☐ YES ☑ NO

EXHIBITS

CASE NO. 2020 CH 5622

DATE: 8/28/2020

CASE TYPE: Class Action

PAGE COUNT: 25

CASE NOTE

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Hearing Date: 12/28/2020 9:30 AM - 9:30 AM
Courtroom Number: 2308
Location: District 1 Court
Cook County, IL

FILED
8/28/2020 4:20 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL

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

DIANE ARNOLD and JENNIFER STEWART, individually, and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**Case No.** 2020CH05622
v.	)	
ROUNDY'S SUPERMARKETS, INC., ROUNDY'S ILLINOIS, LLC, d/b/a MARIANO'S, and THE KROGER COMPANY,	)	
Defendants.	)	

CLASS ACTION COMPLAINT

Plaintiffs Diane Arnold and Jennifer Stewart ("Plaintiffs"), individually and on behalf of all others similarly situated (the "Class"), bring the following Class Action Complaint ("Complaint") pursuant to the Illinois Code of Civil Procedure, 735 ILCS §§ 5/2-801 and 2-802, against Roundy's Supermarkets Inc., Roundy's Illinois, LLC, d/b/a MARIANO'S, and The Kroger Company ("Kroger" and, collectively with the other defendants, "Defendants") to redress and curtail Defendants' unlawful collection, use, storage, and disclosure of Plaintiffs' sensitive and proprietary biometric data. Plaintiffs allege as follows upon personal knowledge as to themselves, their own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

NATURE OF THE ACTION

1. Kroger is one of the world's largest retailers, operating nearly 2,800 grocery retail stores in 35 states within the United States. Kroger owns and operates some of the most well-known grocery stores in the country, including Kroger, Mariano's, Ralphs, and Roundy's. Kroger

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owns and operates approximately 41 Mariano's stores in Illinois, including several stores located in this Circuit. Kroger is a self-proclaimed "innovator and pioneer in the food retail industry," with a noted reliance on technology's "important role in [its] store operations."[1]

2. Plaintiff Arnold regularly entered and shopped at the Mariano's supermarket located at 2323 Capital Drive, Northbrook, Illinois 60062 ("Mariano's Northbrook" or the "Northbrook Store"), including, but not limited to, during the period from its opening to the present. She also entered and shopped sporadically at the Mariano's supermarket located at 784 Skokie Boulevard, Northbrook, Illinois 60062 ("Mariano's Skokie Blvd. Northbrook Store").

3. Plaintiff Stewart worked for the Defendants at its Mariano's store located in Hoffman Estates, Illinois ("Mariano's Hoffman Estates" or the "Hoffman Estates Store") from November 2018 until February 2019. She also regularly shopped at the Mariano's Hoffman Estates during the period from its opening until approximately May 2019.

4. Through testimony in unrelated litigation in which videographic evidence of an accident at Mariano's Northbrook was sought, Plaintiff Arnold learned that—unbeknownst to her—scans of her facial geometry, among other things, had been collected and captured via Mariano's facial recognition devices and software.

5. Specifically, a district manager for Mariano's who had previously managed Mariano's Northbrook testified under oath that Defendants utilize facial recognition cameras at the Northbrook Store. He then identified at least one such camera in photographic evidence.

6. Defendants utilize similar facial recognition devices at the Mariano's Skokie Blvd. Northbrook Store.

[1] https://www.thekrogerco.com/about-kroger/history/ (last visited Aug. 17, 2020).

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7. While completing work-related paperwork in the office at the Hoffman Estates Store, Plaintiff Stewart heard other Mariano's employees talking about the store's use of facial recognition cameras.

8. Plaintiff Stewart observed facial recognition cameras at the entrance and exit of the Hoffman Estates Store, as well as in the employee break room. She was also able to see images on the computer monitors in the store's office that loss-prevention workers could pull up from the cameras.

9. Upon information and belief, Defendants use facial recognition devices and associated software at their locations throughout Illinois.

