’s industry.” *See* 740 ILCS 14/15(a).

52. Defendant failed to comply with this BIPA mandate.

53. Defendant is a corporation and does business in Illinois—or partners with educational institutions in Illinois—and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

54. Plaintiff is an individual who had his “biometric identifiers” captured and/or collected by Defendant, as explained in detail in above. *See* 740 ILCS 14/10.

55. Plaintiff’s biometric identifiers were used to identify Plaintiff and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

56. Defendant failed to store biometric identifiers and biometric information using the reasonable standard of care within its industry, as required by BIPA. *See* 740 ILCS 14/15(e)(1).

57. Defendant failed to transmit biometric identifiers and biometric information using the reasonable standard of care within its industry, as required by BIPA. *See* 740 ILCS 14/15(e)(1).

58. Defendant failed to protect biometric identifiers and biometric information from disclosure using the reasonable standard of care within its industry, as required by BIPA. *See* 740 ILCS 14/15(e)(1).

59. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA’s requirements for the storage, transmission, and protection of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional and/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).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Andrew Lam, on behalf of himself and the proposed Class, respectfully requests that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as representative of the Class, and appointing his counsel as Class Counsel;
- B. Declaring that Defendants' actions, as set out above, violate BIPA, 740 ILCS 14/15(e)(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 Defendants' 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 Defendants to store, transmit, and protect biometric identifiers and/or biometric information from disclosure in compliance with BIPA;
- 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.

**COUNT II – FOR DAMAGES AGAINST DEFENDANT
VIOLATION OF 740 ILCS 14/15(E)(2) – FAILURE STORE, TRANSMIT, AND
PROTECT FROM DISCLOSURE BIOMETRIC IDENTIFIERS AND BIOMETRIC
INFORMATION IN A MANNER THAT IS THE SAME AS OR MORE PROTECTIVE
THAN THE MANNER IN WHICH DEFENDANT STORES, TRANSMITS, AND
PROTECTS OTHER CONFIDENTIAL AND SENSITIVE INFORMATION**

60. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

61. BIPA mandates that companies in possession of biometric data “store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information.” *See* 740 ILCS 14/15(e)(2).

62. Defendant failed to comply with this BIPA mandate.

63. Defendant is a corporation and does business in Illinois—or partners with educational institutions in Illinois—and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

64. Plaintiff is an individual who had his “biometric identifiers” captured and/or collected by Defendant, as explained in detail in above. *See* 740 ILCS 14/10.

65. Plaintiff’s biometric identifiers were used to identify Plaintiff and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

66. Defendant failed to store biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the it stores other confidential and sensitive information, as required by BIPA. *See* 740 ILCS 14/15(e)(2).

67. Defendant failed to transmit biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the it transmits other confidential and sensitive information, as required by BIPA. *See* 740 ILCS 14/15(e)(2).

68. Defendant failed to protect biometric identifiers and biometric information from disclosure in a manner that is the same as or more protective than the manner in which the it protects other confidential and sensitive information, as required by BIPA. *See* 740 ILCS 14/15(e)(2).

69. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA’s requirements for the storage, transmission, and protection of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional and/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).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Andrew Lam, on behalf of himself and the proposed Class, respectfully requests that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as representative of the Class, and appointing his counsel 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 collect, store, and use biometric identifiers and/or biometric information in compliance with BIPA;
- 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.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 17, 2021

Respectfully submitted,

/s/ Carl V. Malmstrom

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLC**

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