

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

LAURA MURPHY and MARK)
GASPER, individually and on behalf of)
similarly situated individuals,) No. 2022CH12036
)
Plaintiffs,)
)
v.) Hon.
)
FACETEC, INC., a Delaware corporation,)
)
Defendant.)
_____)

CLASS ACTION COMPLAINT WITH JURY DEMAND

Plaintiffs Laura Murphy and Mark Gasper (“Plaintiffs”), individually and on behalf of other similarly situated individuals, bring this Class Action Complaint against Defendant FaceTec, Inc. (“FaceTec” or “Defendant”) for its violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), and to obtain redress for persons injured by Defendant’s conduct. Plaintiffs allege the following based on personal knowledge as to their own experiences, and as to all other matters, upon information and belief, including an investigation conducted by their attorneys.

INTRODUCTION

1. BIPA defines a “biometric identifier” as “a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.” “Biometric information” is any information based on a biometric identifier, regardless of how it is converted or stored. 740 ILCS § 14/10. Collectively, biometric identifiers and biometric information are known as “biometrics.”

2. This case concerns the misuse of individuals’ biometrics in the form of scans of their facial geometry by Defendant FaceTec, a provider of biometrically-enabled identity verification services. As part of its verification services, Defendant has captured, collected,

disseminated; and/or otherwise used the biometrics of Plaintiffs and other consumers throughout Illinois, without their informed written consent as required by law.

3. Having recognized that biometrics present unique security concerns, the Illinois Legislature enacted BIPA in 2008 in order to regulate companies that collect and store Illinois citizens' biometrics. BIPA provides, *inter alia*, that private entities, such as Defendant, may not collect, capture, purchase, receive through trade or otherwise obtain an individual's biometrics unless they first:

- (1) inform the person whose biometrics are to be collected *in writing* that biometric identifiers or biometric information will be collected or stored, 740 ILCS 14/15(b)(1);
- (2) inform the person whose biometrics are to be collected *in writing* of the specific purpose and the length of term for which such biometric identifiers or biometric information is being collected, stored, and used, 740 ILCS 14/15(b)(2);
- (3) receive a *written release* from the person whose biometrics are to be collected, allowing the capture and collection of their biometric identifiers or biometric information, 740 ILCS 14/15(b)(3); and
- (4) make publicly available written retention guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a).

4. In addition, private entities are prohibited from profiting from an individual's biometric identifiers or biometric information, and from disclosing or disseminating the same to third parties without informed consent. 740 ILCS 14/15(c)–(d).

5. The deprivation of the statutory rights conferred by BIPA constitutes actual injuries that the Illinois Legislature sought to prevent.

6. In violation of each of the foregoing provisions, Defendant is actively capturing, collecting, storing, and otherwise obtaining—without first providing notice, obtaining informed written consent, or publishing publicly available data retention policies—the biometrics of thousands of individuals throughout Illinois who were subject to Defendant’s identity verification technology.

7. Specifically, Defendant has knowingly created, captured, collected, used, and stored thousands of templates of facial geometry—highly detailed geometric maps of the face—from thousands of Illinois residents such as Plaintiffs.

8. Defendant creates templates of its clients’ end users’ facial geometry using sophisticated facial recognition technology that scans, detects, extracts, collects, analyzes, and compares the biometric facial characteristics of its clients’ end users’ faces appearing in videos and photographs submitted to Defendant.

9. Each facial geometry template that Defendant extracts from its clients’ users is unique to that individual, in the same way that a fingerprint or voiceprint uniquely identifies one and only one person.

10. Compliance with BIPA is straightforward and may be accomplished through a single, signed sheet of paper, or its electronic equivalent. BIPA’s requirements bestow a right to privacy as to a person’s biometrics and a right to make an informed decision when electing whether to provide or withhold their biometrics.

