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

CHEREASE DILLON, individually and)
on behalf of all similarly situated)
individuals,)
)
 Plaintiff,)
)
 v.)
)
 OLD TOWN MARKET, LLC d.b.a.,)
 PLUM MARKET, a Michigan)
 corporation,)
)
)
 Defendant.)
 _____)

No. 2022CH01761
Hon.

CLASS ACTION COMPLAINT WITH JURY DEMAND

Plaintiff Cherease Dillon (“Plaintiff”), individually and on behalf of all similarly situated individuals, brings this Class Action Complaint against Defendant Old Town Market, LLC d.b.a., Plum Market (“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 its conduct. Plaintiff alleges the following based on personal knowledge as to Plaintiff’s own experiences, and as to all other matters, upon information and belief, including an investigation conducted by her attorneys.

INTRODUCTION

1. BIPA defines a “biometric identifier” as any personal feature that is unique to an individual, including handprints, fingerprints, facial geometry, and retinal scans. “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.”

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18. Venue is proper pursuant to 735 ILCS 5/2-101, as this suit is filed in the county in which the transaction or some part thereof occurred out of which the cause of action arose.

STATEMENT OF FACTS

19. Carol Pause executed the Pause Trust on November 30, 2001, hereby attached as Exhibit B.

20. Pause's sister, Lorna Pause, predeceased her. Therefore, the Pause Trust named the following Lutheran-affiliated charities as its residuary beneficiaries: Bethesda (10%), Bible Translators (10%), Family Services (10%), Special Education (10%), World Relief (10%), Laymens League (10%), Lutheran Home (10%), LAMPS (10%), St. Paul's (10%), Heritage Foundation (5%), and Seminary (5%) (this final gift was designated initially to Luther East High School if it was operating at the time of Pause's death, but it closed prior to that date).

21. On January 26, 2011, Carol Pause executed an amendment to the Pause Trust, hereby attached as Exhibit C ("Amendment"). In that Amendment, Carol Pause resigned as trustee, appointed Linnea Schramm as trustee, and named Thrivent Financial Bank (n/k/a Thrivent) as successor trustee. Carol Pause signed this Amendment both as grantor and resigning trustee; Linnea Schramm signed as trustee, and both signatures were notarized by Richard L. Treichel. The original Amendment is in Plaintiff's possession.

22. In December 2021, Pam provided Thrivent's counsel with another purported amendment to the Pause Trust, also apparently executed on January 26, 2011, attached hereby as Exhibit D ("Purported Amendment"). The Purported Amendment provides for gifts to both Pam and Linnea Schramm of \$125,000 each upon Carol Pause's death. Pam has also advised Plaintiff that she and Linnea Schramm each received \$100,000 while Carol was alive. Additionally, instead of the residuary being divided to specific charities as previously referenced, this Purported Amendment directs the trustee "to distribute any remaining trust assets to 501(c)(3)

2. This case concerns the misuse of individuals' biometrics by Defendant. Using biometric enabled technology, Defendant is capturing, collecting, disseminating, or otherwise using the biometrics of Plaintiff and other Class members, without their informed written consent as required by law, in order to track their time at work.

3. BIPA provides, *inter alia*, that a private entity, such as Defendant, may not obtain and/or possess an individual's biometrics unless it first:

- (1) informs the person whose biometrics are to be collected *in writing* that biometric identifiers or biometric information will be collected or stored;
- (2) informs 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;
- (3) receives a *written release* from the person whose biometrics are to be collected, allowing the capture and collection of their biometric identifiers or biometric information; and
- (4) publishes publicly available retention guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a)-(b).

4. Compliance with BIPA is straightforward and may be accomplished through a single, signed sheet of paper or its electronic equivalent. BIPA's requirements, which have been law in Illinois since 2008, bestow a right to privacy in biometrics and a right to make an *informed* decision when electing whether to provide or withhold biometrics.

