

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

COSHIRA ENGLISH, DAWN)	
WASHINGTON, OTIS CHILDS, and)	
LATESSA LEROGAN-WASHINGTON)	
on behalf of themselves and all other persons	)	JURY TRIAL DEMANDED
similarly situated, known and unknown,)	
)	
Plaintiff,)	
	)	Cause No.:
v.)	
	)	REMOVED FROM ILLINOIS
EYM CHICKEN OF ILLINOIS, LLC	)	CIRCUIT COURT FOR
	)	THE SEVENTH JUDICIAL
	)	CIRCUIT
Defendant,)	

NOTICE OF REMOVAL OF CAUSE

To: **Attorney for Plaintiff**
The Garfinkel Group, LLC
Attn: Max P. Barack
6252 N. Lincoln Ave, Suite 200
Chicago, Illinois 60659

United States District Court, Central District of Illinois
151 U.S. Courthouse
600 E. Monroe Street
Springfield, Illinois 62701

Defendant EYM CHICKEN OF ILLINOIS, LLC (“EYM”), under 28 U.S.C. § 1332 and 28 U.S.C. § 1441, notifies this Honorable Court that the above-entitled cause has been removed from the Circuit Court of the Seventh Judicial Circuit, Illinois to the United States District Court for the Central District of Illinois, and in support of said notice states as follows:

1. The Complaint in this matter seeks damages from EYM for multiple alleged violations of the Biometric Information Privacy Act, specifically alleging violations of 740 ILCS 14/15(a), (b) and (d). The lawsuit was served on EYM on August 31, 2022. A copy of the

Summons and Complaint is attached hereto as **Exhibit A**. EYM's responsive pleading is due to be filed on or before September 30, 2022.

2. The parties are of diverse citizenship.

3. Plaintiff Coshira English maintains citizenship in the State of Illinois. See Ex. A, paragraph 12.

4. Plaintiff Dawn Washington maintains citizenship in the State of Illinois. See Ex. A, paragraph 17.

5. Plaintiff Otis Childs maintains citizenship in the State of Illinois. See Ex. A, paragraph 24.

6. Plaintiff Latessa Lerogan-Washington maintains citizenship in the State of Illinois.

7. Defendant EYM is a Texas limited liability company, and its sole member is EYM Chicken LP, which is a Texas limited partnership. Each partner of EYM Chicken LP is a citizen of the State of Texas. For purposes of diversity, EYM is a citizen of the State of Texas.

8. The amount in controversy is in excess of \$75,000.00, exclusive of interest and costs. In this matter Plaintiffs assert claims related to the storage of biometric information, and alleges that the class of individuals affected includes more than fifty (50) members. (See Ex. A, para. 50.). When analyzing the amount in controversy in a class action under 28 U.S.C. § 1332(a), "at least one named plaintiff must satisfy the jurisdictional amount." *Clement v. Lau*, No. 03 C 6179, 2003 WL 22948671, at *2 (N.D. Ill. Dec. 10, 2003). In other words, "the individual claims of class members cannot be aggregated to meet the jurisdictional amount, and instead each class member is required to have a jurisdictionally-sufficient claim." *Id.*; see also *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 607 (7th Cir. 1997). Plaintiffs allege that EYM's BIPA violations were "reckless," thereby seeking a statutory penalty of up to \$5,000 for each

“violation.” (Compl., ¶ 92). The amount in controversy exceeds \$75,000 because Plaintiff alleges that she used the biometric time clock at issue in this lawsuit on a daily basis to clock in and out of work during the entire duration of his employment. (Compl., ¶¶ 58-66). Indeed, in their prayer for relief, Plaintiffs pray for an order awarding them and the class members \$5,000 for *each* violation of BIPA. As such, it is clear that they are seeking damages not simply for single violations, but for *multiple* violations, presumably for each use of their biometric information by Defendant. Based on this approach,¹ and given the use of biometric data to clock in and out, as averred by Plaintiffs, even the most conservative estimate would have Plaintiffs clocking in and out far in excess of the 16 times necessary to exceed the jurisdictional amount-in-controversy threshold (*i.e.*, 16 x \$5,000 = \$80,000) over their employment. Accordingly, the amount in controversy exceeds the jurisdictional minimum for this Court.

9. This Court has original jurisdiction over this action under 28 U.S.C. § 1332, as the parties are diverse and the amount in controversy exceeds the jurisdiction amount of \$75,000.00. Defendant is, therefore, entitled to remove this action to this Court under 28 U.S.C. § 1441.

10. Venue within the Central District of Illinois is appropriate under 28 U.S.C. §§ 89 and 1441(a), as the Circuit Court of the Seventh Judicial Circuit, where Plaintiffs filed their Petition, is located within said district and division.

11. In compliance with 28 U.S.C. § 1446(b), this Notice of Removal was filed with this Court within thirty (30) days after EYM was served with the Summons and Petition on August 31, 2022.

¹ EYM does not concede that this is the proper measure of damages under BIPA, merely that Plaintiff includes this allegation in the Complaint.

12. Pursuant to 28 U.S.C. 1447(b), true and correct copies of all process, pleadings, and orders sent to and received by the Circuit Court of the Seventh Judicial Circuit will be submitted to this Court upon receipt of same.

13. In filing this Notice of Removal, EYM does not waive any denials, objections, or defenses that may be available to it, including jurisdictional defenses.

14. In accordance with 28 U.S.C. § 1446(d), EYM will promptly file a copy of this Notice with the Clerk of the Circuit Court of the Seventh Judicial Circuit, and will give notice thereof to all adverse parties.

WHEREFORE, Defendant EYM CHICKEN OF ILLINOIS, LLC, notifies this Court that this cause has been removed from the Circuit Court of the Seventh Judicial Circuit to the United States District Court for the Central District of Illinois pursuant to the provisions of 28 U.S.C. §§ 1441, 1446.

Respectfully submitted,

EYM CHICKEN OF ILLINOIS, LLC

By: /s/ Daniel E. Tranen
Daniel E. Tranen, ARDC#06244878
Wilson Elser Moskowitz
Edelman & Dicker LLP
7777 Bonhomme Ave, Suite 1900
St. Louis, MO 63105
618-307-0200 (Phone)
618-307-0221 (Fax)
daniel.tranen@wilsonelser.com

Attorneys for EYM CHICKEN OF ILLINOIS, LLC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by the Court's electronic filing system on this 30th day of September, 2022, on counsel of record.