10. Defendants' facial recognition devices and associated software collect and capture biometric identifiers such as scans of an individual's facial geometry, retinas, and irises. Defendants then use those scans to track, identify, and prosecute perceived shoplifters. Indeed, the district manager testified the purpose of the facial recognition software was "loss prevention."

11. Facial geometry and other biometrics are unique and personal identifiers that cannot be changed.

12. As a result of Defendants' conduct, Plaintiffs and the putative Class lost the right to control the collection, use, and storage of their biometric identifiers and information and were exposed to ongoing, serious, and irreversible privacy risks—simply by going to shop for groceries or going to work.

13. Databases containing sensitive, proprietary biometric data can be hacked, breached, or otherwise exposed, as in the recently publicized Clearview AI, Suprema, and Facebook/Cambridge Analytica data breaches.

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14. An illegal market exists for biometric data. Hackers and identity thieves have targeted Aadhaar, the largest biometric database in the world, which contains the personal and biometric data—including fingerprints, iris scans, and facial photographs—of over a billion Indian citizens.[2] In January 2018, an Indian newspaper reported that the information housed in Aadhaar was available for purchase for less than $8 and in as little as 10 minutes.[3]

15. Recognizing the need to protect its citizens from situations like these, Illinois enacted the Biometric Information Privacy Act ("BIPA"), 740 ILCS § 14/1, *et seq.*, specifically to regulate companies that collect, store, and use Illinois citizens' biometrics, such as facial geometry scans.

16. Notwithstanding the clear and unequivocal requirements of the law, Defendants knowingly disregard Plaintiffs' and other similarly situated consumers', employees', and others' ("visitors'") statutorily protected privacy rights and unlawfully collect, store, disseminate, and use Plaintiffs' and other similarly situated visitors' biometric data in violation of BIPA. Specifically, Defendants violated and continue to violate BIPA because they did not and continue not to:

a. Properly inform Plaintiffs and others similarly situated in writing that biometric identifiers or biometric information are being collected or stored, as required by BIPA;

b. Properly inform Plaintiffs and others similarly situated in writing of the specific purpose and length of time for which their facial scans and other biometric identifiers or biometric information were being collected, stored, and used, as required by BIPA;

[2] *See* Vidhi Doshi, *A Security Breach in India Has Left a Billion People at Risk of Identity Theft*, The Washington Post (Jan. 4, 2018), *available at*: https://www.washingtonpost.com/news/worldviews/wp/2018/01/04/a-security-breach-in-india-has-left-a-billion-people-at-risk-of-identity-theft/?utm_term=.b3c70259f138.

[3] Rachna Khaira, *Rs 500, 10 Minutes, and You Have Access to Billion Aadhaar Details*, The Tribune (Jan. 4, 2018), *available at* http://www.tribuneindia.com/news/nation/rs-500-10-minutes-and-you-have-access-to-billion-aadhaar-details/523361.html.

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c. Develop and adhere to a publicly available retention schedule and guidelines for permanently destroying Plaintiffs' and other similarly situated visitors' facial scans and other biometric identifiers or biometric information, as required by BIPA;

d. Obtain a written release from Plaintiffs and others similarly situated to collect, capture, or otherwise obtain their facial scans and other biometric identifiers or biometric information, as required by BIPA; and

e. Obtain consent from Plaintiffs and others similarly situated to disclose, redisclose, or otherwise disseminate their facial scans and other biometric identifiers or biometric information to a third party, as required by BIPA.

17. Accordingly, Plaintiffs, on behalf of themselves as well as the putative Class, seek an Order: (1) declaring that Defendants' conduct violates BIPA; (2) requiring Defendants to cease the unlawful activities discussed herein; and (3) awarding statutory damages to Plaintiffs and the putative Class.

