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

TINA VELASCO, individually and on behalf
of all others similarly situated

Plaintiff,

v.

BELMONT GROCERIES, LLC, d/b/a
RICH'S FRESH MARKET

Defendant.

Case No. 2023-CH-01077

Calendar 14

Courtroom 2301

Hon. Clare J. Quish

**SECOND AMENDED CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff Tina Velasco, individually and on behalf of all others similarly situated, brings this Second Amended Class Action Complaint and Demand for Jury Trial against Defendant Belmont Groceries, LLC, d/b/a Rich's Fresh Market ("Rich's Fresh Market"). Plaintiff alleges the following based upon personal knowledge as to Plaintiff's own experiences, and as to all other matters upon information and belief, including investigation conducted by Plaintiff's counsel.

NATURE OF THE CASE

1. This class action alleges violations of the Biometric Information Privacy Act, 740 ILCS 14/1-99 ("BIPA") and common-law claims for intrusion upon seclusion.
2. Since 2008, BIPA has imposed a notice-and-consent requirement on companies possessing biometric data like handprints, voiceprints, and faceprints.
3. Defendant collected and disclosed Plaintiff's biometrics without proper notice and consent. Accordingly, Plaintiff seeks statutory damages as authorized by BIPA and damages for intrusion upon seclusion.

PARTIES

4. Plaintiff is a citizen of Illinois and a resident of Cook County.

5. Defendant Rich's Fresh Market is an Illinois limited liability company headquartered at 3141 N. Thatcher Ave, River Grove, IL 60171.

JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Defendant because Defendant is organized under the laws of Illinois, headquartered in Illinois, and registered to do business in Illinois. Defendant conducts substantial business in this State, and because Plaintiff's claims arise out of Defendant's conduct within this State.

7. Venue is proper in Cook County because Defendant conducts substantial business in Cook County and the conduct giving rise to Plaintiff's claims occurred in Cook County.

FACTUAL BACKGROUND

8. Defendant owns and operates a grocery store located at 3141 N. Thatcher Ave, River Grove, IL 60171.

9. Plaintiff worked for Defendant at its grocery store.

10. Defendant required its hourly workers, including Plaintiff, to clock in and out of shifts and breaks with InfoTronics HandPunch GT-400 hand-geometry scanners.

11. The GT-400 were connected to Defendant's timekeeping and payroll system, and to a third-party's web-based timekeeping portal (collectively, the "Biometric System").

12. In addition to scanning the shape of workers' hands and capturing their hand geometry (also known as "handprints"), the Biometric System captured, collected, and maintained reference templates derived from workers' handprints.

13. The Biometric System then compared the reference templates against each subsequent handprint scan to identify the worker scanning in and associate the appropriate timekeeping information.

14. The data collected by the Biometric System, including the reference templates, was stored on the servers of Defendant's timekeeping vendor, Attendance on Demand Inc.

15. Defendant did not explain the Biometric System to its workers.

16. Defendant did not tell its workers how it used data collected through the Biometric System.

17. Defendant did not tell its workers how long it kept the data collected through the Biometric System.

18. Defendant's workers did not consent to Defendant's collection of their handprints or the identifying data derived from them.

19. Defendant did not inform its workers that the information collected by the Biometric System would be disclosed to its timekeeping vendor.

20. Defendant's workers did not consent to Defendant's disclosure of their biometric data to its timekeeping vendor.

21. BIPA has been the law of the State of Illinois since 2008.

22. At the beginning of the class period, BIPA had been in effect for over nine years.

23. By the beginning of the class period, BIPA had also been in the news for some time: Facebook had been sued for BIPA violations almost three years earlier,¹ and the case had

¹ See Tony Briscoe, *Suit: Facebook facial recognition technology violates Illinois privacy laws*, Chicago Tribune (Apr. 1, 2015), <https://www.chicagotribune.com/news/breaking/ct-facebook-facial-recognition-lawsuit-met-story.html>.

already resulted in headline-generating rulings;² Google and Shutterfly had likewise found themselves in the news for alleged BIPA violations;³ and the first BIPA fingerprint case had not only been filed, but it had also been settled and finally approved.⁴

24. Throughout the class period, then, BIPA was well known, and its obligations clear.

CLASS ALLEGATIONS

25. Plaintiff brings this action on behalf of the following class of similarly situated individuals:

All individuals identified in Defendant's Biometric System at any time on or between February 2, 2018 and August 1, 2022.

26. Excluded from the Class are any members of the judiciary assigned to preside over this matter, any officer or director of Defendant, counsel for the Parties, and any immediate family member of any of the same.