By: /s/ Daniel E. Tranen

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

Friday, 20 September 2022 11:59:46 AM
Clerk, U.S. District Court, ILCD

STATE OF ILLINOIS, CIRCUIT COURT	SUMMONS	
Sangamon COUNTY		
Instructions ▼	<p>COSHIRA ENGLISH, DAWN WASHINGTON, ET.AL., Plaintiff / Petitioner (First, middle, last name)</p> <p>v.</p> <p>EYM CHICKEN OF ILLINOIS, L.L.C. Defendant / Respondent (First, middle, last name)</p> <p><input type="checkbox"/> Alias Summons (Check this box if this is not the 1st Summons issued for this Defendant.)</p>	<p>2022LA000155</p> <hr/> <p>Case Number</p>
Enter above the county name where the case was filed.		
Enter your name as Plaintiff/Petitioner.		
Enter the names of all people you are suing as Defendants/ Respondents.		
Enter the Case Number given by the Circuit Clerk.		

IMPORTANT INFORMATION:

There may be court fees to start or respond to a case. If you are unable to pay your court fees, you can apply for a fee waiver. You can find the fee waiver application at: illinoiscourts.gov/documents-and-forms/approved-forms/.

E-filing is now mandatory with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit efile.illinoiscourts.gov/service-providers.htm to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit illinoiscourts.gov/faq/gethelp.asp or talk with your local circuit clerk’s office. If you cannot e-file, you may be able to get an exemption that allows you to file in-person or by mail. Ask your circuit clerk for more information or visit illinoislegalaid.org.

Call or text Illinois Court Help at 833-411-1121 for information about how to go to court including how to fill out and file forms. You can also get free legal information and legal referrals at illinoislegalaid.org.

Plaintiff/Petitioner: Do not use this form in an eviction, small claims, detinue, divorce, or replevin case. Use the *Eviction Summons, Small Claims Summons, or Summons Petition for Dissolution of Marriage / Civil Union* available at illinoiscourts.gov/documents-and-forms/approved-forms. If your case is a detinue or replevin, visit illinoislegalaid.org for help.

If you are suing more than 1 Defendant/Respondent, fill out a *Summons* form for each Defendant/Respondent.

In 1a, enter the name and address of a Defendant/ Respondent. If you are serving a Registered Agent, include the Registered Agent’s name and address here.

In 1b, enter a second address for Defendant/ Respondent, if you have one.

In 1c, check how you are sending your documents to Defendant/ Respondent.

1. Defendant/Respondent's address and service information:

a. Defendant/Respondent's primary address/information for service:
 Name (First, Middle, Last): EYM Chicken of Illinois, LLC
 Registered Agent's name, if any: Illinois Corporation Service Company
 Street Address, Unit #: 801 Adlai Stevenson Drive
 City, State, ZIP: Springfield, IL 62703
 Telephone: _____ Email: _____

b. If you have more than one address where Defendant/Respondent might be found, list that here:
 Name (First, Middle, Last): _____
 Street Address, Unit #: _____
 City, State, ZIP: _____
 Telephone: _____ Email: _____

c. Method of service on Defendant/Respondent:
 Sheriff Sheriff outside Illinois: _____
County & State
 Special process server Licensed private detective

Enter the Case Number given by the Circuit Clerk:

In 2, enter the amount of money owed to you.

In 3, enter your complete address, telephone number, and email address, if you have one.

2. Information about the lawsuit:

Amount claimed: \$ _____

3. Contact information for the Plaintiff/Petitioner:

Name (First, Middle, Last): Max P. Barack, The Garfinkel Group
 Street Address, Unit #: 6252 N. Lincoln Ave, Suite 200
 City, State, ZIP: Chicago, IL 60659
 Telephone: 312-736-7991 Email: max@garfinkelgroup.com

GETTING COURT DOCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

Important information for the person getting this form

You have been sued. Read all of the documents attached to this *Summons*. To participate in the case, you must follow the instructions listed below. If you do not, the court may decide the case without hearing from you and you could lose the case. *Appearance* and *Answer/Response* forms can be found at: illinoiscourts.gov/documents-and-forms/approved-forms/.

Check 4a or 4b. If Defendant/Respondent only needs to file an *Appearance* and *Answer/Response* within 30 days, check box 4a. Otherwise, if the clerk gives you a court date, check box 4b.

4. Instructions for person receiving this Summons (Defendant):

a. To respond to this *Summons*, you must file *Appearance* and *Answer/Response* forms with the court within 30 days after you have been served (*not counting the day of service*) by e-filing or at:
 Address: 200 S 9th St #405
 City, State, ZIP: Springfield, IL 62701

b. Attend court:
 On: _____ at _____ a.m. p.m. in _____
Date Time Courtroom

In 4a, fill out the address of the court building where the Defendant may file or e-file their *Appearance* and *Answer/Response*.

In-person at:

_____	_____	_____	_____
<small>Courthouse Address</small>	<small>City</small>	<small>State</small>	<small>ZIP</small>

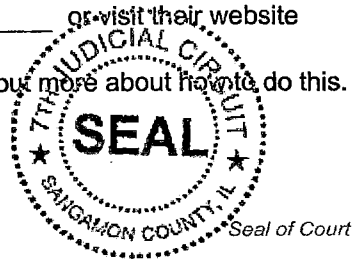
OR

In 4b, fill out:
 •The court date and time the clerk gave you.
 •The courtroom and address of the court building.
 •The call-in or video information for remote appearances (if applicable).
 •The clerk's phone number and website. All of this information is available from the Circuit Clerk.

Remotely (You may be able to attend this court date by phone or video conference. This is called a "Remote Appearance"):
 By telephone: _____
Call-in number for telephone remote appearance
 By video conference: _____
Video conference website

Video conference log-in information (meeting ID, password, etc.)

Call the Circuit Clerk at: _____ or visit their website
Circuit Clerk's phone number
 at: _____ to find out more about how to do this.
Website



9/1/2022

Witness this Date: _____
Clerk of the Court: *Paula Allegro*

This Summons must be served within 30 days of the witness date.

Date of Service: _____
(Date to be entered by an officer or process server on the copy of this Summons left with the Defendant or other person.)

STOP!
 The Circuit Clerk will fill in this section.

STOP!
 The officer or process server will fill in the Date of Service.

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT Sangamon COUNTY	PROOF OF SERVICE OF SUMMONS AND COMPLAINT/PETITION	For Court Use Only Case Number _____
Instructions Enter above the county name where the case was filed. Enter your name as Plaintiff/Petitioner. Enter the names of all people you are suing as Defendants/ Respondents. Enter the Case Number given by the Circuit Clerk.	COSHIRA ENGLISH, DAWN WASHINGTON, ET.AL., Plaintiff / Petitioner (First, middle, last name) v. EYM CHICKEN OF ILLINOIS, L.L.C. Defendant / Respondent (First, middle, last name) <input type="checkbox"/> Alias Summons (Check this box if this is not the 1 st Summons issued for this Defendant.)	