5. Defendant's biometric timekeeping system works by extracting biometric scans from individuals, such as scans of their fingerprints, and subsequently using the same for

8. Lutheran Child and Family Services of Illinois (“**Family Services**”) is an Illinois 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

9. Lutheran Special Education Ministries (“**Special Education**”) is a Michigan 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

10. Lutheran Church Missouri Synod World Relief (“**World Relief**”) is a Missouri 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

11. International Lutheran Laymens League (“**Laymens League**”) is a Missouri 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

12. Lutheran Home and Services (“**Lutheran Home**”) is an Illinois 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

13. Lutheran Association of Missionaries & Pilots (“**LAMPS**”) is a Michigan 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

14. St. Paul’s Evangelical Lutheran Church (“**St. Paul’s**”) is an Illinois 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

15. Lutheran Heritage Foundation Worldwide Lutheran Translators’ Project (“**Heritage Foundation**”) is a Michigan 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

16. Joint Seminary Fund, Lutheran Church, Missouri Synod (“**Seminary**”) is a Missouri 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

JURISDICTION AND VENUE

17. This Court has jurisdiction pursuant to 735 ILCS 5/2-209, as Defendants, among other things, have transacted business in the State of Illinois; own, use, or possess real estate situated in this State; made or performed a contract or promise substantially connected with this State; or are natural persons domiciled or resident within the State of Illinois when the cause of action arose, the action was commenced, or process was served.

authentication and timekeeping purposes. The system includes the dissemination of biometrics to third parties, such as data storage vendors and third-party payroll service providers.

6. The Illinois Legislature has found that “biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, even sensitive information like Social Security numbers can be changed. Biometrics, however, are biologically unique to each individual and, once compromised, such individual has no recourse, is at a heightened risk for identity theft, and is likely to withdraw from biometric facilitated transactions.” 740 ILCS 14/5(c). The risk is compounded when a person’s biometrics are also associated with their other personally identifiable information.

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

8. Plaintiff brings this action for statutory damages and other remedies as a result of Defendant’s conduct in violating Plaintiff’s state biometric privacy rights.

9. On Plaintiff’s own behalf, and on behalf of the proposed Class defined below, Plaintiff seeks 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

10. At all relevant times, Plaintiff Cherease Dillon has been a resident and citizen of the state of Illinois and worked for Defendant in Cook County, Illinois.

11. Defendant Old Town Market, LLC, which does business in Illinois as Plum Market, is a grocery retailer and food services provider organized under the laws of Michigan that conducts substantial business throughout Illinois, including in Cook County, and is registered with and authorized by the Illinois Secretary of State to transact business in the state of Illinois.

2. Timothy Vola (“**Timothy**”) resides in Cobb County, Georgia. He is the acting Independent Executor of the Estate of Linnea L. Schramm, currently pending in the Probate Division in the Circuit Court of Cook County, case number 2020 P 3143. Ms. Schramm was both the named executor under Ms. Pause’s Codicil, as well as the named trustee in the January 26, 2011 Amendment to the Pause Trust. Ms. Schramm was also a friend of Carol Pause, as well as a beneficiary of a purported amendment to the Pause Trust. Per the attached Designation of Resident Agent attached as Exhibit A, Anastasia Xinos of Huck Bouma, P.C. is able to accept service on Timothy’s behalf in his capacity as Independent Executor.

3. Timothy is also the acting Trustee of the Linnea L. Schramm Trust dated October 5, 2011 and his counsel has indicated his willingness to execute a Waiver of Service.

4. Pamela Meyer (“**Pam**”) resides in Cook County. She was a friend of Carol Pause, as well as an alleged beneficiary of a purported amendment to the Pause Trust.

5. The Illinois Attorney General – Charitable Trust Bureau (“**Illinois AG**”) is a necessary party which has an interest in this controversy as it is charged with protecting and safeguarding gifts, bequests, and donations for and on behalf of qualified charitable organizations within the State of Illinois. The Illinois charities hereinafter named are the beneficiaries under the Pause Trust. The purported amendment does not name specific charities but rather directs the trustee to distribute to “501(c)(3) charitable organizations affiliated with the Lutheran Church.”