11. Despite collecting, capturing, storing, and disseminating Illinois individuals’ biometrics as part of its for-profit identity verification business, Defendant has failed to make publicly available a written policy specifying how long it retains such data and when it will destroy

the data, failed to obtain individuals' consent to collect and disclose their biometrics to third parties, and profited directly from individuals' biometric data, all in violation BIPA.

12. Plaintiffs bring this action for statutory damages and other legal and equitable remedies resulting from Defendant's illegal practices of capturing, collecting, storing, using, and disclosing their biometrics, as well as the biometrics of thousands of other consumers throughout the state of Illinois.

13. On behalf of themselves and the proposed Class defined below, Plaintiffs seek an injunction requiring Defendant to comply with BIPA, as well as an award of statutory damages to the Class members, together with costs and reasonable attorneys' fees.

PARTIES

14. Defendant FaceTec, Inc. is a Delaware corporation that conducts substantial business in and markets its services throughout Illinois, including in Cook County.

15. At all relevant times, Plaintiff Laura Murphy has been a citizen of Illinois and Cook County.

16. At all relevant times, Plaintiff Mark Gasper has been a citizen of Illinois and Cook County.

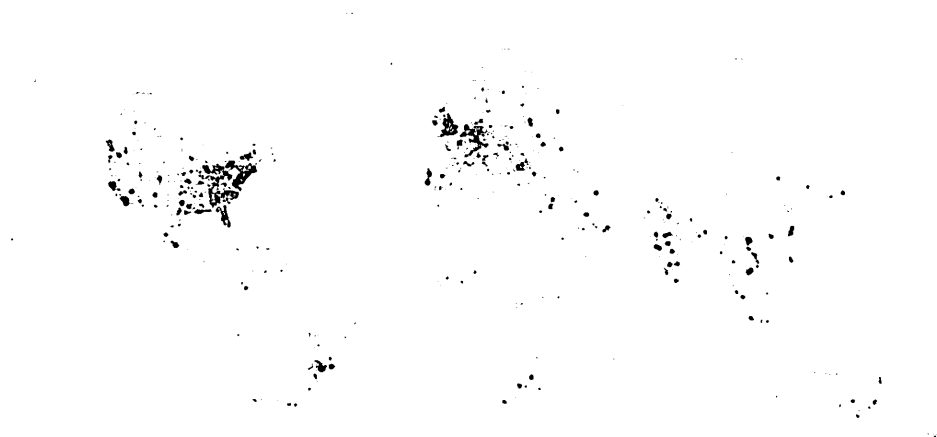
JURISDICTION AND VENUE

17. This Court may assert personal jurisdiction over Defendant in accordance with the Illinois Constitution and the Constitution of the United States because Defendant knowingly advertises, solicits, and conducts its biometric-reliant business within this state, has knowingly deployed and tested its biometric-dependent technology in this state, and because Plaintiffs' claims arise out of Defendant's unlawful in-state actions, as Defendant knowingly and unlawfully captured, collected, stored, and used Plaintiffs' facial biometrics in this state.

18. Indeed, Defendant's own marketing materials promote that for years, its technology has been trained on tens of thousands of unique users, including individuals in the Chicago area as well as elsewhere in Illinois:

Does FaceTec work well with all skin tones?

Yes, FaceTec has been trained on millions of face images collected from tens-of-thousands of unique users from over 3000 different device models in 170 countries, so it works well for all skin tones and ethnic backgrounds. The image below shows where FaceTec has been trained.



(https://www.facetec.com/FaceTec_FAQ.pdf) (last visited December 7, 2022)

19. As illustrated above, Defendant has purposefully and knowingly targeted its facial biometric collection practices towards the Illinois marketplace. Defendant knows precisely when its verification service is interacting with individuals located in Illinois through its use of geolocation-tracking technology and collection of IP addresses.