****Stop. Do not complete the form. The sheriff or special process server will fill in the form.****

My name is _____ and I state
First, Middle, Last

I served the **Summons and Complaint/Petition** on the Defendant/Respondent

as follows:

First, Middle, Last

Personally on the Defendant/Respondent:

Male Female Non-Binary Approx. Age: _____ Race: _____
 On this date: _____ at this time: _____ a.m. p.m.
 Address, Unit#: _____
 City, State, ZIP: _____

On someone else at the Defendant/Respondent's home who is at least 13 years old and is a family member or lives there:

On this date: _____ at this time: _____ a.m. p.m.
 Address, Unit#: _____
 City, State, ZIP: _____
 And left it with: _____

First, Middle, Last

Male Female Non-Binary Approx. Age: _____ Race: _____

and by sending a copy to this defendant in a postage-paid, sealed envelope to the above address on _____, 20_____.

On the Corporation's agent, _____
First, Middle, Last

Male Female Non-Binary Approx. Age: _____ Race: _____

On this date: _____ at this time: _____ a.m. p.m.
 Address: _____
 City, State, ZIP: _____

Enter the Case Number given by the Circuit Clerk: _____

I was not able to serve the *Summons* and Complaint/Petition on Defendant/Respondent:

First, Middle, Last

I made the following attempts to serve the *Summons* and Complaint/Petition on the Defendant/Respondent:

1. On this date: _____ at this time: _____ a.m. p.m.
Address: _____
City, State, ZIP: _____
Other information about service attempt: _____

2. On this date: _____ at this time: _____ a.m. p.m.
Address: _____
City, State, ZIP: _____
Other information about service attempt: _____

3. On this date: _____ at this time: _____ a.m. p.m.
Address: _____
City, State, ZIP: _____
Other information about service attempt: _____

DO NOT complete this section. The sheriff or private process server will complete it.

If you are a special process server, sheriff outside Illinois, or licensed private detective, your signature certifies that everything on the *Proof of Service of Summons* is true and correct to the best of your knowledge. You understand that making a false statement on this form could be perjury.

Under the Code of Civil Procedure, 735 ILCS 5/1-109, making a statement on this form that you know to be false is perjury, a Class 3 Felony.

By:

Signature by: Sheriff
 Sheriff outside Illinois:

County and State
 Special process server
 Licensed private detective

FEES
Service and Return: \$ _____
Miles _____ \$ _____
Total \$ 0.00

Print Name

If *Summons* is served by licensed private detective or private detective agency:
License Number: _____

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

COSHIRA ENGLISH, DAWN)	
WASHINGTON, OTIS CHILDS, and)	
LATESSA LEROGAN-WASHINGTON,)	
on behalf of themselves and all other persons)	
similarly situated, known and unknown,)	
	)	Case No. 2022LA000155
Plaintiffs,)	
)	
v.)	
)	
EYM CHICKEN OF ILLINOIS, L.L.C)	
)	
Defendants.)	

**PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION AND
ALTERNATIVELY FOR DISCOVERY ON CERTIFICATION ISSUES**

In this case, Plaintiffs, Coshira English (“English”), Dawn Washington (“Washington”), Otis Childs (“Childs”), and Latessa Lerogan-Washington (“Lerogan-Washington”) (collectively, “Plaintiffs”) alleges that EYM Chicken of Illinois, LLC (“EYM-Chicken” or “Defendant”) systematically violated the Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* This case is well suited for class certification pursuant to 735 ILCS 5/2-801. Specifically, Plaintiffs seek to certify a class consisting of hundreds of current and former employees who had their biometrics collected, captured, and/or stored by Defendant in the State of Illinois during the applicable statutory period, in violation of BIPA. The question of liability is a legal question that can be answered in one fell swoop. As Plaintiffs’ claims, and the claims of similarly situated individuals, all arise from Defendant’s uniform policies and practices, they satisfy the requirement of 735 ILCS 5/2-801 and should be certified. Notably, to Plaintiffs’ Counsels’ knowledge, the only BIPA class certification decisions issued to date have granted class certification. See, *In re Facebook Biometric Info. Privacy Litig.*, 326 F.R.D. 535 (N.D. Cal. 2018) (granting class certification) *aff’d Patel v. Facebook, Inc.*, 932 F.3d 1264 (9th Cir. 2019).

Plaintiffs moves for class certification to protect members of the proposed class, individuals whose proprietary and legally protected personal and private biometric data was invaded by Defendant. Plaintiffs believes that arguments submitted with this motion are sufficient to allow the class to be certified now. However, in the event the Court (or Defendant) wishes for the parties to undertake formal discovery prior to the Court's consideration of this motion, Plaintiffs request that the Court allow Plaintiffs to supplement his briefing and defer the response and reply deadlines.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Biometric Information Privacy Act

Major national corporations started using Chicago and other locations in Illinois in the early 2000s to test “new [consumer] 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 wary of this then-growing, yet unregulated, technology. *See* 740 ILCS 14/5.

The Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* was enacted in 2008, arising from concerns that these experimental uses of finger-scan technologies created a “very serious need of protections for the citizens of Illinois when it comes to biometric information.” Illinois House Transcript, 2008 Reg. Sess. No. 276. Under the Act, it is unlawful for a private entity 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:

- (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.”

740CS 14/15(b).

Although there may be benefits with using biometrics, there also exist serious risks. Unlike ID badges or timecards – which can be changed or replaced if stolen or compromised – biometrics, including fingerprints, are unique, permanent biometric identifiers associated with each individual. These biometrics are biologically unique to the individual; once compromised, the individual have *no* means by which to prevent identity theft, unauthorized tracking, or other unlawful or improper use of this information. This exposes individuals to serious and irreversible privacy risks. For example, if a biometric database is hacked, breached, or otherwise exposed – as in the recent Equifax and Uber data breaches – individuals have no means to prevent the misappropriation and theft of their proprietary biometric makeup. Thus, recognizing the need to protect its citizens from harms like these, Illinois enacted BIPA specifically to regulate the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information.

II. Factual Allegations

Plaintiffs English, Washington, Childs and Lerogan-Washington originally filed this class action against Defendant on August 31, 2022, to redress Defendant's unlawful collection, use, storage, and disclosure of biometric information of Illinois citizens under BIPA. In the Class Action Complaint, Plaintiffs provided allegations that Defendant have, and continue to violate BIPA through the collection of fingerprint-based biometrics without: (1) informing individuals in writing of the purpose and length of time for which fingerprint(s) were being collected, stored and used; (2) providing a publicly available retention schedule or guidelines for permanent destruction of the data; and (3) obtaining a written release, as required by BIPA. *See* Class Action Complaint. Plaintiffs also alleged that Defendant violated BIPA by disclosing or otherwise disseminating Plaintiffs' and the class members' biometric information without Plaintiffs' and the class members' consent and not otherwise permitted by BIPA.