6. Bethesda Lutheran Homes and Services (“**Bethesda**”) is a Wisconsin 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

7. Lutheran Bible Translators (“**Bible Translators**”) is a Missouri 501(c)(3) charitable organization and residuary beneficiary of the Pause Trust.

JURISDICTION AND VENUE

12. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant is doing business within this State and because Plaintiff's claims arise out of Defendant's unlawful in-state actions, as Defendant captured, collected, stored, and used Plaintiff's biometric identifiers and/or biometric information in this State.

13. Venue is proper in Cook County, Illinois pursuant to 735 ILCS 5/2-101, because Defendant is doing business in Cook County, Illinois and thus resides there under § 2-102.

FACTS SPECIFIC TO PLAINTIFF

14. Defendant is a grocery retailer and food services provider that conducts business throughout Illinois.

15. Between 2020 and 2021, Plaintiff worked for Defendant in Cook County Illinois.

16. During Plaintiff's employment with Defendant, Defendant used biometric scanning and time-tracking devices and technology to monitor and manage its workers', including Plaintiff's, time on the job.

17. Plaintiff was required to provide scans of her fingerprints to Defendant each time Plaintiff needed to clock in and clock out of a shift at work.

18. After collecting Plaintiff's biometrics, Defendant disseminated information derived from the scanning of Plaintiff's biometric identifiers, *i.e.* biometric information, to third parties, including vendors for timekeeping, data storage, and payroll purposes. Defendant never sought nor obtained Plaintiff's consent to do so.

19. Prior to taking Plaintiff's biometrics, Defendant did not inform Plaintiff in writing that Plaintiff's biometrics were being collected, stored, or used.

2011, and as Independent Executor of the Estate of Carol Pause, deceased, by and through its attorneys, FISCHER | KAHN, complains of the Defendants, TIMOTHY VOLA, in his capacity as Independent Executor of the Estate of Linnea L. Schramm; TIMOTHY VOLA, in his capacity as Trustee of the Linnea L Schramm Trust dated October 5, 2011; PAMELA MEYER; individually, ILLINOIS ATTORNEY GENERAL – CHARITABLE TRUST BUREAU; BETHESDA LUTHERAN HOMES AND SERVICES, an Illinois 501(c)(3) charitable organization; LUTHERAN BIBLE TRANSLATORS, an Illinois 501(c)(3) charitable organization; LUTHERAN CHILD AND FAMILY SERVICES OF ILLINOIS, an Illinois 501(c)(3) charitable organization; LUTHERAN SPECIAL EDUCATION MINISTRIES, an Illinois 501(c)(3) charitable organization; LUTHERAN CHURCH MISSOURI SYNOD WORLD RELIEF, an Illinois 501(c)(3) charitable organization; INTERNATIONAL LUTHERAN LAYMENS LEAGUE, an Illinois 501(c)(3) charitable organization; LUTHERAN HOME AND SERVICES, an Illinois 501(c)(3) charitable organization; LUTHERAN ASSOCIATION OF MISSIONARIES & PILOTS (“LAMP”), an Illinois 501(c)(3) charitable organization; ST. PAUL’S EVANGELICAL LUTHERAN CHURCH, an Illinois 501(c)(3) charitable organization; LUTHERAN HERITAGE FOUNDATION WORLDWIDE LUTHERAN TRANSLATORS’ PROJECT, an Illinois 501(c)(3) charitable organization; and JOINT SEMINARY FUND, LUTHERAN CHURCH, MISSOURI SYNOD, an Illinois 501(c)(3) charitable organization, and alleges as follows:

THE PARTIES

1. Thrivent Trust Company (“**Thrivent**”), is the acting Successor Trustee of the Carol Pause Declaration of Trust dated November 30, 2001, as amended on January 26, 2011, (collectively, “**Pause Trust**”), as well as acting Independent Executor of the Estate of Carol Pause, deceased, currently pending in the Probate Division in the Circuit Court of Cook County, case number 2021 P 441 (“**Pause Estate**”).

20. Defendant did not seek, and Plaintiff never provided, any written consent relating to the collection, use, or storage Plaintiff's biometrics

21. Defendant has also failed to make publicly available any written policy addressing its biometric retention and destruction schedules.