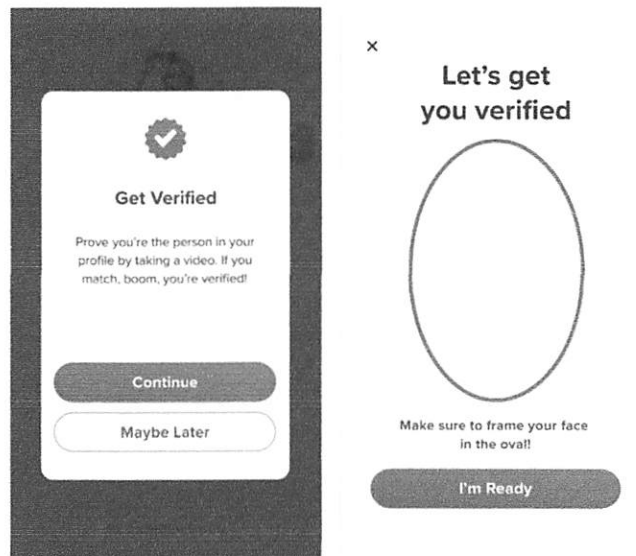
20. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, because Defendant is doing business in Cook County and thus resides there under § 2-102, and because the biometric transactions out of which this cause of action arises occurred in Cook County.

COMMON FACTUAL ALLEGATIONS

21. Defendant's identity verification technology uses facial biometrics to assist Defendant's online service-provider clients with verifying the identities of the client's userbase. Defendant's automated verification technology works by analyzing individuals' facial geometry templates which Defendant scans from photos or videos submitted by the end user.

22. For instance, Defendant offers its verification services and technology to online dating applications so they can protect against "catfishing," ensure that their users are real people, and ensure that the photograph associated with a user's profile is a photograph of the person actually using the profile.

23. Thus, when a user uses a smartphone or other device to access their profile on a dating website integrated with Defendant's verification platform, they may be presented with the below prompts:



24. When the user places their face inside the oval above and clicks "I'm Ready," Defendant's technology and servers scan the users' facial geometry and analyze that data to ensure the image in the oval is of an actual, live person (*i.e.*, to prevent someone from tricking the

verification process by placing a photograph of someone else in the oval), and also to make sure the person in the oval is the same as the person in the photograph associated with the user's profile.

25. Despite capturing, collecting, using, or otherwise obtaining scans of individuals' facial geometries (or information derived therefrom) on its own servers, Defendant does not seek or obtain individuals' written consent to do so. Nor does Defendant disclose the purpose or length of term for which the individuals' biometric data will be used.

26. Despite possessing individuals' biometrics, Defendant has failed to make publicly available any written policy for the retention or destruction of the biometrics in its possession, and has failed to obtain individuals' consent to disclose or otherwise disseminate their biometrics to Defendant's third-party data storage vendors.

27. Moreover, Defendant charges its clients on a per-verification basis, meaning that it profits from the collection and use of biometrics on a per-user basis. In other words, the collection and use of biometrics are central elements of Defendant's business model.

FACTS SPECIFIC TO PLAINTIFF LAURA MURPHY

28. In September 2022, Plaintiff Laura Murphy, while located within Cook County, Illinois, underwent the above profile-verification process with one of Defendant's dating application clients.

29. Plaintiff Murphy's profile on the dating application included several pictures of Plaintiff Murphy's face.

30. As part of the profile verification process discussed above, the dating application displayed the prompts shown above to Plaintiff Murphy. Plaintiff Murphy then submitted a video selfie of her face for verification.

31. Unbeknownst to Plaintiff Murphy, Defendant then surreptitiously scanned Plaintiff Murphy's facial geometry (*i.e.* her biometric identifiers), or information derived therefrom (*i.e.*,

her biometric information) and used it to (a) verify that Plaintiff Murphy was a real, live person, and (b) that she was the person who appeared in the photograph associated with her dating profile. Thus, Defendant necessarily also extracted and used Plaintiff Murphy's biometric data from the photographs already uploaded to her profile.