Accordingly, Defendant's practices violated BIPA. As a result of Defendant's violations, Plaintiffs and similarly situated individuals were subject to Defendant's uniform policies and practices and were victims of its scheme to unlawfully collect, store, and use individuals' biometric data in direct violation of BIPA.

Plaintiffs seek class certification for the following similarly situated individuals, defined as:

All current and former employees of any KFC franchise owned and/or operated by Defendant EYM Chicken of Illinois, L.L.C., who were enrolled in the biometric timekeeping system and subsequently used a biometric timeclock while employed/working for Defendant in Illinois during the applicable statutory period.

Given Defendant's standard practices defined above, and the straightforward and common legal questions presented in this case, Plaintiffs now move for class certification. Notably, this motion is being filed shortly after the Class Action Complaint was filed, and before the Defendant has responded to same. For the reasons discussed herein, Plaintiffs' request should be granted.

STANDARD FOR CLASS CERTIFICATION

"The basic purpose of a class action is the efficiency and economy of litigation." *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App. (1st) 131465, ¶ 9 (Ill. App. Ct. May 8, 2015) (citing *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981)). "In determining whether to certify a proposed class, the trial court accepts the allegations of the complaint as true and should err in favor of maintaining class certification." *CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶ 9 (citing *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 53 (2007)). Under Section 2-801 of the Code of Civil Procedure, a class may be certified if the following four requirements are met:

- (4) the class is so numerous that a joinder of all members is impracticable;
- (5) there are questions of fact or law common to the class that predominate over any questions affecting only individual members;
- (6) the representative parties will fairly and adequately protect the interest of the class; and
- (7) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

See Smith v. Illinois Cent. R.R. Co., 223 Ill. 2d 441, 447 (2006) (citing 735 ILCS 5/2-801). Notably, “[a] trial court has broad discretion in determining whether a proposed class meets the requirements for class certification.” *CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶ 9 (citing *Ramirez*, 378 Ill. App. 3d at 53). Here, the allegations and facts in this case demonstrate that the four certification factors are met.

ARGUMENT

Plaintiffs’ claims here are especially suited for class certification because Defendant treated all class members identically for the purposes of applying BIPA. All of the putative class members in this case were uniformly subjected to the same illegal and unlawful collection, storage, and use of their biometric data by Defendant throughout the class period. Plaintiffs meet each of the statutory requirements for maintenance of this suit as a class action. Thus, the class action device is ideally suited and is far superior to burdening the Court with many individual lawsuits to address the same issues, undertake the same discovery, and rely on the same testimony.

I. **The Class is so Numerous that Joinder of All Members is Impracticable.**

Numerosity is not dependent on a Plaintiffs setting forth a precise number of class members or a listing of their names. *See Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 771 (2d Dist. 2008) (“Of course, Plaintiffs need not demonstrate a precise figure for the class size, because a good faith, nonspeculative estimate will suffice; rather, Plaintiffs need demonstrate only that the class is sufficiently numerous to make joinder of all of the members impracticable.”) (internal citations omitted); *Hayna v. Arby’s, Inc.*, 99 Ill. App. 3d 700, 710-11 (1st Dist. 1981) (“It is not necessary that the class representative name the specific individuals who are possibly members of the class.”). Courts in Illinois generally find numerosity when the class is comprised of at least 40 members. *See Wood River Area Dev. Corp. v. Germania Fed. Sav. Loan Ass’n*, 198 Ill. App. 3d 445, 450 (5th Dist. 1990).

In the present case, there can be no serious dispute that Plaintiffs and the proposed Class meet the numerosity requirement. Defendant owns and/or operates several KFC franchises throughout

Illinois. Indeed, the Plaintiffs, themselves, have worked at six (6) different franchises owned and/or operated by Defendant. (See Class Action Complaint, ¶¶ 14; 21; 26; 31). The class of potential Plaintiffs is sufficiently large to make joinder impracticable. As result of Defendant's violations of BIPA, Plaintiffs and all similar-situated individuals were subject to Defendant's uniform policies and practices and were victims of Defendant's schemes to unlawfully collect, store and use their extremely personal and private biometric data in direct violation of BIPA. The precise number in the class cannot be determined until discovery records are obtained from Defendant, but as alleged in the Class Action Complaint, Defendant owns and/or operates several, at least six (6), KFC franchises throughout Illinois. (See Class Action Complaint, ¶¶ 14; 21; 26; 31). Nevertheless, a more concrete number of class members can be easily determined by reviewing Defendant's records. A review of Defendant's files regarding the collection, storage and use of biometric data performed during the class period is all that is needed to determine membership in Plaintiffs' proposed classes. *See e.g., Chultem v. Ticor Title Ins. Co.*, 401 Ill. App. 3d 226, 233 (1st Dist. 2010) (reversing Circuit Court's denial of class certification and holding that class was certifiable over defendants' objection that "the proposed class was not ascertainable, because the process of reviewing defendants' transaction files to determine class membership would be burdensome"); *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 539-40 (6th Cir. 2012)¹ (rejecting the argument that manual review of files should defeat certification agreeing with district court's reasoning that, if manual review was a bar, "defendants against whom claims of wrongful conduct have been made could escape class-wide review due solely to the size of their businesses or the manner in which their business records were maintained," and citing numerous courts that are in agreement, including *Perez v. First Am. Title Ins. Co.*, 2009 WL 2486003, at *7 (D.

¹ "Section 2-801 is patterned after Rule 23 of the Federal Rules of Civil Procedure and, because of this close relationship between the state and federal provision, 'federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois.'" *Cruz*, 383 Ill. App. 3d at 761 (quoting *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100, 125 (2005)).

Ariz. Aug. 12, 2009) (“Even if it takes a substantial amount of time to review files and determine who is eligible for the [denied] discount, that work can be done through discovery”). Once Defendant’s records are obtained, the Court will know the precise number of persons affected.

Absent certification of this class action, putative class members may never know that their legal rights have been violated and as a result may never obtain the redress to which they are entitled under BIPA. Illinois courts have noted that denial of class certification where members of the putative class have no knowledge of the lawsuit may be the “equivalent of closing the door of justice” on the victims. *Wood River Area Dev. Corp. v. Germania Fed. Sav. & Loan Assn.*, 198 Ill.App.3d 445, 452 (5th Dist. 1990). Further, recognizing the need to protect its citizens from harms such as identity theft, Illinois enacted BIPA specifically to regulate the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information. A class action would help ensure that Plaintiffs and all other similarly situated individuals have a means of redress against Defendant for its widespread violations of BIPA.