² Russell Brandom, *Lawsuit challenging Facebook's facial recognition system moves forward*, The Verge (May 5, 2016), <https://www.theverge.com/2016/5/5/11605068/facebook-photo-tagging-lawsuit-biometric-privacy>; see also Joel Rosenblatt, *Is Facebook's Facial-Scanning Technology Invading Your Privacy Rights*, Bloomberg (Oct. 26, 2016), <https://www.bloomberg.com/news/articles/2016-10-26/is-facebook-s-facial-scanning-technology-invading-your-privacy-rights>.

³ Christopher Zara, *Google Gets Sued Over Face Recognition, Joining Facebook And Shutterfly In Battle Over Biometric Privacy In Illinois*, International Business Times (Mar. 4, 2016), <https://www.ibtimes.com/google-gets-sued-over-face-recognition-joining-facebook-shutterfly-battle-over-2330278>.

⁴ Jonathan Bilyk, *L.A. Tan settles handprint scan privacy class action for \$1.5M; attorneys get \$600K*, Cook County Record (Dec. 9, 2016), <https://cookcountyrecord.com/stories/511056103-1-a-tan-settles-handprint-scan-privacy-class-action-for-1-5m-attorneys-get-600k>; see also Melissa Daniels, *Tanning Co. Settles For \$1.5M Under Illinois Biometric Law*, Law360 (Dec. 6, 2016), <https://www.law360.com/articles/869828/tanning-co-settles-for-1-5m-under-illinois-biometric-law>.

27. The Class contains hundreds of individuals. The Class is therefore so numerous that joinder of all members is impracticable. The precise number of Class members can be determined by reference to Defendant's records.

28. Plaintiff's claims are typical of the proposed Class's. Because Plaintiff used the Biometric System in the same fashion as the Class members, Plaintiff's claims have the same factual and legal bases as the proposed Class members', and Defendant's conduct has resulted in identical injuries to Plaintiff and the other Class members.

29. Common questions of law and fact will predominate over any individualized inquiries. Those common questions include:

- a. Whether Defendant collected the Class's biometric identifiers or biometric information;
- b. Whether Defendant published a written policy establishing a retention schedule and biometric-destruction guidelines;
- c. Whether Defendant obtained a written release prior to collecting the Class's biometrics;
- d. Whether Defendant informed the Class, in writing, of the purposes and duration for which their biometrics would be collected and stored;
- e. Whether Defendant disclosed the Class members' biometric identifiers or information without informed consent;
- f. Whether Defendant is liable for \$5,000 or only \$1,000 per BIPA violation;
- g. Whether Defendant committed an unauthorized intrusion or prying into the Class members' seclusion;
- h. Whether the intrusion would be highly offensive or objectionable to a reasonable person;
- i. Whether the matter intruded on was private; and
- j. Whether the intrusion caused the Class members mental anguish and suffering.

30. Absent a class action, most Class members would find their claims prohibitively expensive to bring individually and would be left without an adequate remedy. Class treatment of the common questions is also superior because it conserves the Court's and Parties' resources and promotes efficiency and consistency of adjudication.

31. Plaintiff will adequately represent the Class. Plaintiff has retained counsel experienced in biometric class actions. Plaintiff and Plaintiff's counsel are committed to vigorously litigating this action on the Class's behalf and have the resources to do so. Neither Plaintiff nor Plaintiff's counsel have any interest adverse to the Class.

32. Defendant has acted on grounds generally applicable to Plaintiff and the Class, requiring the Court's imposition of uniform relief, including injunctive and declaratory relief to the Class.

COUNT I
Violation of 740 ILCS 14/15(a)
(On behalf of Plaintiff and the Class)

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

34. Defendant is a limited liability company and is therefore a private entity. 740 ICLS 14/10.

35. By capturing and collecting Plaintiff's and the Class's handprints through the Biometric System, Defendant possessed scans of their hand geometry.

36. The scans of Plaintiff's and the Class's hand geometry possessed by Defendant were biometric identifiers under 740 ILCS 14/10.

37. By converting Plaintiff's and the Class's handprints to reference templates and using those reference templates to identify Plaintiff and the Class members, Defendant obtained Plaintiff's and the Class's biometric information. 740 ILCS 14/10.

38. While Defendant was in possession of Plaintiff's and the Class's biometric identifiers and information, Defendant failed to provide a publicly available retention schedule detailing the length of time it would maintain Plaintiff's and the Class's biometrics and guidelines for permanently destroying the same. 740 ILCS 14/15(a).

COUNT II
Violation of 740 ILCS 14/15(b)
(On behalf of Plaintiff and the Class)

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

40. Defendant is a limited liability company and is therefore a private entity. 740 ICLS 14/10.

41. By capturing and collecting Plaintiff's and the Class's handprints through the Biometric System, Defendant captured, collected, or otherwise obtained scans of Plaintiff's and the Class's hand geometry.

42. The scans of Plaintiff's and the Class's hand geometry captured, collected, or otherwise obtained by Defendant were biometric identifiers. 740 ILCS 14/10.

43. By converting Plaintiff's and the Class's handprints to reference templates and using those reference templates to identify Plaintiff and the Class members, Defendant captured, collected, or otherwise obtained Plaintiff's and the Class's biometric information. 740 ILCS 14/10.

44. Prior to capturing and collecting Plaintiff's and the Class's biometric identifiers and information, Defendant did not inform Plaintiff and the Class in writing that their biometrics were being captured, collected, stored, and used. 740 ILCS 14/15(b)(1).

45. Prior to capturing and collecting Plaintiff's and the Class's biometric identifiers and information, Defendant did not inform Plaintiff and the Class of the specific purpose for which their biometrics were being captured, collected, stored, and used. 740 ILCS 14/15(b)(2).

46. Prior to capturing and collecting Plaintiff's and the Class's biometric identifiers and information, Defendant did not inform Plaintiff and the Class of the length of time that their biometrics would be maintained. 740 ILCS 14/15(b)(2).

47. Prior to capturing and collecting Plaintiff's and the Class's biometric identifiers and information, Defendant did not obtain a written release authorizing such collection. 740 ILCS 14/15(b)(3).

COUNT III
Violation of 740 ILCS 14/15(d)
(On behalf of Plaintiff and the Class)

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

49. Defendant is a limited liability company and is therefore a private entity. 740 ICLS 14/10.

50. By allowing its timekeeping vendor to store Plaintiff's and the Class members' reference templates, which were used to identify Plaintiff and the Class members, Defendant disclosed Plaintiff's and the Class's biometric information. 740 ILCS 14/10.

51. Plaintiff and the Class members, and their legally authorized representatives, did not consent to Defendant's disclosure of their biometric information to its timekeeping vendor. 740 ILCS 14/15(d)(1).

52. Defendant's disclosure of Plaintiff's and the Class members' biometric information did not complete a financial transaction requested or authorized by Plaintiff, the Class members, or their legally authorized representatives. 740 ILCS 14/15(d)(2).

53. Defendant's disclosure of Plaintiff's and the Class members' biometric information was not required by State or federal law or municipal ordinance. 740 ILCS 14/15(d)(3).

54. Defendant's disclosure of Plaintiff's and the Class members' biometric information was not required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction. 740 ILCS 14/15(d)(4).

COUNT IV
Intrusion Upon Seclusion
(On behalf of Plaintiff and the Class)

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

56. By intentionally using the GT-400 devices to scan the shapes of Plaintiff's and the Class members' hands, extracting from those handprints uniquely identifying reference templates, and then disclosing those reference to its timekeeping vendor, Defendant intentionally and unlawfully intruded upon Plaintiff's and the Class's private affairs and concerns.

57. The biometric identifiers and information captured, collected, stored, used, and disclosed by Defendant were private, as they have been given special statutory protections in Illinois for over 15 years.

58. A reasonable person would find it highly offensive and objectionable that their employer would intrude upon their seclusion by capturing and maintaining their biometrics without informed consent, as evidenced by Illinois's passage and maintenance of BIPA.

59. Defendant's intrusion upon Plaintiff's and the Class's seclusion has directly caused and continues to cause Plaintiff mental anguish and injury. Plaintiff worries about what was done with her biometric data, whether it was ever improperly utilized by Defendant or its timekeeping vendor, or whether any malicious actor ever accessed the data.

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 appointing Plaintiff's counsel as class counsel;
- b. Declaring that Defendant's actions as set forth herein violate BIPA;
- c. Declaring that Defendant's actions as set forth herein constitute intrusion upon seclusion;
- d. Awarding injunctive and equitable relief as necessary to protect the Class;
- e. Finding Defendant's conduct intentional or reckless and awarding \$5,000 in damages per violation, per Class member under 740 ILCS 14/20(2), or, if Defendant's conduct does not rise to that standard, \$1,000 per violation, per Class member under 740 ILCS 14/20(1);
- f. Awarding damages for intrusion upon seclusion in an amount to be proven at trial, including punitive damages;
- g. Awarding Plaintiff and the Class their reasonable attorneys' fees, costs, and other litigation expenses under 740 ILCS 14/20(3);
- h. Awarding Plaintiff and the Class pre- and post-judgment interest; and
- i. Awarding such other and further relief as the Court deems equitable and just.

JURY DEMAND

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

Dated: July 24, 2024

TINA VELASCO, individually and on behalf of all others similarly situated,

s/ J. Dominick Larry
Plaintiff's counsel

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Attorney for Plaintiff and the Class

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that on July 24, 2024, I e-filed the foregoing through an approved e-filing vendor, with courtesy copies sent by email to the following counsel for Defendant:

John C. Ochoa
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Molly Arranz
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AMUNDSEN DAVIS, LLC

Dated: July 24, 2024

s/ J. Dominick Larry _____
Plaintiff's Counsel