32. Moments after Plaintiff Murphy submitted the video selfie for identity verification, she was informed that her identity and dating profile had been verified.

33. Despite collecting, capturing, using, or otherwise obtaining Plaintiff Murphy's facial biometrics, and despite Defendant's knowledge (based on geolocation tracking) that it did specific purpose and length of term for which her biometrics were being collected, and Defendant failed to obtain valid written consent as required by BIPA.

34. Despite possessing Plaintiff Murphy's biometrics, Defendant failed to make publicly available a written policy providing for the retention and destruction of biometrics, in violation of 740 ILCS 14/15(a).

35. Moreover, Defendant was paid by its client for its collection and analysis of Plaintiff's biometrics, and thus profited directly from that data, in violation of 740 ILCS 14/15(c).

FACTS SPECIFIC TO PLAINTIFF MARK GASPER

36. In August 2022, Plaintiff Mark Gasper, while located within Cook County, Illinois, underwent the above profile-verification process with one of Defendant's dating application clients.

37. Plaintiff Gasper's profile on the dating application included several pictures of Plaintiff Gasper's face.

38. As part of the profile verification process discussed above, the dating application displayed the prompts shown above to Plaintiff Gasper. Plaintiff Gasper then submitted a video selfie of his face for verification.

39. Unbeknownst to Plaintiff Gasper, Defendant then surreptitiously scanned Plaintiff Gasper's facial geometry (*i.e.*, his biometric identifier), or information derived therefrom (*i.e.*, his biometric information) and used it to (a) verify that Plaintiff Gasper was a real, live person and (b) that he was the person who appeared in the photographs associated with his dating profile. Thus, Defendant necessarily also extracted and used Plaintiff Gasper's biometric data from the photographs already uploaded to his profile.

40. Moments after Plaintiff Gasper submitted the video selfie for identity verification, he was informed that his identity and dating profile had been verified.

41. Despite collecting, capturing, using, or otherwise obtaining Plaintiff Gasper's facial biometrics, and despite Defendant's knowledge (based on geolocation tracking) that it did so in Illinois, Defendant did not provide Plaintiff Gasper with written disclosures informing him of the specific purpose and length of term for which his biometrics were being collected, and Defendant failed to obtain valid written consent as required by BIPA to collect such biometric data, all in violation of 740 ILCS 14/15(b).

42. Despite possessing Plaintiff Gasper's biometrics, Defendant failed to make publicly available a written policy providing for the retention and destruction of biometrics, in violation of 740 ILCS 14/15(a).

43. Moreover, Defendant was paid by its client for its collection and analysis of Plaintiff's biometrics, and thus profited directly from that data, in violation of 740 ILCS 14/15(c).

CLASS ALLEGATIONS

44. Plaintiffs bring this action on behalf of themselves and all similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiffs seek to represent a Class defined as follows:

The Class:

All individuals whose biometrics were captured, collected, stored, obtained, or otherwise used by Defendant within the state of Illinois any time within the applicable limitations period.

45. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officers or directors.

46. Upon information and belief, there are at least thousands of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of members of the Class is currently unknown to Plaintiffs, the members can be easily identified through Defendant's records.

47. Plaintiffs' claims are typical of the claims of the members of the Class they seek to represent, because the factual and legal bases of Defendant's liability to Plaintiffs and the other members are the same, and because Defendant's conduct has resulted in similar injuries to Plaintiffs and to the Class. As alleged herein, Plaintiffs and the members of the Class have all suffered damages as a result of Defendant's BIPA violations.