II. Common Questions of Law and Fact Exist That Predominate Over Any Questions Solely Affecting Individual Members of the Class.

Courts analyze commonality and predominance under Section 2-801 by identifying the substantive issues that will control the outcome of the case. *See Bemis v. Safeco Ins. Co. of Am.*, 407 Ill. App. 3d 1164, 1167 (5th Dist. 2011); *Cruz*, 383 Ill. App. 3d at 773. The question then becomes whether those issues will predominate and whether they are common to the class, meaning that “favorable adjudication of the claims of the named Plaintiffs will establish a right of recovery in other class members.” *Cruz*, 383 Ill. App. 3d at 773. As stated by the Court of Appeals, the question is will “common . . . issues be the subject of the majority of the efforts of the litigants and the court[?]” *Bemis*, 407 Ill. App. 3d at 1168. The answer here is “yes.”

At the heart of this litigation is the culpable conduct of the Defendant under BIPA. The issues are straightforward legal questions that plainly lend themselves to class-wide resolution.

Notwithstanding the clear and unequivocal requirements of the law, Defendant disregarded Plaintiffs' and other similarly situated individuals' statutorily protected privacy rights and unlawfully collected, stored, used, sold, and disclosed their biometric data in direct violation of BIPA. Specifically, Defendant has violated BIPA by: (1) failing to develop a publicly available written policy regarding collection, storage, retention, and destruction of biometric information; (2) collecting Plaintiffs' and the class members' biometric information without informing them: (i) the biometric information was being collected; (ii) of the specific purpose and length the biometric information would be stored; and (iii) obtaining a written release signed by Plaintiffs and the class members for the collection, storage, and use of their biometric information; and (3) disclosing Plaintiffs' and the class members' biometric information to third parties. Defendant treated the entire proposed class in precisely the same manner, resulting in identical violations of BIPA. These common biometric-collection practices create common issues of law and fact. In fact, the legality of Defendant's collection, storage, and use of biometric data is the focus of this litigation.

Indeed, once this Court determines whether Defendant's practice of collecting, storing, and using individuals' biometric data without adhering to the specific requirements of BIPA constitutes violations thereof, liability for the claims of class members will be determined in one stroke. The material facts and issues of law are substantially the same for the members of the class, and therefore these common issues could be tried such that proof as to one claimant would be proof as to all members of the class. This alone establishes predominance. The only remaining questions will be whether Defendant's violations caused members of the class to suffer damages and the proper measure of damages and injunctive relief, which in and of themselves are questions common to the class. Accordingly, a favorable adjudication of the Plaintiffs' claims in this case will establish a right of recovery to all other class members, and thus the commonality and predominance requirements weigh in favor of certification of the class.

III. The Named Plaintiffs and Class Counsel Are Adequate Representatives of The Class.

When evaluating adequacy, courts look to whether the named Plaintiffs have the same interests as those of the class and whether he or she will fairly represent them. *See CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶ 16. In this case, Plaintiffs' interest arises from statute. The class representative, Latessa Lerogan-Washington, is a member of the proposed class and will fairly and adequately protect the class's interests. Plaintiffs was required to scan her fingerprints into Defendant's biometric time clock so Defendant could track her hours worked. Defendant subsequently stored Plaintiffs' biometrics in its database(s). Each time Plaintiffs began and ended her workday, she was required to scan her fingerprints. Plaintiffs have never been informed of the specific limited purposes (if any) of length of time for which Defendant collected, stored, or used her fingerprints. Plaintiffs have never been informed of any biometric data retention policy developed by Defendant, nor was she ever been informed of whether Defendant will ever permanently delete any stored biometrics. Finally, Plaintiffs have never been provided nor did she ever sign a written release allowing Defendant to collect, store, or use her biometrics. Thus, Plaintiffs were the victim of the same uniform policies and practices of Defendant as the individuals they seek to represent and is not seeking any relief that is potentially antagonistic to other members of the class. What is more, Plaintiffs have the interests of those class members in mind, as demonstrated by her willingness to sue on a class-wide basis and step forward as the class representative, which subjects the Plaintiffs to discovery. This qualifies Plaintiffs as a conscientious representative Plaintiffs, and satisfies the adequacy of representation requirement.

Proposed Class Counsel, Garfinkel Group, LLC, will also fairly and adequately represent the class. Proposed Class Counsel are highly qualified and experienced attorneys. Proposed Class Counsel has significant past and current experience representing Plaintiffs classes in BIPA and other class

action lawsuits in both state and federal court. Thus, proposed Class Counsel, too, are adequate and have the ability and resources to manage this lawsuit.

IV. A Class Action is the Appropriate Means for Fair and Efficient Adjudication of this Controversy.

Finally, a class action is the most appropriate method for the fair and efficient adjudication of this controversy, rather than bringing individual suits which could result in inconsistent determinations and unjust results. “It is proper to allow a class action where a defendant is alleged to have acted wrongfully in the same basic manner toward an entire class.” *P.J.’s Concrete Pumping Service, Inc. v. Nextel West Corporation*, 345 Ill. App. 3d 992, 1003 (2d Dist. 2004). “The purported class representative must establish that a successful adjudication of its individual claims will establish a right of recovery or resolve a central issue on behalf of the class members.” *Id.*

Here, Plaintiffs’ claims stem from Defendant’s common and uniform policies and practices, resulting in common violations of BIPA for all members of the class. Thus, class certification will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendant’s practices. *Wenthold v. AT&T Technologies, Inc.*, 142 Ill. App. 3d 612 (1st Dist. 1986). Without a class, the Court would have to hear dozens of additional individual cases raising identical questions of liability. Moreover, class members are better served by pooling resources rather than attempting to litigate individually. *CE Design Ltd.*, 2015 IL App. (1st) 131465, ¶¶ 28-30 (certifying TCPA class where statutory damages were alleged and rejecting arguments that individual lawsuits would be superior). In the interests of justice and judicial efficiency, it is desirable to concentrate the litigation of all class members’ claims in a single forum. For all of these reasons, the class action is the most appropriate mechanism to adjudicate the claims in this case.

V. In the Event the Court or Defendant Seek More Factual Information Regarding this Motion, the Court Should Allow Supplemental and Deferred Briefing Following Discovery.