PARTIES

18. Plaintiff Diane Arnold is a natural person and at all relevant times was a resident of the State of Illinois.

19. Plaintiff Jennifer Stewart is a natural person and at all relevant times was a resident of the State of Illinois.

20. Defendant Roundy's Supermarkets, Inc. is a Wisconsin corporation that is registered to do business in Illinois. Roundy's Supermarkets, Inc. operates retail stores in Illinois, including grocery stores and supermarkets, such as Mariano's stores, in this Circuit. Upon information and belief, Roundy's Supermarkets, Inc., maintains Mariano's employee files. It is the member manager of Roundy's Illinois, LLC, and a subsidiary that operates supermarkets for Kroger.

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21. Defendant Roundy's Illinois, LLC d/b/a Mariano's Fresh Market, is an Illinois limited liability company that does business in Illinois as Mariano's and operates grocery stores or supermarkets in this State.

22. Defendant Kroger is an Ohio corporation registered to do business in Illinois. Kroger owns and operates retail grocery stores—such as Mariano's—throughout the United States, including within the State of Illinois.

JURISDICTION AND VENUE

23. This Court has jurisdiction over Defendants pursuant to 735 ILCS § 5/2-209 because Defendants conduct business in Illinois, have locations in Illinois, and committed statutory violations alleged herein in Cook County, Illinois.

24. Venue is proper in Cook County because Defendants conduct business in Cook County and committed statutory violations alleged herein in Cook County, Illinois.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

25. In the early 2000s, major national corporations started using Chicago and other locations in Illinois to test "new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias." 740 ILCS § 14/5(c). Given its relative infancy, an overwhelming portion of the public became weary [sic] of this then-growing yet unregulated technology. *See* 740 ILCS § 14/5.

26. In late 2007, a biometrics company called Pay by Touch, which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions—including at retail grocery stores—filed for bankruptcy. That bankruptcy alarmed the Illinois Legislature because suddenly there was a serious risk that millions of fingerprint

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records—which, like other unique biometric identifiers, can be linked to people's sensitive financial and personal data—could now be sold, distributed, or otherwise shared through the bankruptcy proceedings to third parties without adequate protections for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who used the company's fingerprint scanners were completely unaware the scanners were not actually transmitting fingerprint data to the retailer who deployed the scanner, but rather to Pay by Touch, and that their unique biometric identifiers could now be sold to unknown third parties.

27. Recognizing the "very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information," Illinois enacted BIPA in 2008. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS § 14/5.

28. Additionally, to ensure compliance, BIPA provides that, for each violation, the prevailing party may recover $1,000 or actual damages, whichever is greater, for negligent violations and $5,000, or actual damages, whichever is greater, for intentional or reckless violations. 740 ILCS § 14/20.

29. BIPA is an informed consent statute that achieves its goal by making it unlawful for a company to, among other things, collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers or biometric information, unless it first:

a. Informs the subject in writing that a biometric identifier or biometric information is being collected, stored, and used;

b. 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

c. Receives a written release executed by the subject of the biometric identifier or biometric information.

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See 740 ILCS § 14/15(b).

30. Biometric identifiers include facial scans, retina and iris scans, voiceprints, scans of hands, and fingerprints. *See* 740 ILCS § 14/10. Biometric information is defined separately to include any information based on an individual's biometric identifier that is used to identify an individual. *Id.*

31. BIPA establishes standards for how companies must handle biometric identifiers and biometric information. *See, e.g.*, 740 ILCS § 14/15(c)-(d). For example, BIPA prohibits private entities from disclosing a person's or customer's biometric identifier or biometric information without first obtaining consent for such disclosure. *See* 740 ILCS § 14/15(d)(1).

32. BIPA also prohibits selling, leasing, trading, or otherwise profiting from a person's biometric identifiers or biometric information, 740 ILCS § 14/15(c), and requires companies to develop and comply with 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 such identifiers or information has been satisfied, or within three years of the individual's last interaction with the company, whichever occurs first. 740 ILCS § 14/15(a).