48. There are many questions of law and fact common to the claims of Plaintiffs and the Class and those questions predominate over any questions that may affect individual members. Common questions for the Class include, but are not limited to, the following:

- a. Whether Defendant collects, captures, stores, uses, or disseminates the biometrics of the members of the Class;
- b. Whether Defendant made available to the public a written policy establishing a retention schedule and guidelines for permanently destroying biometrics;
- c. Whether Defendant has obtained a written release from the members of the Class before capturing, collecting, or otherwise obtaining their biometrics;

- d. Whether Defendant has provided a written disclosure to the members of the Class that explains the specific purposes, and the length of time, for which their biometrics were collected, stored, and used before collecting such biometrics;
- e. Whether Defendant unlawfully profited from its collection of biometric identifiers;
- f. Whether Defendant's conduct violates BIPA;
- g. Whether Defendant's violations of BIPA are willful or reckless;
- h. Whether Defendant's violations of BIPA are negligent; and
- i. Whether Plaintiffs and other Class members are entitled to damages and injunctive relief.

49. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

50. Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Class they seek to represent. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither Plaintiffs nor their counsel has any interest adverse to those of the other members of the Class.

51. Defendant has acted and failed to act on grounds generally applicable to Plaintiffs and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

COUNT I**Violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(a)
(On behalf of Plaintiffs and the Class)**

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

53. Defendant is a private entity under BIPA.

54. Section 15(a) of BIPA requires any private entity in possession of biometric identifiers or biometric information to “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).

55. Though Defendant has come into possession of Plaintiffs’ and other Class members’ biometric identifiers and biometric information, it has failed to make publicly available any written policy addressing its biometric retention and destruction practices.

56. As a result, Defendant has violated Section 15(a) of BIPA.

57. Defendant knew, or was reckless in not knowing, that its biometric-reliant technology and verification platform would subject it to Section 15(a) of BIPA, a statutory provision passed in 2008, but Defendant failed to comply with the statute.

58. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1)-(2).

59. Defendant’s violations of Section 15(a) of BIPA, a statutory provision that has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with Section 15(a) of BIPA.

60. Accordingly, with respect to Count I, Plaintiffs, both individually and on behalf of the proposed Class, pray for the relief set forth below.

COUNT II
Violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(b)
(On behalf of Plaintiffs and the Class)

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

62. Defendant is a private entity under BIPA.

63. As discussed above, Plaintiffs and the other members of the class had their facial biometrics extracted, collected, captured, and otherwise obtained by Defendant as a result of interacting with Defendant's identity-verification technology and platform.

64. BIPA requires private entities like Defendant to obtain informed written consent from individuals before acquiring their biometrics. Specifically, BIPA makes it unlawful to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or 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 for which a biometric identifier or biometric information is being captured, 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).

65. Plaintiffs and the other Class members have had their "biometric identifiers," namely scans of their facial geometries, and information derived therefrom, *i.e.* "biometric information," collected, captured, or otherwise obtained by Defendant when Defendant used such data to verify them for its client. 740 ILCS 14/10.

66. Each instance when Plaintiffs and the other Class members interacted with Defendant's verification platform, Defendant captured, collected, stored, and/or used Plaintiffs'

and the other Class members' facial geometry biometric identifiers without valid written consent and without complying with and, thus, in violation of BIPA.

67. Defendant's practice with respect to capturing, collecting, storing, and using biometrics fails to comply with applicable BIPA requirements:

- a. Defendant failed to inform Plaintiffs and the members of the Class in writing that their biometrics were being collected and stored, prior to such collection or storage, as required by 740 ILCS 14/15(b)(1);
- b. Defendant failed to inform Plaintiffs and the Class in writing of the specific purpose for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- c. Defendant failed to inform Plaintiffs and the Class in writing of the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2); and
- d. Defendant failed to obtain a written release, as required by 740 ILCS 14/15(b)(3).

68. As a result, Defendant has violated section 15(b) of BIPA.

69. Defendant knew, or was reckless in not knowing, that its biometric-reliant technology and verification platform would subject it to Section 15(b) of BIPA, a statutory provision passed in 2008, but Defendant failed to comply with the statute.

70. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1)-(2).

71. Defendant's violations of BIPA, a statutory provision that has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with Section 15(b) of BIPA.

72. Accordingly, with respect to Count II, Plaintiffs, both individually and on behalf of the proposed Class, pray for the relief set forth below.