There is no meaningful need for discovery for the Court to certify a class in this matter; Defendant's practices and policies are uniform. If, however, the Court wishes for the Parties to engage in discovery, the Court should keep the instant motion pending during the discovery period, allow Plaintiffs a supplemental brief, and defer Defendant's response and Plaintiffs' reply. Plaintiffs are moving for class certification in part to avoid the "buy-off problem," which occurs when a defendant seeks to settle with a class representative on individual terms in an effort to moot the class claims asserted by the class representative. Plaintiffs are also moving for class certification now because the class should be certified, and because no meaningful discovery is necessary to establish that fact. The instant motion is far more than a placeholder or barebones memorandum. Rather, Plaintiffs' full arguments are set forth based on the facts known at this extremely early stage of litigation. Should the Court wish for more detailed factual information, the briefing schedule should be extended.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully requests that the Court enter an Order: (1) certifying Plaintiffs' claims as a class action; (2) appointing Plaintiffs as Class Representatives; (3) appointing Garfinkel Group, LLC as Class Counsel; and (4) authorizing court-facilitated notice of this class action to the class. In the alternative, this Court should allow discovery, allow Plaintiffs to supplement this briefing, and defer response and reply briefs.

Dated: September 2, 2022

Respectfully submitted,

/s/ Max P. Barack
One of Plaintiffs' Attorneys

Garfinkel Group, LLC
Max P. Barack (ARDC No. 6312302)
Haskell Garfinkel (haskell@garfinkelgroup.com) (ARDC No. 6274971)
6252 N. Lincoln Avenue, Suite 200
Chicago, Illinois 60659
(312) 736-7991
max@garfinkelgroup.com
haskell@garfinkelgroup.com

Certificate of Service

I hereby certify that on this date, I filed the foregoing document with the clerk of the Court using the Illinois E-Filing System, which should further distribute a true and accurate copy of the foregoing to all counsel of record.

/s/ Max P. Barack

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
 SANGAMON COUNTY, ILLINOIS**

COSHIRA ENGLISH, DAWN)	
WASHINGTON, OTIS CHILDS, and)	
LATESSA LEROGAN-WASHINGTON,)	
on behalf of themselves and all other persons)	
similarly situated, known and unknown,)	
)	
Plaintiffs,)	
	)	2022LA000155
v.	)	Case No.
)	
EYM CHICKEN OF ILLINOIS, L.L.C	)	JURY DEMANDED
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiffs, Coshira English (“English”), Dawn Washington (“Washington”), Otis Childs (“Childs”), and Latessa Lerogan-Washington (“Lerogan-Washington”) (collectively, “Plaintiffs”) file this Class Action Complaint (“Complaint”) against Defendant EYM Chicken of Illinois, L.L.C., d/b/a KFC, for violations of the Illinois Biometric Information Privacy Act 740 ILCS 14/1, *et seq.* (“BIPA”), and state:

INTRODUCTION

1. BIPA defines a “biometric identifier” as any personal feature that is unique to an individual, including handprints, fingerprints and palm 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.”
2. This case concerns the misuse of individuals’ biometrics by Defendant. Using biometric enabled technology, Defendant is capturing, collecting, storing, disseminating, or otherwise using the biometrics of Plaintiffs 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 private entities, such as Defendant, may not obtain

and/or possess an individual's biometrics unless they first:

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

4. Compliance with BIPA is straightforward and may be accomplished through a single, signed sheet of paper. BIPA's requirements 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 uses biometric timekeeping devices to track its employees' work hours.

6. Defendant's system works by scanning its employees' biometric identifiers, such as their fingerprints, and subsequently using the same for authentication and timekeeping purposes.

7. Upon information and belief, the system includes the dissemination of biometrics to third parties, such as common data storage vendors, and/or payroll service providers.

8. 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. The

risk is compounded when a person's biometrics are also associated with their other personally identifiable information.

9. Plaintiffs brings this action for statutory damages and other remedies as a result of Defendant's conduct in violating Plaintiffs' biometric privacy rights.

10. On Plaintiffs' own behalf, and on behalf of the proposed Class defined below, Plaintiffs also seek an injunction requiring Defendant to comply with all aspects of BIPA, including but not limited to:

- a. Identifying any and all private entities that collected, captured, purchased, received through trade, or otherwise obtained the Plaintiffs' and Class members' biometric identifiers or biometric information as a result of Defendant's collection of such; and
- b. A description from the Defendant as to its method for storing, transmitting and protecting the biometric identifiers/information going forward.

11. Plaintiffs also seeks an award of statutory damages to the Class members, together with costs and reasonable attorneys' fees.

SUMMARY OF CLAIMS AND PARTIES INVOLVED

Coshira English

12. Plaintiff, Coshira English, is an individual, a citizen of Illinois, and former employee of Defendant EYM-Chicken.

13. English has worked for EYM-Chicken stores intermittently, beginning in 2014, and most recently, in 2019 and 2022.

14. English worked at the Bartonville, Illinois KFC franchise owned and operated/managed by EYM-Chicken.

15. At the KFC franchise where Plaintiffs has worked as a Team Member, she clocked in

and clocked out by scanning her fingerprint, using a biometric timekeeping device.

16. At no point during any of her periods of employment for Defendant was English ever given written consent and/or did she sign a written release authorizing the same as a condition of her employment.

Dawn Washington

17. Plaintiff, Dawn Washington, is an individual, a citizen of Illinois, and former employee of Defendant EYM-Chicken.

18. Washington began working for EYM-Chicken as a “Team Member” in 2014.

19. Washington continued working as a Team Member and Manager between 2014 and March 2020.

20. Washington continued working for EYM-Chicken as a General Manager, beginning in March 2020, and continuing, intermittently, through July or August 2022.

21. Washington has worked at several KFC franchises owned and operated/managed by EYM-Chicken, including: Pekin, Illinois, the “North Pekin” store and “South Pekin” store; the Glenn Avenue store and Allen Road store in Peoria, Illinois; the three or four times at the Bartonville store in Bartonville, Illinois.

22. At each store where Washington worked as a Team Member and/or Manager, she clocked in and clocked out by scanning her fingerprint, using a biometric timekeeping device.

23. At no point during any of her periods of employment for Defendant, at any of its franchises, was she ever given written consent and/or did she sign a written release authorizing the same as a condition of her employment.

Otis Childs

24. Plaintiff, Otis Childs, is an individual, a citizen of Illinois, and current employee of Defendant EYM-Chicken.

25. Childs began working for EYM-Chicken as a Team Member in approximately 2021.

26. Childs has worked for Defendant at multiple KFC franchises owned and operated/managed by EYM-Chicken, including: the “Western Avenue” store in Peoria, Illinois; and the Bartonville store in Bartonville, Illinois.

27. At each store where Childs has worked as a Team Member, he clocked in and clocked out by scanning his fingerprint, using a biometric timekeeping device.

28. At no point during any of his periods of employment for Defendant, at any of its franchises, was he ever given written consent and/or did he sign a written release authorizing the same as a condition of his employment.

Latessa Lerogan-Washington

29. Plaintiff, Latessa Lerogan-Washington, is an individual, a citizen of Illinois, and former employee of Defendant EYM-Chicken.