33. The Illinois legislature enacted BIPA due to the increasing use of biometric data in financial and security settings, the general public's hesitation to use biometric information, and—significantly—the unknown ramifications of biometric technology. Biometrics are biologically unique to the individual and, once compromised, an individual is at a heightened risk for identity theft and left without any recourse.

34. BIPA provides individuals with a private right of action, protecting their right to privacy regarding their biometrics as well as protecting their rights to know the precise nature for

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which their biometrics are used and how they are being stored and ultimately destroyed. Unlike other statutes that only create a right of action if there is a qualifying data breach, BIPA strictly regulates the manner in which entities may collect, store, use, and disseminate biometrics and creates a private right of action for lack of statutory compliance.

35. Plaintiffs, like the Illinois legislature, recognize how imperative it is to keep biometric information secure. Biometric information, unlike other personal identifiers such as a social security number, cannot be changed or replaced if hacked or stolen.

II. Defendants Violate the Biometric Information Privacy Act.

36. By the time BIPA passed through the Illinois legislature in mid-2008, most companies who had experimented with using individuals' biometric data in Illinois stopped doing so.

37. However, Defendants failed to take note of the shift in Illinois law governing the collection, use, storage, and dissemination of biometric data. As a result, Defendants continue to collect, store, use, and disseminate their visitors' biometric data in violation of BIPA.

38. In 2017, Defendants faced a lawsuit alleging that Roundy's stores retained employees' fingerprint information without their consent in violation of BIPA. In that suit, Defendants were accused by former employees of both Mariano's and Kroger grocery stores of unlawful collection, use, storage, and disclosure of employees' biometric data through the use of a fingerprint scanning timekeeping system.

39. Despite these prior accusations and Defendants' knowledge of BIPA, when visitors enter and exit Defendants' retail locations and when employees visit the employee break room, their facial identifiers and geometry are scanned, tracked, and uploaded.

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40. Each Defendant fails to inform its visitors that it is collecting or storing biometric data; fails to inform visitors of the specific purposes and duration for which it collects their sensitive biometric data; fails to obtain written releases from visitors before collecting their sensitive biometric data; and fails to inform visitors that each discloses their sensitive biometric data to each other, to the third-party biometric device and software vendor(s), and to other, currently unknown, third parties, which, *inter alia*, host and/or analyze the biometric data.

41. Each Defendant also fails to publish a written, publicly available policy identifying its retention schedule and guidelines for permanently destroying visitors' biometric data when the initial purpose for collecting or obtaining their biometrics has been satisfied or within three years of the individual's last interaction with the Defendant, whichever occurs first, as required by BIPA.

42. The Pay by Touch bankruptcy that catalyzed the passage of BIPA, as well as the recent data breaches, highlights why such conduct—where individuals are aware they are providing a biometric identifier, but not aware of to whom or for what purposes they are doing so—is dangerous. That bankruptcy spurred Illinois citizens and legislators into realizing how crucial it is for individuals to understand when providing biometric identifiers, such as facial scans, who exactly is collecting their biometric data, where the biometric data will be transmitted and for what purposes, and how long the biometric data will be retained. Each Defendant disregards these obligations and visitors' statutory rights and instead unlawfully collects, stores, uses, and disseminates visitors' biometric identifiers and information, all without receiving the informed written consent required by the BIPA.

43. Each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiffs' and the putative Class's biometric data and has not and will not destroy Plaintiffs' and the putative Class's biometric data as required by BIPA.

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44. Each Defendant fails to inform its visitors what will happen to their biometric data in the event Defendants merge with another company or cease operations, or what will happen in the event the third parties that receive, store, and/or manage Plaintiffs' and the putative Class's biometric data from Defendants cease operations.

45. These violations of BIPA raise a material risk that Plaintiffs' and the putative Class's biometric data will be unlawfully accessed by third parties.

46. By and through the actions detailed above, each Defendant disregards Plaintiffs' and the putative Class's legal rights in violation of BIPA.