22. By failing to comply with BIPA, Defendant has violated Plaintiff's substantive state rights to biometric privacy.

CLASS ALLEGATIONS

23. Plaintiff brings this action individually and on behalf of all similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent a Class defined as follows:

Class: All individuals whose biometrics were captured, collected, stored, used, transmitted, or disseminated by or on behalf of Defendant within the state of Illinois at any time within the applicable limitations period.

24. 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.

25. Upon information and belief, there are at least hundreds 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 Plaintiff, the members can be easily identified through Defendant's personnel records.

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

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

THRIVENT TRUST COMPANY, as)
Successor Trustee of the Carol Pause Declaration)
of Trust No. 1, dated November 30, 2001, as amended on January)
26, 2011, and Independent Executor of the Estate of Carol Pause,)
Deceased)

**NO. 2022 CH
2022CH01398**

Plaintiff,)

vs.)

TIMOTHY VOLA, as Independent Executor of the Estate of)
Linnea Schramm; TIMOTHY VOLA, as Trustee of the Linnea)
Schramm Trust dated October 5, 2011; PAMELA MEYER,)
individually; ILLINOIS ATTORNEY GENERAL –)
CHARITABLE TRUST BUREAU; BETHESDA)
LUTHERAN HOMES AND SERVICES, a Wisconsin)
501(c)(3) charitable organization; LUTHERAN BIBLE)
TRANSLATORS, a Missouri 501(c)(3) charitable organization;)
LUTHERAN CHILD AND FAMILY SERVICES OF)
ILLINOIS, an Illinois 501(c)(3) charitable organization;)
LUTHERAN SPECIAL EDUCATION MINISTRIES, a)
Michigan 501(c)(3) charitable organization; LUTHERAN)
CHURCH MISSOURI SYNOD WORLD RELIEF, a Missouri)
501(c)(3) charitable organization; INTERNATIONAL)
LUTHERAN LAYMENS LEAGUE, a Missouri 501(c)(3))
charitable organization; LUTHERAN HOME AND)
SERVICES, an Illinois 501(c)(3) charitable organization;)
LUTHERAN ASSOCIATION OF MISSIONARIES &)
PILOTS (“LAMPS”), a Michigan 501(c)(3) charitable)
organization; ST. PAUL’S EVANGELICAL LUTHERAN)
CHURCH, an Illinois 501(c)(3) charitable organization;)
LUTHERAN HERITAGE FOUNDATION WORLDWIDE)
LUTHERAN TRANSLATORS’ PROJECT, a Michigan)
501(c)(3) Illinois charitable organization; JOINT SEMINARY)
FUND, LUTHERAN CHURCH, MISSOURI SYNOD, a)
Missouri 501(c)(3) charitable organization.)

Defendants)

**COMPLAINT FOR DECLARATORY JUDGEMENT, BREACH OF FIDUCIARY
DUTY AND ACCOUNTING**

Plaintiff, THRIVENT TRUST COMPANY, in its capacity as Successor Trustee of the
Carol Pause Declaration of Trust No. 1 dated November 30, 2001, as amended on January 26,

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27. There are many questions of law and fact common to the claims of Plaintiff 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's conduct violates BIPA;
- b. Whether Defendant made available to the public a written policy that establishes a retention schedule and guidelines for destroying biometrics;
- c. Whether Defendant obtained a written release from Plaintiff or the Class members before capturing, collecting, or otherwise obtaining their biometrics;
- d. Whether Defendant provided a written disclosure to Plaintiff or the Class members that explains the specific purposes, and the length of time, for which biometrics were being collected, stored and used before taking such biometrics;
- e. Whether Defendant's violations of the BIPA are willful or reckless; and
- f. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

28. 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 in that it conserves the resources of the courts and the litigants and promotes consistency of adjudication.

29. Plaintiff will adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and Plaintiff's 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.

Naperville, Illinois 60563
Tel: 630.355.7590
Fax: 630.778.0400
docketing@fishlawfirm.com

Neither Plaintiff nor Plaintiff’s counsel have any interest adverse to those of the other members of the Class.