30. Plaintiffs Lerogan-Washington worked for EYM-Chicken intermittently throughout the last five (5) years, beginning in approximately 2018, and most recently, in 2021 as a “Team Member.”

31. Lerogan-Washington has worked at multiple KFC franchises owned and operated/managed by EYM-Chicken, including: its Bartonville store; its Glenn Avenue Store in Peoria, Illinois; and its “Western Peoria” store in Peoria, Illinois.

32. At each store where Lerogan-Washington worked as a Team Member and/or Manager, she clocked in and clocked out by scanning her fingerprint, using a biometric timekeeping device.

33. At no point during any of her periods of employment for Defendant, at any of its franchises, was she ever given written consent and/or did she sign a written release authorizing the same as a condition of her employment.

Defendant

34. Defendant, EYM-Chicken, is a foreign LLC, authorized to do business in Illinois, and owns and operates franchises of KFC throughout the State of Illinois.

35. Upon information and belief, and based on searches of public records, EYM-Chicken owns and operates at least twenty (20) KFC franchises throughout Illinois.

36. Employees of each franchise share a common paymaster, and are all paid by EYM Pizza of Illinois, L.L.C.

37. Upon information and belief, EYM-Chicken subjects its employees at each franchise to the same or substantially similar policies and procedures, including but not limited to timekeeping and pay practices.

38. Upon information and belief, and based on EYM-Chicken's website, would-be employees for any franchise can apply for positions on EYM-Chicken's website.

39. When employees apply to work for EYM-Chicken, they can apply for jobs at any of EYM-Chicken's franchises by applying through the website and using the "search jobs" function, confirming EYM-Chicken's control over same.

40. Upon information and belief, prior to Plaintiffs' hire, Defendant installed a biometric timeclock in each of their facilities, including but not limited to the facilities where Plaintiffs worked.

41. Beginning at the time of their respective hires, Defendant required Plaintiffs to use a biometric time clock system to record their time worked.

42. Upon information and belief, beginning prior to 2017, Defendant required all EYM-Chicken employees at all KFC franchises in Illinois to use a biometric time clock system to record their time worked.

43. Defendant required Plaintiffs and other employees to scan their fingerprints in Defendant's biometric time clock each time they started and stopped working.

44. Unlike an employee identification number or employee identification card, fingerprints are *unique* and *permanent* identifiers.

45. By requiring employees to scan their fingerprints to record their time, instead of identification numbers or badges only, Defendant ensured that one employee could not clock in for another.

46. Thus, Defendant achieved a labor management benefit from using a biometric timeclock.

47. In enacting BIPA, the Illinois legislature recognized that biologically unique identifiers, like fingerprints, can never be changed when compromised, and thus subject a victim of identity theft to heightened risk of loss.

48. Accordingly, Defendant's actions placed employees at risk by using their biometric identifiers.

49. As a result, Illinois restricted private entities, such as Defendant, from collecting, storing, using, or transferring a person's biometric identifiers and information without adhering to strict informed-consent procedures established by BIPA.

50. Defendant collected, stored, used, and transferred the unique biometric fingerprints identifiers, or information derived from those identifiers, of Plaintiffs and others similarly situated without following the detailed requirements of BIPA.

51. As a result, Defendant violated BIPA and compromised the privacy and security of the biometric identifiers and information of Plaintiffs and other similarly situated employees.

JURISDICTION AND VENUE

52. This Court has personal jurisdiction over Defendant because, during the relevant time period, Defendant did business in Illinois, was registered to do business in Illinois, and committed the statutory violations alleged in this Complaint in Illinois.

53. Pursuant to 735 ILCS 5/2-102(a) Cook County is an appropriate venue for this litigation as Defendant does business in Cook County by and through their franchise locations.

REQUIREMENTS OF BIPA

54. BIPA defines a “biometric identifier” as any personal feature that is unique to an individual, including handprints, fingerprints and palm 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.”

55. In enacting BIPA, the Illinois legislature recognized that the full ramifications of biometric technology are not yet fully known and so the public will benefit from “regulations on the collection, use, safeguarding, handling, storage retention, and description of biometric identifiers and information.” 740 ILCS 14/5(f)-(g).

56. BIPA prohibits a “private entity” from capturing or collecting biometric identifiers or information from an individual unless that private entity first obtains the individual’s written consent or employment-related release authorizing the private entity to capture or collect an individual’s biometric identifiers and/or biometric information. 740 ILCS 14/15(b)(3).

57. Relatedly, BIPA prohibits a private entity from capturing or collecting biometric identifiers or information from an individual unless that private entity first informs the individual, in writing, of the following: (a) that the private entity is collecting biometric identifiers or information, (b) the purpose of such collection, and (c) the length of time the private entity will retain the biometric identifiers or information. 740 ILCS 14/15(b)(1)-(2).

BACKGROUND FACTS (BIPA ALLEGATIONS)

58. When Plaintiffs scanned their fingerprint in Defendant’s biometric time clock, Defendant captured and stored Plaintiffs’ fingerprints, or personal identifying information derived from Plaintiffs’ fingerprints.

59. Once the mandatory scan of Plaintiffs' fingerprints was complete, Defendant were in possession of Plaintiffs' fingerprints.

60. Likewise, Defendant captured and collected Plaintiffs' fingerprints when they scanned them through its biometric timeclock.

61. When Plaintiffs scanned their fingerprints in Defendant's biometric timeclock, Defendant disclosed their fingerprints – or personal identifying information derived from their fingerprints, to wit, their biometric identifiers, to Defendant's timekeeping vendor.

62. Before requiring Plaintiffs to use a biometric time clock, Defendant did not provide Plaintiffs any written materials stating that they were collecting, retaining, or disclosing their fingerprints or personal identifying information derived from their fingerprints.

63. Before requiring Plaintiffs to use a biometric time clock, Defendant never obtained Plaintiffs' written consent, or release as a condition of employment, authorizing the collection, storage, dissemination, or use of their fingerprints or personal identifying information derived from Plaintiffs' fingerprints.

64. Defendant violated Plaintiffs' privacy by capturing or collecting their unique biometric identifiers and information and sharing those identifiers and information with its time-keeping vendor, without their consent.

65. In addition, BIPA prohibits a private entity from possessing biometric identifiers or information unless it creates and follows a written policy, made available to the public, establishing a retention schedule and destruction guidelines for its possession of biometric identifiers and information. 740 ILCS 14/15(a).

66. Finally, BIPA prohibits a private entity from disclosing or otherwise disseminating biometric identifiers or information without first obtaining an individual's consent for that disclosure or dissemination, unless the disclosure or dissemination was (a) in furtherance of an authorized

financial transaction, (b) authorized by law, (c) for healthcare reasons, or (d) pursuant to a valid warrant or subpoena. 740 ILCS 14/15(d).