47. Defendants knew, including through their involvement in previous BIPA litigation, that the aforementioned actions were in direct violation of BIPA, yet they implemented and continued their practice of violating Plaintiffs' and the putative Class's legal rights without regard to the law.

III. Plaintiffs' Experiences

48. Plaintiff Arnold is a consumer who regularly entered and shopped at Mariano's Northbrook, a retail supermarket wholly owned by Defendants, during the statutory period. She also entered and shopped sporadically at the Mariano's Skokie Blvd. Northbrook Store.

49. Plaintiff Stewart worked for Defendants at the Mariano's store located in Hoffman Estates, Illinois from November 2018 until February 2019. She also regularly shopped at the Mariano's Hoffman Estates during the period from its opening until approximately May 2019.

50. Plaintiff Arnold was involved in unrelated litigation in which her counsel sought videographic evidence of an accident that occurred at Mariano's Northbrook.

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51. On August 11, 2020, Jared Anderson testified under oath in that unrelated personal injury matter. Mr. Anderson was a former store manager at Mariano's Northbrook; he is currently a district manager for Mariano's and in charge of 22 Mariano's locations.

52. When questioned about specific cameras at Mariano's Northbrook, Mr. Anderson identified at least one facial recognition device on the east entrance of the Mariano's Northbrook, captured in this photograph:

53. Mr. Anderson further testified that there are, typically, two facial recognition cameras at Mariano's locations—one at an entrance and an exit at both sides of a store. These cameras "shoot[] upwards" so as to collect facial recognition data even from visitors wearing "hats, hoodies, et cetera."

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54. Mr. Anderson testified that these facial recognition devices are utilized for "loss-prevention" purposes—*i.e.*, to track, identify, and prosecute perceived shoplifters.

55. Defendants utilize similar facial recognition devices at the Mariano's Skokie Blvd. Northbrook Store at which Plaintiff Arnold shops sporadically.

56. While completing work-related paperwork in the office at the Hoffman Estates Store, Plaintiff Stewart heard other Mariano's employees talking about the store's use of facial recognition cameras.

57. Plaintiff Stewart observed facial recognition cameras at the entrance and exit of the Hoffman Estates Store, as well as in the employee break room. She was also able to see images on the computer monitors in the store's office that loss-prevention workers could pull up from the cameras.

58. Each Defendant collects, captures, or otherwise obtains and stores Plaintiffs' biometric data, including facial geometry scans and other biometric identifiers, in a database.

59. Mariano's disclosed Plaintiffs' sensitive biometric data to Roundy's Supermarkets, Inc., and to Kroger, as well as to the third-party biometric device and software vendor(s), and to other, currently unknown, third parties, which, *inter alia*, host and/or analyze the biometric data.

60. No Defendant ever (1) informed Plaintiffs in writing or otherwise that it was collecting or storing their biometric data or of the specific purpose(s) and length of time for which their biometric data was being collected; (2) received a written release from Plaintiffs to collect, store, or use their biometric data; developed or adhered to a publicly available retention schedule and guidelines for permanently destroying Plaintiffs' biometric data; or obtained Plaintiffs' consent for any disclosure or dissemination of their biometric data to third parties.

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61. Plaintiffs have never been informed of the specific limited purposes or length of time for which any Defendant collects, captures, obtains, stores, uses, and/or disseminates their biometric data.

62. Plaintiffs have never seen, been made aware of, or been able to find, view, or access a publicly available biometric data retention policy developed by any Defendant, nor have they ever seen, been made aware of, or been able to find, view, or access any policies regarding whether any Defendant will ever permanently delete their biometric data.

63. No retention schedules or destruction guidelines relating to biometric data were in Plaintiff Stewart's onboarding materials when she began working at Mariano's.

64. No retention schedules or destruction guidelines relating to biometric data are available to Plaintiffs on the Internet, or available to Plaintiff Stewart on a company intranet.

65. No retention schedules or destruction guidelines relating to biometric data are posted on any Defendant's premises.

66. No employees at any of Defendant's stores have ever informed Plaintiffs of, or provided Plaintiffs with, any retention schedules or destruction guidelines relating to biometric data.

67. Plaintiffs have not been provided with nor ever signed a written release allowing any Defendant to collect, capture, obtain, store, use, or disseminate their biometric data.

68. Plaintiffs have been continuously and repeatedly exposed to the risks and harmful conditions created by Defendants' violations of BIPA alleged herein.

69. No amount of time or money can compensate Plaintiffs if their biometric data has been compromised by the intentional, reckless, and/or negligent procedures through which Defendants capture, store, use, and disseminate their and the putative Class's biometric data.

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Moreover, Plaintiffs would not have provided their biometric data to Defendants if they had known Defendants would retain such information for an indefinite period of time without their consent.

70. A showing of actual damages is not necessary in order to state a claim under BIPA. *See Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶ 40 ("[A]n individual need not allege some actual injury or adverse effect, beyond violation of his or her rights under the Act, in order to qualify as an "aggrieved" person and be entitled to seek liquidated damages and injunctive relief pursuant to the Act").

71. As Plaintiffs are not required to allege or prove actual damages in order to state a claim under BIPA, they seek statutory damages under BIPA as compensation for the injuries caused by Defendants. *Rosenbach*, 2019 IL 123186, ¶ 40.

CLASS ALLEGATIONS

72. Pursuant to the Illinois Code of Civil Procedure, 735 ILCS § 5/2-801, Plaintiffs bring claims on their own behalves and as representatives of all other similarly situated individuals pursuant to BIPA, 740 ILCS § 14/1, *et seq.*, to recover statutory penalties, prejudgment interest, attorneys' fees and costs, and other damages owed for the violations described herein.

73. Under the Illinois Code of Civil Procedure, 735 ILCS § 5/2-801, Plaintiffs seek certification of the following Class:

> All individuals who entered Defendants' locations in the State of Illinois who had their facial geometry scans, biometric identifiers, and/or biometric information collected, captured, received, or otherwise obtained, maintained, stored, disclosed, or disseminated by any Defendant during the applicable statutory period.

74. Excluded from the Class are Defendants' officers and directors, and any judge, justice, or judicial officials presiding over this matter and their immediate families.

75. This action is properly maintained as a class action under 735 ILCS § 5/2-801 because:

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A. The Class is so numerous that joinder of all members is impracticable;

B. There are questions of law or fact that are common to the Class;

C. Plaintiffs' claims are typical of the claims of the Class; and,

D. Plaintiffs will fairly and adequately protect the interests of the Class.

Numerosity

76. There are at least many thousands of putative Class members. The exact number of Class members can easily be determined from Defendants' records.

Commonality

77. There is a well-defined commonality of interest in the substantial questions of law and fact concerning and affecting the Class in that Plaintiffs and all members of the Class have been harmed by Defendants' failure to comply with BIPA. The common questions of law and fact include, but are not limited to the following:

A. Whether any Defendant collected, captured, received, or otherwise obtained, maintained, stored, or disclosed or disseminated Plaintiffs' and the Class's biometric identifiers or biometric information;

B. Whether any Defendant informed Plaintiffs and the Class that they were collecting or storing their biometric identifiers and biometric information;

C. Whether any Defendant properly informed Plaintiffs and the Class of the specific purpose and duration for which Defendants were collecting, using, storing, and disseminating their biometric identifiers or biometric information;

D. Whether any Defendant properly obtained a written release (as defined in 740 ILCS § 14/10) to collect, use, store, and disseminate Plaintiffs' and the Class's biometric identifiers or biometric information;

E. Whether any Defendant has disclosed, redisclosed, or otherwise disseminated Plaintiffs' and the Class's biometric identifiers or biometric information;

F. Whether any Defendant has sold, leased, traded, or otherwise profited from Plaintiffs' and the Class's biometric identifiers or biometric information;

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G. Whether any 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 its last interaction with the individual, whichever occurs first;

H. Whether any Defendant complied with any such written policy (if one exists);

I. Whether any Defendant's violations of BIPA have raised a material risk that Plaintiffs' and the putative Class's biometric data will be unlawfully accessed by third parties;

J. Whether any Defendant used Plaintiffs' and the Class's biometric identifiers, including scans of their facial geometry, to identify them;

K. Whether the violations of BIPA were committed negligently; and

L. Whether the violations of BIPA were committed intentionally or recklessly.

78. Plaintiffs anticipate Defendants will raise defenses that are common to Plaintiffs and the Class.

Adequacy

79. Plaintiffs will fairly and adequately protect the interests of all members of the Class, and there are no known conflicts of interest between Plaintiffs and class members. Plaintiffs, moreover, have retained experienced counsel who are competent in the prosecution of complex litigation and who have extensive experience serving as class counsel.

Typicality

80. The claims asserted by Plaintiffs are typical of the Class members they seek to represent. Plaintiffs have the same interests and suffers from the same unlawful practices as the Class.

81. Upon information and belief, there are no other Class members who have an interest in individually controlling the prosecution of his individual claims, especially in light of the

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relatively small value of each claim. However, if any such Class member should become known, he or she can "opt out" of this action pursuant to 735 ILCS § 5/2-801.

Predominance and Superiority

82. The common questions identified above predominate over any individual issues, which will relate solely to the quantum of relief due to individual class members. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense if these claims were brought individually. Moreover, as the damages suffered by each class member are relatively small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it difficult for individual class members to vindicate their claims.

83. Additionally, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantially more than if claims are treated as a class action. Prosecution of separate actions by individual class members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of class members to protect their interests. The issues in this Action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to fashion methods to efficiently manage this Action as a class action.

FIRST CAUSE OF ACTION

Violation of 740 ILCS § 14/15(a): Failure to Institute, Maintain, and Adhere to Publicly Available Retention Schedule and Destruction Guidelines

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

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

86. Defendants failed to comply with these BIPA mandates.

87. Defendant Roundy's Supermarkets, Inc. is a Wisconsin corporation that is registered to do business in Illinois, and therefore, qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

88. Defendant Roundy's Illinois, LLC d/b/a Mariano's Fresh Market, is an Illinois limited liability company that does business in Illinois, and therefore, qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

89. Defendant Kroger is an Ohio corporation registered to do business in Illinois, and therefore, qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

90. Plaintiffs and the putative Class are individuals who have had their "biometric identifiers" and "biometric information" collected by Defendants, as explained in detail in Sections II and III, *supra*. *See* 740 ILCS § 14/10.

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

92. Each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiffs' and the Class's biometric data and has not and will not destroy Plaintiffs' or

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the Class's biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the Plaintiffs' and Class members' last interaction with any Defendant, whichever occurs first.

93. On behalf of themselves and the putative Class, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendants to comply with BIPA's requirements for the collection, storage, and use 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).

SECOND CAUSE OF ACTION

Violation of 740 ILCS § 14/15(b): Failure to Obtain Informed Written Consent and Release Before Collecting or Obtaining Biometric Identifiers or Information

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

95. BIPA requires companies to obtain informed written consent from individuals before acquiring their biometric data. Specifically, BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers or biometric information unless [the entity] first: (1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject . . . in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and (3) receives a written release executed by the subject of the biometric identifier or biometric information." 740 ILCS § 14/15(b).

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96. Defendants failed to comply with these BIPA mandates.

97. Defendant Roundy's Supermarkets, Inc. is a Wisconsin corporation that is registered to do business in Illinois, and therefore, qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

98. Defendant Roundy's Illinois, LLC d/b/a Mariano's Fresh Market, is an Illinois limited liability company that does business in Illinois, and therefore, qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

99. Defendant Kroger is an Ohio corporation registered to do business in Illinois, and therefore, qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

100. Plaintiffs and the putative Class are individuals who have had their "biometric identifiers" and "biometric information" collected by Defendants, as explained in detail in Sections II and III, *supra*. *See* 740 ILCS § 14/10.

101. Each Defendant systematically and automatically collected, captured, or otherwise obtained Plaintiffs' and the putative Class's biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS § 14/15(b)(3).

102. No Defendant ever informed Plaintiffs and the putative Class, nor their legally authorized representatives, in writing that their biometric identifiers and/or biometric information were being collected, captured, or otherwise obtained, nor did any Defendant ever inform Plaintiffs and the putative Class in writing of the specific purpose(s) and length of term for which their biometric identifiers and/or biometric information were being collected, stored, used, and disseminated as required by 740 ILCS § 14/15(b)(1)-(2).

103. By collecting, capturing, or otherwise obtaining Plaintiffs' and the putative Class's biometric identifiers and biometric information as described herein, Defendants violated Plaintiffs'

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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.*

104. On behalf of themselves and the putative Class, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendants to comply with BIPA's requirements for the collection, storage, and use 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).

THIRD CAUSE OF ACTION

Violation of 740 ILCS § 14/15(d): Disclosure or Dissemination of Biometric Identifiers and Information Before Obtaining Consent

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

106. BIPA prohibits private entities from disclosing or disseminating a person's or customer's biometric identifier or biometric information without first obtaining consent for that disclosure. *See* 740 ILCS § 14/15(d)(1).

107. Defendants fail to comply with this BIPA mandate.

108. Defendant Roundy's Supermarkets, Inc. is a Wisconsin corporation that is registered to do business in Illinois, and therefore, qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

109. Defendant Roundy's Illinois, LLC d/b/a Mariano's Fresh Market, is an Illinois limited liability company that does business in Illinois, and therefore, qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

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110. Defendant Kroger is an Ohio corporation registered to do business in Illinois, and therefore, qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

111. Plaintiffs and the putative Class are individuals who have had their "biometric identifiers" and "biometric information" collected by Defendants, as explained in detail in Sections II and III, *supra*. *See* 740 ILCS § 14/10.

112. Each Defendant systematically and automatically disclosed, redisclosed, or otherwise disseminated Plaintiffs' and the Class's biometric identifiers and/or biometric information without first obtaining the consent required by 740 ILCS § 14/15(d)(1).

113. By disclosing, redisclosing, or otherwise disseminating Plaintiffs' and the Class's biometric identifiers and biometric information as described herein, each Defendant violated Plaintiffs' 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.*

114. On behalf of themselves and the putative Class, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendants to comply with BIPA's requirements for the collection, storage, use, and dissemination 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).

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PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully requests that this Court enter an Order:

A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiffs Diane Arnold and Jennifer Stewart as Class Representatives, and appointing Wexler Wallace LLP, Stephan Zouras, LLP, and Gustafson Gluek PLLC as Class Counsel;

B. Declaring that Defendants' actions, as set forth above, violate BIPA;

C. Awarding 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);

D. Declaring that Defendants' actions, as set forth above, were intentional and/or reckless or, in the alternative, were negligent;

E. Awarding injunctive and other equitable relief as is necessary to protect the interests of Plaintiffs and the Class, including an Order requiring Defendants to collect, store, use, and disseminate biometric identifiers and/or biometric information in compliance with BIPA and to delete and destroy any biometric identifiers and information previously collected from Class members;

F. Awarding Plaintiffs and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS § 14/20(3);

G. Awarding Plaintiffs 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.

Date: August 28, 2020

Respectfully Submitted,

/s/Kenneth A. Wexler

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**Pro Hac Vice Forthcoming*

Counsel for Plaintiffs and the Putative Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: Class Action Filed Over Kroger’s Alleged Use of Facial Recognition Software in Mariano’s Stores