30. Defendant has acted and failed to act on grounds generally applicable to Plaintiff 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 14/1, et seq.,
(On behalf of Plaintiff and the Class)

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

32. Defendant is a private entity under BIPA.

33. BIPA requires private entities, such as Defendant, to obtain informed written consent from individuals before acquiring their biometric identifiers or biometric information. 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).

34. BIPA also requires that a private entity in possession of biometric identifiers and/or biometric information establish and maintain a publicly available retention policy. An entity which possesses biometric identifiers or information must (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric information

and biometric information as described herein; (2) liquidated damages for each of Altitude’s violations of the BIPA pursuant to 740 ILCS 14/20; and (3) reasonable attorneys’ fees and costs and expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, respectfully request that the 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 their counsel as Class Counsel;
- B. Declaring that Defendant’s actions, as set out above, violate the BIPA;
- C. Awarding statutory damages for each of Defendant’s violations of the BIPA, pursuant to 740 ILCS 14/20;
- D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including an Order requiring Altitude to collect, store, and use biometric identifiers or biometric information in compliance with the BIPA;
- F. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys’ fees;
- G. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- H. Awarding such other and further relief as equity and justice may require.

Dated: February 18, 2022

Respectfully submitted,

Tameka Little, individually and on behalf of all others similarly situated,

By: /s/ David Fish
One of Plaintiff’s Attorneys

David Fish #23522
dfish@fishlawfirm.com
Mara Baltabols
mara@fishlawfirm.com
FISH POTTER BOLAÑOS, P.C.
200 East Fifth Avenue, Suite 123

(entities may not retain biometric information longer than three years after the last interaction with the individual); and (ii) adhere to the publicly posted retention and deletion schedule.

35. Plaintiff and the other Class members have had their “biometric identifiers,” namely their fingerprints, collected, captured, or otherwise obtained by Defendant. Plaintiff and the other Class members’ biometric identifiers were also used to identify them, and therefore constitute “biometric information” as defined by BIPA. 740 ILCS 14/10.

36. Each instance Plaintiff and the other Class members were required to scan their fingerprints, Defendant captured, collected, stored, and/or otherwise obtained Plaintiff’s and the other Class members’ biometric identifiers or biometric information without valid consent and without complying with and, thus, in violation of BIPA.

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

- a. Defendant failed to inform Plaintiff 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 Plaintiff and 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 Plaintiff and the Class in writing the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- d. Defendant failed to obtain a written release, as required by 740 ILCS 14/15(b)(3);

61. Altitude violated 740 ILCS 14/15(a) by failing to publicly provide a retention schedule or guideline for permanently destroying its biometric identifiers and biometric information.

62. Altitude systematically and automatically disclosed, redisclosed, or otherwise disseminated Plaintiff's biometric identifiers and/or biometric information without first obtaining the consent required by 740 ILCS 14/15(d)(1).

63. Altitude also otherwise profited from biometric data collected at Altitude's facilities in violation of 740 ILCS 14/15(c).

64. By collecting, storing, and using Plaintiff's and the Class' biometric identifiers and biometric information as described herein, Altitude violated Plaintiff's and the Class' rights to privacy in their biometric identifiers or biometric information as set forth in the BIPA, 740 ILCS 14/1, *et seq.*

65. By disclosing, redisclosing, or otherwise disseminating Plaintiff's and the Class's biometric identifiers and biometric information as described herein, each Defendant violated Plaintiff's and the Class's rights to privacy in their biometric identifiers or biometric information as set forth in BIPA. *See* 740 ILCS 14/1, *et seq.*

66. Ultimately, Altitude disregards individuals' statutorily protected privacy rights by violating the BIPA and did so knowingly or recklessly because the law has been in effect for over a decade and Altitude exchange internal correspondence about biometric privacy law without taking additional steps to comply.