BIPA CLASS ACTION ALLEGATIONS

67. Plaintiffs seeks to represent a class of Defendant's workers who scanned their fingerprints in Defendant's biometric time clock system in Illinois between August 31, 2017 and the present without first executing a written release and/or receiving access to a written policy available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first ("the Class").

68. Plaintiffs and the Class are similar to one another as they were all subject to the same illegal practices: scanning their fingerprints in Defendant's biometric time clock system despite Defendant failing to adhere to the requirements of BIPA.

69. The Class includes more than 50 members based on the number of franchises owned/operated by Defendant, and the employee turnover at each such store.

70. As a result, the Class is so numerous that joining of all class members in one lawsuit is not practical.

71. The issues involved in this lawsuit present common questions of law and fact, including whether Defendant required the Class to scan their fingerprints to clock in and out during shifts; whether Defendant collected the Class's "biometric identifiers" or "biometric information" under BIPA; and whether Defendant complied with the procedures in 740 ILCS 14/15(a), (b), and (d) of the Biometric Information Privacy Act.

72. These common questions of law and fact predominate over variations that may exist between members of the Class, if any.

73. Plaintiff, the members of the Class, and Defendant has a commonality of interest in the subject matter of the lawsuit and the remedy sought.

74. If individual actions were required to be brought by each member of the Class injured or affected, the result would be a multiplicity of actions, creating a hardship to the Class, to the Court, and to the Defendant.

75. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this lawsuit and distribution of the common fund to which the Class is entitled.

76. Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

77. Plaintiffs retained counsel experienced in complex class action litigation.

COUNT I
Violation of the Biometric Information Privacy Act (740 ILCS 14/15(b))
(Class Action)

78. Plaintiffs realleges and incorporates the previous allegations of this Complaint.

79. Defendant is a “private entity” under BIPA. 740 ILCS 14/10.

80. Plaintiffs’ and the Class’s fingerprints qualify as “biometric identifier[s]” as defined by BIPA. 740 ILCS 14/10.

81. Defendant has “biometric information” from Plaintiffs and the Class through its acquisition and retention of personal identifying information based on Plaintiffs’ and the Class’s fingerprints.

82. Defendant violated BIPA by capturing or collecting Plaintiffs’ and the Class’s fingerprints and personal identifying information based on their fingerprints without first informing them in writing that Defendant was doing so.

83. Defendant violated BIPA by capturing or collecting Plaintiffs’ and the Class’s fingerprints and personal identifying information based on their fingerprints without first informing them in writing of the purpose of Defendant doing so and the length of time Defendant would store

and use Plaintiffs' and the Class's biometric identifiers and/or biometric information.

84. Defendant violated BIPA by capturing or collecting Plaintiffs' and the Class's fingerprints and personal identifying information based on their fingerprints without first obtaining their written consent or other release authorizing Defendant to capture or collect Plaintiffs' and the Class's biometric identifiers and/or biometric information.

85. Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of BIPA even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

WHEREFORE, Plaintiffs and the Class pray for a judgment against Defendant as follows:

- A. Awarding liquidated or actual monetary damages, whichever is higher, to Plaintiffs and the Class for each violation of BIPA as provided by 740 ILCS 14/20(1)-(2);
- B. Enjoining Defendant from committing further violations of BIPA as authorized by 740 ILCS 14/20(4);
- C. Awarding Plaintiffs' reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by 740 ILCS 14/20(3); and
- D. Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

COUNT II

Violation of the Biometric Information Privacy Act (740 ILCS 14/15(a)) (Class Action)

86. Plaintiffs realleges and incorporates the previous allegations of this Complaint.

87. Defendant is a "private entity" under BIPA. 740 ILCS 14/10.

88. Plaintiffs' and the Class's fingerprints qualify as "biometric identifier[s]" as defined by BIPA. 740 ILCS 14/10.

89. Defendant has "biometric information" from Plaintiffs and the Class through its acquisition and retention of personal identifying information based on Plaintiffs' and the Class's

fingerprints.

90. Defendant violated BIPA by possessing Plaintiffs' and the Class's fingerprints and personal identifying information based on their fingerprints without creating and following a written policy, made available to the public, establishing a retention schedule and destruction guidelines for its possession of biometric information derived from Plaintiffs' and the Class's fingerprints.

91. Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of BIPA even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

92. As a result, Defendant's violations of BIPA were reckless or, in the alternative, negligent.

WHEREFORE, Plaintiffs and the Class pray for a judgment against Defendant as follows:

- A. Awarding liquidated or actual monetary damages, whichever is higher, to Plaintiffs and the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);
- B. Enjoining Defendant from committing further violations of the Biometric Information Privacy Act as authorized by 740 ILCS 14/20(4);
- C. Awarding Plaintiffs' reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by 740 ILCS 14/20(3); and
- D. Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

COUNT III
Violation of the Biometric Information Privacy Act (740 ILCS 14/15(d))
(Class Action)

93. Plaintiffs realleges and incorporates the previous allegations of this Complaint.

94. Defendant is a "private entity" under BIPA. 740 ILCS 14/10.

95. Plaintiffs' and the Class's fingerprints qualify as "biometric identifier[s]" as defined by BIPA. 740 ILCS 14/10.

96. Defendant has "biometric information" from Plaintiffs and the Class through its acquisition and retention of personal identifying information based on Plaintiffs' and the Class's fingerprints.

97. Defendant violated BIPA by disclosing or otherwise disseminating Plaintiffs' and the Class's fingerprints and information based on their fingerprints to Defendant's time-keeping vendor without first obtaining their consent for that disclosure or dissemination.

98. Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

99. As a result, Defendant's violations of the Biometric Information Privacy Act were reckless or, in the alternative, negligent.

WHEREFORE, Plaintiffs and the Class pray for a judgment against Defendant as follows:

- A. Awarding liquidated or actual monetary damages, whichever is higher, to Plaintiffs and the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);
- B. Enjoining Defendant from committing further violations of the Biometric Information Privacy Act as authorized by 740 ILCS 14/20(4);
- C. Awarding Plaintiffs' reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by 740 ILCS 14/20(3); and
- D. Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

Dated: August 31, 2022

Respectfully submitted,

/s/ Max P. Barack
One of Plaintiffs' Attorneys

The Garfinkel Group, LLC

Max P. Barack (max@garfinkelgroup.com) (ARDC No. 6312302)

Haskell Garfinkel (haskell@garfinkelgroup.com) (ARDC No. 6274971)

6252 N. Lincoln Avenue, Suite 200

Chicago, Illinois 60659

Telephone: (312) 736-7991

Attorneys for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Illinois KFC Restaurants Scanned Workers' Fingerprints Without Authorization, Class Action Claims](#)