COUNT III
Violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(c)
(On behalf of Plaintiffs and the Class)

73. Plaintiffs incorporate the forgoing allegations as if fully set forth herein.

74. Defendant is a private entity under BIPA.

75. As discussed above, Plaintiffs and the other members of the Class have had their facial biometrics extracted, collected, captured, and otherwise obtained by Defendant as a result of interacting with Defendant's identity-verification technology and platform.

76. Section 15(c) of BIPA prohibits any private entity in possession of biometrics, such as Defendant FaceTec, from selling, leasing, trading, or otherwise profiting from such biometrics. 740 ILCS 14/15(c).

77. As alleged herein, Defendant profited directly from the facial biometrics it obtained from Plaintiffs and the Class members, as, on information and belief, Defendant is paid by its clients for its biometric identity-verification services on a per-verification basis. The biometrics of Plaintiffs and the Class members are thus a necessary element to Defendant's business model.

78. Accordingly, Defendant has violated Section 15(c) of BIPA.

79. Defendant knew, or was reckless in not knowing, that its biometric-reliant technology and verification platform would subject it to Section 15(c) of BIPA, a statutory provision passed in 2008, but Defendant failed to comply with the statute.

80. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1)-(2).

81. Defendant's violations of Section 15(c) of BIPA, a statutory provision that has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with Section 15(c) of BIPA.

82. Accordingly, with respect to Count III, Plaintiffs, both individually and on behalf of the proposed Class, pray for the relief set forth below.

COUNT IV

**Violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(d)
(On behalf of Plaintiffs and the Class)**

83. Plaintiffs incorporate the forgoing allegations as if fully set forth herein.

84. Defendant is a private entity under BIPA.

85. As discussed above, Plaintiffs and the other members of the Class have had their facial biometrics extracted, collected, captured, and otherwise obtained by Defendant as a result of interacting with Defendant's identity-verification technology and platform.

86. Section 15(d) of BIPA prohibits any private entity in possession of biometrics, such as Defendant, from disclosing, redisclosing, or otherwise disseminating an individual's biometric identifiers or biometric information without that individual's consent. 740 ILCS 14/15(d).

87. After collecting Plaintiffs' and the other Class members' biometrics, Defendant disclosed or otherwise disseminated their biometric information to third party cloud storage vendors without seeking or receiving Plaintiffs' informed consent to do so.

88. Accordingly, Defendant has violated section 15(d) of BIPA.

89. Defendant knew, or was reckless in not knowing, that its biometric-reliant technology and verification platform would subject it to Section 15(d) of BIPA, a statutory provision passed in 2008, but Defendant failed to comply with the statute.

90. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1)-(2).

91. Defendant's violations of Section 15(d) of BIPA, a statutory provision that has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with section 15(d) of BIPA.

92. Accordingly, with respect to Count IV, Plaintiffs, both individually and on behalf of the proposed Class, pray for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, respectfully requests that this Court enter an Order:

- a. Certifying the Class as defined above, appointing Plaintiffs as class representatives and the undersigned as class counsel;
- b. Declaring that Defendant's actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiffs and the Class by requiring Defendant to comply with BIPA requirements for the capture, collection, storage, use, and dissemination of biometric identifiers and biometric information;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(2);
- e. Awarding statutory damages of \$1,000 for each negligent violation of BIPA, pursuant to 740 ILCS 14/20(1);
- f. Awarding reasonable attorneys' fees, costs, and other litigation expenses pursuant to 740 ILCS 14/20(3);
- g. Awarding pre- and post-judgment interest, as allowable by law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiffs request a trial by jury of all claims that can be so tried.

Dated: December 13, 2022

Respectfully submitted,

LAURA MURPHY and MARK GASPER,
individually and on behalf of similarly situated
individuals

By: /s/ Timothy P. Kingsbury
One of Plaintiffs' Attorneys

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