67. On behalf of themselves and the Class, Plaintiff seeks: (1) injunctive and equitable relief as is necessary to protect the interests of the Plaintiff and the Class by requiring Defendant's to comply with the BIPA's requirements for the collection, storage, and use of biometric identifiers

- e. Defendant failed to make publicly available a retention schedule detailing the length of time for which the biometrics are stored and/or guidelines for permanently destroying the biometrics it stores, as required by 740 ILCS 14/15(a); and
- f. Defendant failed to obtain consent to disclose or disseminate Plaintiff's and the Class' biometrics, as required by 740 ILCS 14/15(d)(1).

38. By obtaining and operating an employee timekeeping system which uses biometrics that was devoid of the privacy protections required by BIPA, Defendant profited from Plaintiff's and the Class members' biometric identifiers and biometric information in violation of 740 ILCS 14/15(c). Defendant knew, or was reckless in not knowing, that the biometric timekeeping system it used would be subject to the provisions of BIPA yet wholly failed to comply with the statute.

39. By capturing, collecting, storing, using, and disseminating Plaintiff's and the Class' biometrics as described herein, Defendant denied Plaintiff and the Class their right to statutorily required information and violated their respective rights to biometric information privacy, as set forth in BIPA.

40. 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).

41. Defendant's violations of BIPA, a statute 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 BIPA.

42. Accordingly, with respect to Count I, Plaintiff, individually and on behalf of the proposed Class, prays for the relief set forth below.

740 ILCS 14/15(b) (emphasis added).

53. The BIPA also 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 (*i.e.*, when the employment relationship ends); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

54. Unfortunately, Altitude failed to comply with these BIPA mandates.

55. Altitude qualifies as a “private entity” under the BIPA. *See* 740 ILCS 14/10.

56. Plaintiff and the Class are individuals who had their “biometric identifiers” collected by Altitude.

57. Plaintiff and the Class’ biometric identifiers or information based on those biometric identifiers were used to identify them, constituting “biometric information” as defined by the BIPA. *See* 740 ILCS 14/10.

58. Altitude violated 740 ILCS 14/15(b)(3) by failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and biometric information.

59. Altitude violated 740 ILCS 14/15(b)(1) by failing to inform Plaintiff and the Class in writing that their biometric identifiers and biometric information were being collected and stored.

60. Altitude violated 740 ILCS 14/15(b)(2) by failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or biometric information was being collected, stored, and used.

PRAYER FOR RELIEF

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

- a. Certifying the Class as defined above, appointing Plaintiff as class representative 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 Plaintiff and the Class by requiring Defendant to comply with BIPA;
- 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

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: March 1, 2022

Respectfully submitted,

CHEREASE DILLON, individually and on behalf
of a class of similarly situated individuals

By: /s/ Brendan Duffner
One of Plaintiff’s Attorneys

Myles McGuire
Timothy P. Kingsbury

by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Altitude's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Altitude's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in their Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

49. Plaintiff and counsel will fairly and adequately protect the interests of the Class.

50. Plaintiff retained counsel experienced in complex class action litigation.

CAUSE OF ACTION
Violation of 740 ILCS 14/1, *et seq.*
(On Behalf of Plaintiff and the Class)

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

52. The BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, the 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...."

Brendan Duffner (ARDC #6332635)
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tkingsbury@mcgpc.com
bduffner@mcgpc.com

Attorneys for Plaintiff and the Putative Class

include, but are not necessarily limited to the following:

- a) whether Defendant collected, captured, or otherwise obtained Plaintiff's and the Class' biometric identifiers or biometric information;
- b) whether Defendant properly informed Plaintiff and the Class of its purposes for collecting, using, and storing their biometric identifiers or biometric information;
- c) whether Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff and the Class' biometric identifiers or biometric information;
- d) whether Defendant has sold, leased, traded, or otherwise profited from Plaintiff and the Class's biometric identifiers or biometric information;
- e) 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 three years of their last interaction, whichever occurs first;
- f) whether Defendant complies with any such written policy (if one exists); and
- g) whether Defendant used Plaintiff and the Class' fingerprints to identify them.

47. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and have retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor their counsel have any interest adverse to those of the other members of the Class.

48. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all others available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered