☐ YES ☑ NO

EXHIBITS

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12-Person Jury

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

APRIL GUY-POWELL, ELIZABETH BUTUCEA BOSCOIANU, KEVIN HARRIS, and MICHELLE GILLIAM, *on behalf of themselves and all others similarly situated,* Plaintiffs, v. APPLEBEE'S RESTAURANTS LLC, BLAZE PIZZA, LLC, CHIPOTLE MEXICAN GRILL, INC., DINE BRANDS GLOBAL, INC., INTERACTIONS LLC, NOODLES & COMPANY, PORTILLO'S INC., RED LOBSTER HOSPITALITY LLC, RED LOBSTER MANAGEMENT LLC, RED LOBSTER RESTAURANTS LLC, RED LOBSTER SEAFOOD CO., LLC, SYNQ3, INC., and SYNQ3 RESTAURANT SOLUTIONS, LLC, Defendant.	Case No.: 2022CH08365 **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiffs April Guy-Powell, Elizabeth Butucea Boscoianu, Kevin Harris, and Michelle Gilliam ("Plaintiffs"), individually and on behalf of all others similarly situated, bring this Class Action Complaint for violations of the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.*, against Defendants Applebee's Restaurants LLC and Dine Brands Global, Inc. (collectively, "Applebee's"), Blaze Pizza, LLC ("Blaze Pizza"), Chipotle Mexican Grill, Inc. ("Chipotle"), Noodles & Company, Portillo's Inc. ("Portillo's"), and Red Lobster Hospitality LLC, Red Lobster Management LLC, Red Lobster Restaurants LLC, and Red Lobster Seafood

Co., LLC (collectively, "Red Lobster")[1], Interactions LLC ("Interactions"), SYNQ3, Inc. and SYNQ3 Restaurant Solutions, LLC (collectively, "SYNQ3").[2,3] Plaintiffs allege as follows based on personal knowledge as to themselves, on the investigation of their counsel, and on information and belief as to other matters, and demand trial by jury.

NATURE OF ACTION

A. BIPA.

1. Plaintiffs bring this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendants in collecting, storing, and using Plaintiffs' and other similarly situated individuals' biometric identifiers[4] and biometric information[5] (referred to, collectively, as "biometrics") without obtaining the requisite prior informed written consent or providing the requisite data retention and destruction policies, in direct violation of BIPA.

2. The Illinois Legislature has found that "[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information." 740 ILCS 14/5(c). "For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual

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[1] Hereinafter, Defendants Applebee's Restaurants LLC and Dine Brands Global, Inc., Blaze Pizza, LLC, Chipotle Mexican Grill, Inc., Noodles & Company, Portillo's Inc., Red Lobster Hospitality LLC, Red Lobster Management LLC, Red Lobster Restaurants LLC, and Red Lobster Seafood Co., LLC shall be referred to, collectively, as the "Restaurant Defendants."

[2] Hereinafter, Defendants Interactions LLC, SYNQ3, Inc., and SYNQ3 Restaurant Solutions, LLC shall be referred to, collectively, as the "Voice Technology Defendants."

[3] Hereinafter, the Restaurant Defendants and Voice Technology Defendants shall be referred to, collectively, as the "Defendants."

[4] A "biometric identifier" is any personal feature that is unique to an individual, including but not limited to fingerprints, iris scans, voiceprints, DNA, and "face geometry".

[5] "Biometric information" is any information that is captured, converted, stored, or shared based on a person's biometric identifier and used to identify an individual.

has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions." *Id.*

3. In recognition of these concerns over the security of individuals' biometrics, the Illinois Legislature enacted BIPA, which provides, *inter alia*, that private entities like Defendants may not obtain and/or possess an individual's biometrics unless they: (1) inform that person in writing that biometric identifiers or information will be collected or stored, *see* 740 ILCS 14/15(b); (2) inform that person in writing of the specific purpose and length of term for which such biometric identifiers or biometric information are being collected, stored, and used, *see id.*; and (3) receive a written release from the person for the collection of his or her biometric identifiers or information, *see id.*

4. Moreover, entities collecting biometric identifiers and biometric information must publish publicly available written retention schedules and guidelines for permanently destroying biometric identifiers and biometric information. *See* 740 ILCS 14/15(a).

5. Further, entities must store, transmit, and protect an individual's biometric identifiers and biometric information using the same standard of care as within the industry and in a manner at least as protective as the means used to protect other confidential and sensitive information. *See* 740 14/15(e).

6. Finally, entities are expressly prohibited from selling, leasing, trading or otherwise profiting from the individual's biometrics. *See* 740 15/15(c).

B. Defendants' Biometric Collection Practices.

7. By 2021, Defendant Applebee's rolled out an automated voice ordering system that is used by its restaurants located across the nation, including those in Illinois.

8. In or around February 2018, Defendant Blaze Pizza rolled out an automated voice ordering system that is used by its restaurants located across the nation, including those in Illinois.

9. Between 2018 and 2019, Defendant Chipotle rolled out an automated voice ordering system that is used by its restaurants located across the nation, including those in Illinois.

10. Between 2017 and 2019, Defendant Noodles & Company rolled out an automated voice ordering system that is used by its restaurants located across the nation, including those in Illinois.

11. In or around 2017, Defendant Portillo's rolled out an automated voice ordering system that is used by its restaurants located across the nation, including those in Illinois.

12. By 2019, Defendant Red Lobster rolled out an automated voice ordering system that is used by its restaurants located across the nation, including those in Illinois.

13. Each of the Restaurant Defendants' automated voice ordering ("AVO") systems operate in the same way. Each AVO utilizes an artificial intelligence ("AI") voice assistant to allow customers to place orders over the phone, answer customers' questions, give directions, and respond to other customer and restaurant needs.

14. Each of the Restaurant Defendants' automated voice ordering systems are developed and provided by Defendant SYNQ3.

15. Each of the artificial intelligence voice assistants utilized in the Restaurant Defendants' AVO systems are powered by Defendant Interactions, with whom SYNQ3 partnered to bring the relevant technology to market.

16. Critically, the Defendants' AVO systems collect, store, and use customers' voiceprints and biometric information to understand, interpret, analyze, and/or make use of speech signals produced by customers; engage in speech recognition and other functions; and fulfill machine learning processes, which, among other things, help the Defendants' automated voice ordering systems to become more accurate over time; compile guest-specific data and/or identify customers; provide a tailored experience; and allow for expeditious reordering.

17. Yet Defendants have failed to comply with the foregoing provisions of § 15(a) and § 15(b) of BIPA.

18. Defendants never adequately informed any of the Restaurant Defendants' customers who have interacted with the AVO systems that the AVO systems collect and/or store their voiceprints and biometric information.

19. Defendants never adequately informed any of Restaurant Defendants' customers of the specific purpose and length of term for which such biometric identifiers and biometric information are collected, stored, and used.

20. Defendants never obtained written consent from any of the Restaurant Defendants' customers regarding their biometric practices.

21. And Defendants never provided any data retention or destruction policies to any of the Restaurant Defendants' customers.

22. If Defendants' collections of the voiceprints of the Restaurant Defendants' customers were to fall into the wrong hands, by data breach or otherwise, then unscrupulous entities could subvert such individuals' expectations of personal privacy, grossly violate their respective senses of dignity, and otherwise flout notions of common decency. Voiceprints and related biometric information may be used to glean copious amounts of sensitive information

about those who are subject to their collection. "To the human ear, your voice can instantly give away your mood, for example—it's easy to tell if you're excited or upset. But machines can learn a lot more: inferring your age, gender, ethnicity, socio-economic status, health conditions, and beyond. Researchers have even been able to generate images of faces based on the information contained in individuals' voice data."[6] "Soon companies may also draw conclusions about your weight [and] height[.]"[7] Thus, voiceprints, especially when appropriated, may be utilized in in applications with pernicious, pervasive effects, such as "exploiting people's habit-forming tendences"[8] or engaging in other conduct that may be deemed "threatening or discriminatory[.]"[9] BIPA confers on Plaintiffs and all other similarly situated Illinois residents a right to know of such risks inherent to the collection and storage of biometrics, and a right to know how long such risks will persist.

23. Plaintiffs bring this action to prevent Defendants from further violating the privacy rights of Illinois residents, and to recover statutory damages for Defendants' unauthorized collection, storage, and use of these individuals' biometrics in violation of BIPA.

PARTIES

24. Plaintiff April Guy-Powell is, and has been at all relevant times, a resident of Harvard, Illinois and has an intent to remain there, and is therefore domiciled in Illinois. Plaintiff

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6 https://www.wired.com/story/voice-recognition-privacy-speech-changer/amp

7 https://www.nytimes.com/2021/09/12/opinion/voice-surveillance-alexa.html?referringSource=articleShare

8 https://www.nytimes.com/2021/09/12/opinion/voice-surveillance-alexa.html?referringSource=articleShare

9 https://www.nytimes.com/2021/09/12/opinion/voice-surveillance-alexa.html?referringSource=articleShare

Guy-Powell utilized Defendant Chipotle's AVO system when she placed an order by phone from a Chipotle located within the state of Illinois in or around June 2022. Plaintiff Guy-Powell utilized Defendant Noodles & Company's AVO system when she placed an order by phone from a Noodles & Company located within the state of Illinois in or around July 2022.

25. Plaintiff Elizabeth Butucea Boscoianu is, and has been at all relevant times, a resident of Broadview, Illinois and has an intent to remain there, and is therefore domiciled in Illinois. Plaintiff Boscoianu utilized Defendant Applebee's' AVO system when she placed an order by phone from an Applebee's located within the state of Illinois in or around February 2022. Plaintiff Boscoianu utilized Defendant Red Lobster's AVO system when she placed an order by phone from a Red Lobster located within the state of Illinois in or around March 2022.

26. Plaintiff Kevin Harris is, and has been at all relevant times, a resident of Dekalb, Illinois and has an intent to remain there, and is therefore domiciled in Illinois. Plaintiff Harris utilized Defendant Applebee's' AVO system when he placed an order by phone from an Applebee's located within the state of Illinois in or around March 2022. Plaintiff Harris utilized Defendant Chipotle's AVO system when he placed an order by phone from a Chipotle located within the state of Illinois in or around May 2022. Plaintiff Harris utilized Defendant Noodles & Company's AVO system when he placed an order by phone from a Noodles & Company located within the state of Illinois in or around February 2022. Plaintiff Harris utilized Defendant Portillo's' AVO system when he placed an order by phone from a Portillo's located within the state of Illinois in or around August 2022.

27. Plaintiff Michelle Gilliam is, and has been at all relevant times, a resident of Chicago, Illinois and has an intent to remain there, and is therefore domiciled in Illinois. Plaintiff Gilliam utilized Defendant Blaze Pizza's AVO system when she placed an order by phone from

a Blaze Pizza located within the state of Illinois in or around January 2021. Plaintiff Gilliam utilized Defendant Portillo's' AVO system when she placed an order by phone from a Portillo's located within the state of Illinois in or around January 2021.

28. Defendants Applebee's Restaurants LLC and Dine Brands Global, Inc. (collectively, "Applebee's") are Delaware corporations with their principal places of business in Glendale, California. Defendant Applebee's operates restaurants located throughout Illinois.

29. Defendant Blaze Pizza, LLC ("Blaze Pizza") is a California corporation with its principal place of business in Pasadena, California. Defendant Blaze Pizza operates restaurants located throughout Illinois.

30. Defendant Chipotle Mexican Grill, Inc. ("Chipotle") is a Delaware corporation with its principal place of business in Newport Beach, California. Defendant Chipotle operates restaurants located throughout Illinois.

31. Defendant Noodles & Company is a Delaware corporation with its principal place of business in Broomfield, Colorado. Defendant Noodles & Company operates restaurants located throughout Illinois.

32. Defendant Portillo's Inc. ("Portillo's") is a Delaware corporation with its principal place of business in Oak Brook, Illinois. Defendant Portillo's operates restaurants located throughout Illinois.

33. Defendants Red Lobster Hospitality LLC, Red Lobster Management LLC, Red Lobster Restaurants LLC, and Red Lobster Seafood Co., LLC (collectively, "Red Lobster") are Delaware corporations with their principal places of business in Orlando, Florida. Defendant Red Lobster operates restaurants located throughout Illinois.

34. Defendant Interactions LLC ("Interactions") is a Delaware corporation with its principal place of business in Franklin, Massachusetts. Defendant Interactions purveys artificial intelligence voice assistant technologies that are utilized throughout Illinois, including by the Restaurant Defendants.

35. Defendants SYNQ3, Inc. and SYNQ3 Restaurant Solutions, LLC (collectively, "SYNQ3") are Delaware and Nevada corporations, respectively, with a shared principal place of business in Colorado Springs, Colorado. On information and belief, SYNQ3 Restaurant Solutions, LLC is a subsidiary of Defendant SYNQ3, Inc. SYNQ3 purveys automated voice ordering system technologies that are utilized throughout Illinois, including by the Restaurant Defendants.

JURISDICTION AND VENUE

36. This Court has personal jurisdiction over Defendants because the biometrics that give rise to this lawsuit (1) belong to Illinois residents, (2) were collected, by Defendants, from customers placing orders to the Restaurant Defendants' locations in Illinois, (3) were collected, by Defendants, from customers located in Illinois while placing their orders, and (4) were used by Defendants at facilities in Illinois.

37. Venue is proper in this County pursuant to 735 ILCS 5/2-102(a) because Defendants conduct their usual and customary business in this County. 735 ILCS 5/2-102(a).

FACTUAL BACKGROUND

I. Illinois's Biometric Information Privacy Act

38. In 2008, the Illinois Legislature enacted BIPA due to the "very serious need [for] protections for the citizens of Illinois when it [comes to their] biometric information." Illinois House Transcript, 2008 Reg. Sess. No. 276. BIPA makes it unlawful for a company to, *inter alia*,

"collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers biometric information, unless it first:

> (l) 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 or the subject's legally authorized representative."

740 ILCS 14/15 (b).

39. Section 15(a) of BIPA also provides:

> A private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first.

740 ILCS 14/15(a).

40. As alleged below, Defendants' practices of collecting, storing, and using individuals' biometric identifiers (specifically, voiceprints) and associated biometric information without obtaining informed written consent violate all three prongs of § 15(b) of BIPA. Additionally, Defendants' failure to provide a publicly available written policy regarding a schedule and guidelines for the retention and permanent destruction of individuals' biometric identifiers and biometric information violates § 15(a) of BIPA.

II. Defendants Violate Illinois's Biometric Information Privacy Act

41. Unbeknownst to the average consumer, and in direct violation of § 15(b)(1) of BIPA, Defendants collect, and then indefinitely store, voiceprints of the Restaurant Defendants' customers who interact with the Restaurant Defendants' automated voice ordering systems, which utilize an artificial intelligence ("AI") voice assistant to take orders placed over the phone – without ever informing anyone of this practice in writing.

42. In direct violation of §§ 15(b)(2) and 15(b)(3) of BIPA, Defendants never informed Illinois residents who interacted with the Restaurant Defendants' AVO systems of the specific purpose and length of term for which their biometrics would be collected, stored, and used, nor did Defendants obtain a written release from any of these individuals.

43. In direct violation of § 15(a) of BIPA, Defendants do not have written, publicly available policies identifying their retention schedules, or guidelines for permanently destroying any of these biometric identifiers or biometric information.

44. By 2021, Defendant Applebee's implemented an automated voice ordering ("AVO") system, which utilizes an artificial intelligence ("AI") voice assistant, to take customer orders placed over the phone to its restaurants located across the nation, including those in Illinois. As of August 6, 2021, "around 150"[10] of Defendant Applebee's locations had "begun using the company's artificial intelligence (AI) voice ordering platform[.]"[11] On or around May 21, 2022, "[m]ore than half"[12] of Defendant Applebee's' restaurants had come to use its AVO

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[10] https://www.pymnts.com/restaurant-innovation/2021/dine-brands-75-pct-of-firms-tech-will-be-upgraded-by-eoy/

[11] https://www.pymnts.com/restaurant-innovation/2021/dine-brands-75-pct-of-firms-tech-will-be-upgraded-by-eoy/

[12] https://www.cnn.com/2022/05/21/business/applebees-call-centers/index.html

system "for phone orders, according to the company. By the end of the year, Applebee's wants most of its restaurants to get on board."[13]

45. In or around February 2018, Defendant Blaze Pizza implemented an AVO system, which utilizes an artificial intelligence ("AI") voice assistant, to take customer orders placed over the phone to its restaurants located across the nation, including those in Illinois. An article published on March 2, 2018, states that, the prior month, Blaze Pizza "went live with phone ordering"[14] via an AVO system and "a national call center set up through SYNQ3 Restaurant Solutions."[15]

46. Between 2018 and 2019, Defendant Chipotle implemented an AVO system, which utilizes an artificial intelligence ("AI") voice assistant, to take customer orders placed over the phone to its restaurants located across the nation, including those in Illinois. In early 2018, Defendant Chipotle "launched a pilot program at 10 locations"[16] to test an automated voice ordering system. By July 30, 2019, Defendant Chipotle's AVO system "10-unit test grew to 1,800 locations"[17] and, as of November 25, 2019, the automated voice ordering system was

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13 https://www.cnn.com/2022/05/21/business/applebees-call-centers/index.html

14 https://www.nrn.com/operations/blaze-pizza-zeroes-convenience

15 https://www.nrn.com/operations/blaze-pizza-zeroes-convenience

16 https://voicebot.ai/2019/08/13/chipotle-plans-to-have-ai-phone-order-system-in-all-locations-by-end-of-2019/

17 https://www.nrn.com/fast-casual/chipotle-mexican-grill-quietly-rolls-out-voice-ai-1800-units?cid=

"handling phone orders for all 2,500"[18] of Defendant Chipotle's restaurants located across the nation, including those in Illinois.

47. Between 2017 and 2019, Defendant Noodles & Company implemented an AVO system, which utilizes an artificial intelligence ("AI") voice assistant, to take customer orders placed over the phone to its restaurants located across the nation, including those in Illinois. By November 2017, Noodles & Company was listed as one of "several top brands" that, per SYNQ3's website, had been "using SYNQ3's technology[.]"[19] Material published in September 2018, likewise, states that SYNQ3 "services numerous top brands with thousands of restaurants, such as . . . Noodles & Company"[20] and a December 2019 article says, "Synq3 Restaurant Solutions and its intelligent virtual assistant technology (or IVA for short) has been fielding phone orders placed at" Noodles & Company.[21]

48. In or around 2017, another restaurant chain, P.F. Chang's, implemented an AVO system, which utilizes an artificial intelligence ("AI") voice assistant, to take customer orders placed over the phone to its restaurants located across the nation, including those in Illinois. On May 1, 2017, SYNQ3 announced "the results from a never-before-done study using a new artificial-intelligence (AI), automated-speech-recognition (ASR) technology"[22] that "monitored

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[18] https://voicebot.ai/2019/11/25/chipotle-adds-voice-assistant-to-every-store-launches-alexa-skill-for-reordering-favorite-meals/

[19] https://synq3.com/blog/whiteboard-steve-bigari-restaurants-adopt-automated-ordering-technologies-now/

[20] https://recruiting2.ultipro.com/SYN1010SYNQ3/JobBoard/2dd25e83-d1b5-4657-97fb-292fe1de08c2/OpportunityDetail?opportunityId=ca1878f8-3863-4784-b4d9-f501ac8a5bf5

[21] https://www.denverpost.com/2019/12/05/colorado-springs-restaurant-ordering-artificial-intelligence-company-workers-on-autism-spectrum/

[22] https://synq3.com/blog/new-artificial-intelligence-acquires-never-measured-guest-experience-data/

restaurant calls to P.F. Chang's[.]"[23] In 2018, SYNQ3 CEO Steve Bigari described how one might order "take-out from one of our brands—P.F.Chang's"[24] and an article stated that "[m]ore than 20 restaurants use SYNQ3," including "P.F. Chang's[.]"[25]

49. In or around 2017, Defendant Portillo's implemented an AVO system, which utilizes an artificial intelligence ("AI") voice assistant, to take customer orders placed over the phone to its restaurants located across the nation, including those in Illinois. An article published that year, on August 30, states, "SYNQ3 facilitates off-premise orders for . . . Portillo's[.]"[26] January and April 2022 SYNQ3 job listings confirm that "SYNQ3 services numerous top brands with thousands of restaurants" such as "Portillo's."[27] [28] SYNQ3's website also provides a "Partner Support" page for Portillo's.[29]

50. By 2019, Defendant Red Lobster implemented an AVO system, which utilizes an artificial intelligence ("AI") voice assistant, to take customer orders placed over the phone to its restaurants located across the nation, including those in Illinois. August and October SYNQ3 job

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[23] https://www.fastcasual.com/news/restaurant-ai-study-gathers-guest-experience-data/

[24] https://www.velocityokc.com/blog/economy/q-a-synq3-ceo-steve-bigari/

[25] https://www.oklahoman.com/story/business/columns/2018/10/09/tech-company-expansion-brings-flexible-jobs/60496420007/

[26] https://www.fsrmagazine.com/content/tech-company-hits-2b-take-out-sales-top-restaurant-chains

[27] https://recruiting2.ultipro.com/SYN1010SYNQ3/JobBoard/2dd25e83-d1b5-4657-97fb-292fe1de08c2/OpportunityDetail?opportunityId=ff5cfb14-6489-42ea-8779-8f6d09acb85b

[28] https://recruiting2.ultipro.com/SYN1010SYNQ3/JobBoard/2dd25e83-d1b5-4657-97fb-292fe1de08c2/OpportunityDetail?opportunityId=17fde510-bf36-4852-a3f8-d3ab64a5e641

[29] https://synq3.com/clients/portillos/

listings from that year, as well as one from March 2020, state that "SYNQ3 services numerous top brands with thousands of restaurants" such as "Red Lobster."[30] [31] [32] An archive of SYNQ3's website shows that, in June 2021, it stated "we service over 12,000 locations for big-name brands such as Red Lobster,"[33] as it does today,[34] and SYNQ3's website also provides a "Partner Support" page for Red Lobster.[35]

51. The Restaurant Defendants' automated voice ordering systems each are developed and provided by Defendant SYNQ3. "Synq3 . . . is a key player in the emerging voice-bot space. The company uses speech-recognition technology to automate phone orders for restaurants[.]"[36]

52. The artificial intelligence voice assistants utilized in Defendants' automated voice ordering systems are "powered by [Defendant] Interactions[,]"[37] as SYNQ3 "partnered with"[38] Defendant Interactions LLC to bring its technology to market.

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30 https://recruiting2.ultipro.com/SYN1010SYNQ3/JobBoard/2dd25e83-d1b5-4657-97fb-292fe1de08c2/OpportunityDetail?opportunityId=5640aad1-e2cf-4d34-9ee8-1d90c33ec33f

31 https://recruiting2.ultipro.com/SYN1010SYNQ3/JobBoard/2dd25e83-d1b5-4657-97fb-292fe1de08c2/OpportunityDetail?opportunityId=28160bc8-d226-4ee2-bf68-ab21b6fbb9d5

32 https://recruiting2.ultipro.com/SYN1010SYNQ3/JobBoard/2dd25e83-d1b5-4657-97fb-292fe1de08c2/OpportunityDetail?opportunityId=6e660885-ab34-457f-8c8a-6fa441ce1520

33 https://web.archive.org/web/20210624001543/https://synq3.com/careers/

34 https://synq3.com/careers/

35 https://synq3.com/clients/red-lobster/

36 https://www.businessinsider.com/meet-33-tech-power-players-changing-how-restaurants-operate-2021-11#steve-bigari-ceo-of-synq3-17

37 https://synq3.com/wp-content/uploads/SYNQ3_SeenInNRN_Digital-230pmJun19-2.pdf

38 https://synq3.com/our-technology/

53. Defendants' AVO systems have advanced the Restaurant Defendants' interests in several ways. The technology "incorporates incredibly advanced, speech-recognition technology that requires very little human interpretation, which improves the order automation process and keeps costs down."[39] This can "free up labor to do other, more important tasks."[40] For example, per Nicole West, vice president of digital strategy and product at Chipotle, "[a]utomating phone orders [] reduces the amount of time managers and employees spend on the phone[.]"[41] "[C]all centers allow 'our team members to really focus on dine-in execution and restaurant-level execution,' [Applebee's President John] Cywinski said. 'I'm always a little apprehensive about team members doing a dinner rush ... having to stop what they're doing in-restaurant to pick up a phone to take an order.' Outsourcing calls 'improves our efficiency and improves the guest experience,' he said. 'It's well worth it, if you think about the opportunity cost of a dropped call or a busy team member putting a guest on hold.'"[42]

54. The Restaurant Defendants' rollout of the AVO systems was also pursued to enhance "'convenience for [] customers[.]'"[43] "'We want to make ordering a pizza from Blaze the most accessible thing you can do,' [Blaze Pizza Chief Marketing Officer Shivram] Vaideeswaran said. 'One of things we had seen in the pizza category is that picking up the phone

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39 https://synq3.com/our-technology/

40 https://www.restaurantdive.com/news/chipotle-leverages-ai-for-phone-orders/559887/

41 https://www.nrn.com/fast-casual/chipotle-mexican-grill-quietly-rolls-out-voice-ai-1800-units?cid=

42 https://www.cnn.com/2022/05/21/business/applebees-call-centers/index.html

43 https://www.nrn.com/fast-casual/chipotle-mexican-grill-quietly-rolls-out-voice-ai-1800-units?cid=

and calling in was something that was very familiar and very natural to a lot of our guests.'"[44] "'More and more when we watch people interact with their devices, it's voice,' [Portillo's Senior Vice President of Marketing and Off-Premise Dining Nick] Scarpino said. 'It's sometimes the primary way that people are interacting with their devices.'"[45]

55. The Restaurant Defendants, in implementing their respective AVO systems, also intended to "improve the customer experience."[46] SYNQ3's technology facilitates "increasing consistency and efficiency in call-in-guest engagement,"[47] reducing "the risk of permanently losing a guest due to stressed, poor service,"[48] and making "instant answering standard for all guests, which means there will never be a wait for an answered call[.]"[49] Such features complement AVO systems' capacity to personalize calls by gathering and acting upon data, analytics, and other insights into consumers' behaviors and preferences. "Red Lobster's [President and Chief Concept Officer Salli] Setta observes that customer data can be integrated with direct marketing to tailor specific offers to customers — for instance, those who would be interested in Red Lobster's shrimp offers will get targeted notices about the event."[50]

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44 https://www.nrn.com/operations/blaze-pizza-zeroes-convenience

45 https://www.pymnts.com/restaurant-technology/2022/portillos-reimagines-restaurants-mobile-order-future/

46 https://www.spencerstuart.com/-/media/2019/september/future_restaurant_leadership_final.pdf

47 https://synq3backup.kinsta.cloud/our-technology/analytics/

48 https://synq3.com/our-technology/

49 https://synq3.com/our-technology/

50 https://www.spencerstuart.com/-/media/2019/september/future_restaurant_leadership_final.pdf

56. AVO systems' fulfillment of these and other functions underscores, for restaurants, the value conferred by SYNQ3. According to the Denver Post, in a piece mentioning the Colorado roots of both SYNQ3 and Noodles & Company, "Dave Boennighausen, CEO of Noodles & Co., . . . considers Synq3 one of the state's most innovative companies. 'With the labor situation that we have today with unemployment at historic lows, they've created an absolute win-win,' he said."[51] Similarly, SYNQ3's website, in a section titled "What Our Friends Say[,]" features the following endorsement: "'I have never seen something happen outside a restaurant affect what happens inside as much as SYNQ3 does.' Lane Cardwell[,] Former CEO of P.F. Chang's[.]"[52]

57. However, for the customer, using Defendants' AVO systems to place orders over the phone is not without its costs. When a customer interacts with Defendants' AVO systems, the systems collect, store, and use the customer's voiceprint and biometric information to understand, interpret, analyze, and/or make use of speech signals produced by the customer. Defendants' AVO systems do so to, among other things, fulfill speech recognition functions, allowing them to "take orders, answer an assortment of questions and give directions[.]"[53]

58. Collecting, storing, and using customers' voiceprints and biometric information also supports the ability of Defendants' AVO systems to "pick up most all types of speech and

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[51] https://www.denverpost.com/2019/12/05/colorado-springs-restaurant-ordering-artificial-intelligence-company-workers-on-autism-spectrum/

[52] https://synq3.com/ AND https://synq3.com/about-us/

[53] https://www.businessinsider.com/9-food-tech-companies-helping-restaurants-with-the-labor-crisis-2021-6

sounds[,]"[54] including when customers "speak naturally just as they would with a human, . . . [e]ven with background noise, accents, and poor connections[.]"[55]

59. In addition, Defendants' AVO systems collect and store customers' voiceprints and biometric information so that they may be utilized in and for machine learning processes. Such machine learning serves a number of purposes, including helping Defendants' AVO systems to become more accurate over time. According to SYNQ3's website, "traditional AI . . . fail[s] 10% to 20% of the time to capture an order accurately."[56] SYNQ3's technology, on the other hand, is "99.9% accurate"[57] because it "is constantly learning"[58] through "machine learning capabilities to improve responses[,] . . . allowing for more productive and consistent conversations."[59] Thus, "[w]ith each transaction, [the Restaurant Defendants' AVO systems] learn[] the idiosyncrasies of how people order. [The Restaurant Defendants' AVO systems] might stumble if someone responds 'combo' when requesting a mix of pinto and black beans. But, once [it] figures it out, [its] algorithm remembers."[60]

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54 https://synq3.com/our-technology/

55 https://www.interactions.com/products/customer-engagement/

56 https://synq3.com/our-technology/

57 https://synq3.com/wp-content/uploads/SYNQ3_SeenInNRN_Digital-230pmJun19-2.pdf

58 https://synq3.com/our-technology/

59 https://www.interactions.com/products/customer-engagement/

60 https://www.nrn.com/fast-casual/chipotle-mexican-grill-quietly-rolls-out-voice-ai-1800-units?cid=

60. Further, Defendants' AVO systems collect, store, and use customers' voiceprints and biometric information to compile "guest-specific data"[61] and/or identify customers. SYNQ3's technology "provide[s] advanced automated analytics research that assesses calls for restaurants[,]"[62] and it engages in "the aggregation of . . . data"[63] as to "identify areas or opportunity for growth and increased profits[.]"[64] Per Steve Bigari, the Chief Executive Officer and founder of SYNQ3, "'The actual restaurant-function of our technology, taking orders, only scratches the surface of its abilities. The data we're collecting from servicing 10,000-plus, digital, voice-engagement orders per day is incredible[.]'"[65]

61. In producing such data, Defendants' AVO systems collect, capture, or otherwise obtain customers' voiceprints and biometric information to recognize and/or track "a person's level of interaction based on their response times and murmurs,"[66] "if someone is crying or laughing,"[67] "guest emotions,"[68] "tone of voice, vocal stress, language, interactions, timeliness

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61 https://synq3.com/blog/new-artificial-intelligence-acquires-never-measured-guest-experience-data/

62 https://synq3.com/our-technology/

63 https://synq3.com/our-solutions/

64 https://synq3.com/our-solutions/

65 https://www.fsrmagazine.com/content/takeout-technology-processes-1-billion-65-months

66 https://synq3.com/our-technology/

67 https://synq3.com/our-technology/

68 https://synq3.com/our-solutions/

of responses, interruptions, vocal exchanges,"[69] "the cadence of the call, . . . gaps in conversations, interruptions, and pauses,"[70] and "behavioral changes."[71]

62. This allows Defendants' AVO systems to "direct [] conversation[,] . . . upsell[,] and, ultimately, close more sales"[72] while interacting with customers. Drawing upon customers' voiceprints, biometric information, and/or other data, Defendants' AVO systems are able to "[t]ailor[] the ordering process"[73] "to greet callers by name[,] offer options based on noted preferences[,]"[74] and "recall[] . . . favorite order, food allergens, and other specifics,"[75] associated with individual customers, including their "prior ordering history[,]"[76] "previous orders, and even location[.]"[77]

63. Guest-specific data, which includes customers' voiceprints and biometric information, also facilitates the "voice-to-Automation Reordering"[78] features embedded in

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69 https://synq3.com/our-technology/analytics/

70 https://synq3.com/our-technology/

71 https://synq3.com/our-solutions/

72 https://synq3.com/blog/new-artificial-intelligence-acquires-never-measured-guest-experience-data/

73 https://www.fastcasual.com/news/restaurant-ai-study-gathers-guest-experience-data/

74 https://synq3.com/blog/new-artificial-intelligence-acquires-never-measured-guest-experience-data/

75 https://synq3.com/blog/new-artificial-intelligence-acquires-never-measured-guest-experience-data/

76 https://synq3.com/blog/new-artificial-intelligence-acquires-never-measured-guest-experience-data/

77 https://synq3.com/our-technology/

78 https://synq3.com/

Defendants' AVO systems. These features are associated with SYNQ3's Rapid Reorder solution, "a voice-enabled, digital, reorder platform that saves guests an average of 105 seconds on repeat, voice-orders"[79] and has allowed customers "to order their favorite meal in less than 10 seconds."[80] When a returning guest uses Rapid Reorder, "which greets the customer by name[,]"[81] "an automated, AI bot details his or her last order and asks if he or she would like to have the same meal again, adjust it, or order something new. If the guest would like to start a new, customized order, the bot transfers them to an ordering specialist. The order then integrates into the restaurant's POS system as simply as it would in person, making the entire process convenient for guests. Plus, the new order is saved with the Rapid Reorder technology to be offered as a repeat meal in the future, which can be placed by simply sending a text."[82]

64. Materials posted on the website of Defendant Interactions indicate that its artificial intelligence voice assistant technology, which is utilized in Defendants' AVO systems, collects, stores, and uses voiceprints and biometric information. The site states the following. "At Interactions, our Voice Biometrics solution is seamlessly integrated with our Intelligent Virtual Assistant solution. Since voiceprints are collected as part of normal conversation and securely encrypted and stored, this removes the need for lengthy and cumbersome enrollments and eliminates the major upfront investments inherent with traditional voice biometrics

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79 https://synq3.com/stylisticmodal/rapid-reorder/

80 https://www.fsrmagazine.com/content/takeout-technology-processes-1-billion-65-months

81 https://www.forbes.com/sites/forbestechcouncil/2019/12/10/restaurant-giants-and-tech-startups-pioneer-new-frontier-with-voice-technologies/?sh=481e2e452bc9

82 https://synq3.com/stylisticmodal/rapid-reorder/

solutions."[83] "By adding Voice Biometrics to Interactions Intelligent Virtual Assistant, you can securely and easily verify a customer's identity using the unique characteristics of the human voice. So you can offer customers convenience and personalization in everyday transactions, while still reducing costs."[84] "Our Conversational AI Engine includes: Automated Speech Recognition (ASR), Natural Language Processing (NLP), Text to Speech (TTS), Dialogue Management, Voice Biometrics, and Machine Learning."[85]

65. Defendant Interactions' patents, likewise, indicate that its technologies, some of which are utilized in Defendants' automated voice ordering systems, collect, store, and use voiceprints and biometric information. One Interactions patent, United States Patent Number 9,697,206, entitled "System and method for enhancing voice-enabled search based on automated demographic identification[,]" claims "1. A method performed by a speech recognition system, the method comprising: receiving recognized speech; identifying information about a speaker of the recognized speech from the recognized speech; generating confidence scores indicating degrees of certainty of the identified information; and submitting the recognized speech, the information, and the confidence scores to a question-answering engine integrated with the speech recognition system, which outputs a response associated with the recognized speech using the recognized speech, the information, and the confidence scores. 2. The method of claim 1, wherein the information comprises demographic features. 3. The method of claim 2, wherein the demographic features comprise one of age, gender, socio-economic group, nationality, and

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83 https://www.interactions.com/blog/compliance-and-security/benefits-voice-biometrics/

84 https://www.interactions.com/products/customer-engagement/

85 https://www.interactions.com/products/customer-engagement/

origin. 4. The method of claim 1, wherein identifying of the information is based on voice characteristics of the recognized speech. 5. The method of claim 1, further comprising storing the information for future use."[86]

66. Another Interactions patent, United States Patent Number 9,369,577, entitled "Transparent voice registration and verification method and system[,]" claims "1. A method comprising: providing a party communicating with a voice response system with one or more digital prompts; capturing speech spoken by the party in response to the one or more digital prompts; creating, with a processor, a voice model of the party, the voice model being created by processing the speech; and verifying an identity of the party by applying the voice model to speech spoken by the party during a subsequent communication between the party and the voice response system, wherein the voice model is created without notifying the party. 2. The method according to claim 1, wherein verifying an identity of the party comprises: receiving a communication from a requester requesting access to an account; prompting the requester for information; capturing speech of the requester; processing the speech of the requester to create processed speech; and comparing the processed speech of the requester with the voice model. 3. The method according to claim 2, further comprising determining whether the processed speech and the voice model are a match. 4. The method according to claim 3, further comprising granting access to the account when the processed speech and the voice model match. 5. The method according to claim 3, further comprising denying access to the account when the processed speech and the voice model fail to match. 6. The method according to claim 3, further comprising

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[86] https://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnetahtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=9697206.PN.&OS=PN/9697206&RS=PN/9697206

screening the requester when the processed speech and the voice model fail to match. 7. The method according to claim 3, further comprising automatically updating the voice model when the processed speech and the voice model match. 8. The method according to claim 1, wherein the capturing comprises isolating the speech of the party via a segmentation algorithm. 9. The method according to claim 2, wherein the information comprises account information. 10. The method according to claim 2, further comprising automatically updating the voice model with new voiceprint information."[87]

III. Plaintiffs' Experiences

a. Plaintiff April Guy-Powell's Experience

67. Like thousands of other Illinois residents, Plaintiff April Guy-Powell's voiceprint and biometric information were collected when she interacted with Chipotle's AVO system to place orders from two Chipotle restaurants, located in Round Lake Beach, Illinois and Crystal Lake, Illinois, in June 2022.

68. Like thousands of other Illinois residents, Plaintiff April Guy-Powell's voiceprint and biometric information were collected when she interacted with Noodles & Company's AVO system to place orders from a Noodles & Company restaurant located in Crystal Lake, Illinois, in July 2022.

69. When Plaintiff April Guy-Powell called the Chipotle and Noodles & Company locations, she was greeted, and her order was handled, by the artificial intelligence ("AI") voice assistants that are utilized by the Chipotle and Noodles & Company AVO systems.

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[87] https://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnetahtml%2FPTO%2Fsrchnum.htm&r=1&f=G&l=50&s1=9369577.PN.&OS=PN/9369577&RS=PN/9369577

70. The Chipotle and Noodles & Company AVO systems collected Plaintiff April Guy-Powell's voiceprint and biometric information to understand, interpret, analyze, and/or make use of speech signals produced by Plaintiff April Guy-Powell; recognize Plaintiff April Guy-Powell's speech and perform other speech processing functions; fulfill machine learning processes, which, among other things, help the Chipotle and Noodles & Company automated voice ordering systems to become more accurate over time; compile data specific to Plaintiff April Guy-Powell and/or identify Plaintiff April Guy-Powell; provide a tailored experience to Plaintiff April Guy-Powell; and furnish Plaintiff April Guy-Powell with the capacity to expeditiously reorder.

71. At no time did Plaintiff April Guy-Powell receive notice from Defendants Chipotle, Noodles & Company, Interactions, and/or SYNQ3, in writing or any other form, that Defendants Chipotle, Noodles & Company, Interactions, and SYNQ3 were collecting, storing, and using her voiceprint and biometric information.

72. At no time did Plaintiff April Guy-Powell receive notice from Defendants Chipotle, Noodles & Company, Interactions, and/or SYNQ3, in writing or any other form, of the specific purpose and length of term for which her voiceprint and biometric information were being collected, stored, and used by Defendants Chipotle, Noodles & Company, Interactions, and SYNQ3.

73. At no time was Plaintiff April Guy-Powell asked, by Defendants Chipotle, Noodles & Company, Interactions, and/or SYNQ3, to provide consent for Defendants Chipotle, Noodles & Company, Interactions, and SYNQ3 to collect, store, or use her voiceprint or biometric information.

74. At no time did Plaintiff April Guy-Powell give Defendants Chipotle, Noodles & Company, Interactions, and SYNQ3 permission in writing or any other form for – or otherwise consent or agree to – the collection, storage, or use of her voiceprint or biometric information.

75. Likewise, Defendants Chipotle, Noodles & Company, Interactions, and SYNQ3 never provided Plaintiff April Guy-Powell with any opportunity to prohibit or prevent the collection, storage, or use of her voiceprint or biometric information.

76. Upon information and belief, at no time while possessing Plaintiff April Guy-Powell's biometric data did Defendants Chipotle, Noodles & Company, Interactions, and/or SYNQ3 maintain publicly available retention and deletion schedules for biometric data.

77. By collecting Plaintiff April Guy-Powell's unique biometrics without her consent, written or otherwise, Defendants Chipotle, Noodles & Company, Interactions, and SYNQ3 invaded Plaintiff April Guy-Powell's statutorily protected right to privacy in her biometrics.

b. Plaintiff Elizabeth Butucea Boscianu's Experience

78. Like thousands of other Illinois residents, Plaintiff Elizabeth Butucea Boscianu's voiceprint and biometric information were collected when she interacted with Applebee's' AVO system to place orders from an Applebee's restaurant located in Chicago, Illinois, in February 2022.

79. Like thousands of other Illinois residents, Plaintiff Elizabeth Butucea Boscianu's voiceprint and biometric information were collected when she interacted with Red Lobster's AVO system to place orders from a Red Lobster restaurant located in Matteson, Illinois, in March 2022.

80. When Plaintiff Elizabeth Butucea Boscianu called the Applebee's and Red Lobster locations, she was greeted, and her order was handled, by the artificial intelligence ("AI") voice assistants that are utilized by the Applebee's and Red Lobster AVO systems.

81. The Applebee's and Red Lobster AVO systems collected Plaintiff Elizabeth Butucea Boscianu's voiceprint and biometric information to understand, interpret, analyze, and/or make use of speech signals produced by Plaintiff Elizabeth Butucea Boscianu; recognize Plaintiff Elizabeth Butucea Boscianu's speech and perform other speech processing functions; fulfill machine learning processes, which, among other things, help the Applebee's and Red Lobster automated voice ordering systems to become more accurate over time; compile data specific to Plaintiff Elizabeth Butucea Boscianu and/or identify Plaintiff Elizabeth Butucea Boscianu; provide a tailored experience to Plaintiff Elizabeth Butucea Boscianu; and furnish Plaintiff Elizabeth Butucea Boscianu with the capacity to expeditiously reorder.

82. At no time did Plaintiff Elizabeth Butucea Boscianu receive notice from Defendants Applebee's, Red Lobster, Interactions, and/or SYNQ3, in writing or any other form, that Defendants Applebee's, Red Lobster, Interactions, and SYNQ3 were collecting, storing, and using her voiceprint and biometric information.

83. At no time did Plaintiff Elizabeth Butucea Boscianu receive notice from Defendants Applebee's, Red Lobster, Interactions, and/or SYNQ3, in writing or any other form, of the specific purpose and length of term for which her voiceprint and biometric information were being collected, stored, and used by Defendants Applebee's, Red Lobster, Interactions, and SYNQ3.

84. At no time was Plaintiff Elizabeth Butucea Boscianu asked, by Defendants Applebee's, Red Lobster, Interactions, and/or SYNQ3, to provide consent for Defendants

Applebee's, Red Lobster, Interactions, and SYNQ3 to collect, store, or use her voiceprint or biometric information.

85. At no time did Plaintiff Elizabeth Butucea Boscianu give Defendants Applebee's, Red Lobster, Interactions, and/or SYNQ3 permission in writing or any other form for – or otherwise consent or agree to – the collection, storage, or use of her voiceprint or biometric information.

86. Likewise, Defendants Applebee's, Red Lobster, Interactions, and SYNQ3 never provided Plaintiff Elizabeth Butucea Boscianu with any opportunity to prohibit or prevent the collection, storage, or use of her voiceprint or biometric information.

87. Upon information and belief, at no time while possessing Plaintiff Elizabeth Butucea Boscianu's biometric data did Defendants Applebee's, Red Lobster, Interactions, and/or SYNQ3 maintain publicly available retention and deletion schedules for biometric data.

88. By collecting Plaintiff Elizabeth Butucea Boscianu's unique biometrics without her consent, written or otherwise, Defendants Applebee's, Red Lobster, Interactions, and SYNQ3 invaded Plaintiff Elizabeth Butucea Boscianu's statutorily protected right to privacy in her biometrics.

c. Plaintiff Kevin Harris' Experience

89. Like thousands of other Illinois residents, Plaintiff Kevin Harris' voiceprint and biometric information were collected when he interacted with Applebee's' AVO system to place orders from a Applebee's restaurant located in Chicago, Illinois, in March 2022.

90. Like thousands of other Illinois residents, Plaintiff Kevin Harris' voiceprint and biometric information were collected when he interacted with Chipotle's AVO system to place orders from a Chipotle restaurant located in Chicago, Illinois, in May 2022.

91. Like thousands of other Illinois residents, Plaintiff Kevin Harris' voiceprint and biometric information were collected when he interacted with Noodles & Company's AVO system to place orders from a Noodles & Company's restaurant located in Chicago, Illinois, in February 2022.

92. Like thousands of other Illinois residents, Plaintiff Kevin Harris' voiceprint and biometric information were collected when he interacted with Portillo's' AVO system to place orders from a Portillo's restaurant located in Chicago, Illinois, in August 2022.

93. When Plaintiff Kevin Harris called the Applebee's, Chipotle, Noodles & Company, and Portillo's locations, he was greeted, and his order was handled, by the artificial intelligence ("AI") voice assistants that are utilized by the Applebee's, Chipotle, Noodles & Company, and Portillo's AVO systems.

94. The Applebee's, Chipotle, Noodles & Company, and Portillo's automated voice ordering systems collected Plaintiff Kevin Harris' voiceprint and biometric information to understand, interpret, analyze, and/or make use of speech signals produced by Plaintiff Kevin Harris; recognize Plaintiff Kevin Harris' speech and perform other speech processing functions; fulfill machine learning processes, which, among other things, help the Applebee's, Chipotle, Noodles & Company, and Portillo's automated voice ordering systems to become more accurate over time; compile data specific to Plaintiff Kevin Harris and/or identify Plaintiff Kevin Harris; provide a tailored experience to Plaintiff Kevin Harris; and furnish Plaintiff Kevin Harris with the capacity to expeditiously reorder.

95. At no time did Plaintiff Kevin Harris receive notice from Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and/or SYNQ3, in writing or any other

form, that Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and SYNQ3 were collecting, storing, and using his voiceprint and biometric information.

96. At no time did Plaintiff Kevin Harris receive notice from Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and/or SYNQ3, in writing or any other form, of the specific purpose and length of term for which his voiceprint and biometric information were being collected, stored, and used by Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and SYNQ3.

97. At no time was Plaintiff Kevin Harris asked, by Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and/or SYNQ3, to provide consent for Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and SYNQ3 to collect, store, or use his voiceprint or biometric information.

98. At no time did Plaintiff Kevin Harris give Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and SYNQ3 permission in writing or any other form for – or otherwise consent or agree to – the collection, storage, or use of his voiceprint or biometric information.

99. Likewise, Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and SYNQ3 never provided Plaintiff Kevin Harris with any opportunity to prohibit or prevent the collection, storage, or use of his voiceprint or biometric information.

100. Upon information and belief, at no time while possessing Plaintiff Kevin Harris' biometric data did Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and/or SYNQ3 maintain publicly available retention and deletion schedules for biometric data.

101. By collecting Plaintiff Kevin Harris' unique biometrics without his consent, written or otherwise, Defendants Applebee's, Chipotle, Noodles & Company, Portillo's, Interactions, and SYNQ3 invaded Plaintiff Kevin Harris' statutorily protected right to privacy in his biometrics.

d. Plaintiff Michelle Gilliam's Experience

102. Like thousands of other Illinois residents, Plaintiff Michelle Gilliam's voiceprint and biometric information were collected when she interacted with Blaze Pizza's AVO system to place orders from a of Blaze Pizza's restaurant located in Chicago, Illinois, in January 2021.

103. Like thousands of other Illinois residents, Plaintiff Michelle Gilliam's voiceprint and biometric information were collected when she interacted with Portillo's' AVO system to place orders from a Portillo's restaurant located in Chicago, Illinois, in January 2021.

104. When Plaintiff Michelle Gilliam called the Blaze Pizza and Portillo's locations, she was greeted, and her order was handled, by the artificial intelligence ("AI") voice assistants that are utilized by the Blaze Pizza and Portillo's AVO systems.

105. The Blaze Pizza and Portillo's AVO systems collected Plaintiff Michelle Gilliam's voiceprint and biometric information to understand, interpret, analyze, and/or make use of speech signals produced by Plaintiff Michelle Gilliam; recognize Plaintiff Michelle Gilliam's speech and perform other speech processing functions; fulfill machine learning processes, which, among other things, help the Blaze Pizza and Portillo's automated voice ordering systems to become more accurate over time; compile data specific to Plaintiff Michelle Gilliam and/or identify Plaintiff Michelle Gilliam; provide a tailored experience to Plaintiff Michelle Gilliam; and furnish Plaintiff Michelle Gilliam with the capacity to expeditiously reorder.

106. At no time did Plaintiff Michelle Gilliam receive notice from Defendants Blaze Pizza, Portillo's, Interactions, and/or SYNQ3, in writing or any other form, that Defendants Blaze Pizza, Portillo's, Interactions, and SYNQ3 were collecting, storing, and using her voiceprint and biometric information.

107. At no time did Plaintiff Michelle Gilliam receive notice from Defendants Blaze Pizza, Portillo's, Interactions, and/or SYNQ3, in writing or any other form, of the specific purpose and length of term for which her voiceprint and biometric information were being collected, stored, and used by Defendants Blaze Pizza, Portillo's, Interactions, and SYNQ3.

108. At no time was Plaintiff Michelle Gilliam asked, by Defendants Blaze Pizza, Portillo's, Interactions, and/or SYNQ3, to provide consent for Defendant to collect, store, or use her voiceprint or biometric information.

109. At no time did Plaintiff Michelle Gilliam give Defendants Blaze Pizza, Portillo's, Interactions, and SYNQ3 permission in writing or any other form for – or otherwise consent or agree to – the collection, storage, or use of her voiceprint or biometric information.

110. Likewise, Defendants Blaze Pizza, Portillo's, Interactions, and SYNQ3 never provided Plaintiff Michelle Gilliam with any opportunity to prohibit or prevent the collection, storage, or use of her voiceprint or biometric information.

111. Upon information and belief, at no time while possessing Plaintiff Michelle Gilliam's biometric data did Defendants Blaze Pizza, Portillo's, Interactions, and/or SYNQ3 maintain publicly available retention and deletion schedules for biometric data.

112. By collecting Plaintiff Michelle Gilliam's unique biometrics without her consent, written or otherwise, Defendants Blaze Pizza, Portillo's, Interactions, and SYNQ3 invaded Plaintiff Michelle Gilliam's statutorily protected right to privacy in her biometrics.

CLASS ALLEGATIONS

113. **Class Definition**: Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on behalf of a class of similarly situated individuals, defined as follows (the "Class"):

> All Illinois residents who had their voiceprint or biometric information collected, captured, received, or otherwise obtained and/or stored by one or more of Defendants' automated voice ordering systems

114. Plaintiffs Elizabeth Butucea Boscoianu and Kevin Harris additionally bring this action on behalf of a subclass of similarly situated individuals, defined as follows (the "Applebee's Subclass"):

> All Illinois residents who had their voiceprint or biometric information collected, captured, received, or otherwise obtained and/or stored by Defendant Applebee's' automated voice ordering system.

115. Plaintiff Michelle Gilliam additionally brings this action pursuant to 735 ILCS 5/2-801 on behalf of a subclass of similarly situated individuals, defined as follows (the "Blaze Pizza Subclass"):

> All Illinois residents who had their voiceprint or biometric information collected, captured, received, or otherwise obtained and/or stored by Defendant Blaze Pizza's automated voice ordering system.

116. Plaintiffs April Guy-Powell and Kevin Harris additionally bring this action pursuant to 735 ILCS 5/2-801 on behalf of a subclass of similarly situated individuals, defined as follows (the "Chipotle Subclass"):

> All Illinois residents who had their voiceprint or biometric information collected, captured, received, or otherwise obtained and/or stored by Defendant Chipotle's automated voice ordering system.

117. Plaintiffs April Guy-Powell and Kevin Harris additionally bring this action pursuant to 735 ILCS 5/2-801 on behalf of a subclass of similarly situated individuals, defined as follows (the "Noodles & Company Subclass"):

> All Illinois residents who had their voiceprint or biometric information collected, captured, received, or otherwise obtained and/or stored by Defendant Noodles & Company's automated voice ordering system.

118. Plaintiffs Kevin Harris and Michelle Gilliam additionally bring this action pursuant to 735 ILCS 5/2-801 on behalf of a subclass of similarly situated individuals, defined as follows (the "Portillo's Subclass"):

> All Illinois residents who had their voiceprint or biometric information collected, captured, received, or otherwise obtained and/or stored by Defendant Portillo's' automated voice ordering system.

119. Plaintiff Elizabeth Butucea Boscoianu additionally brings this action pursuant to 735 ILCS 5/2-801 on behalf of a subclass of similarly situated individuals, defined as follows (the "Red Lobster Subclass"):

> All Illinois residents who had their voiceprint or biometric information collected, captured, received, or otherwise obtained and/or stored by Defendant Red Lobster's automated voice ordering system.

120. The aforementioned Class and Subclasses shall collectively be referred to as the "Classes."

121. The following are excluded from the Classes: (1) any Judge presiding over this action and members of his or her family; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest (including current and former employees, officers, or directors); (3) persons who

properly execute and file a timely request for exclusion from the Classes; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

122. **Numerosity:** Pursuant to 735 ILCS 5/2-801 (1), the numbers of persons within the Class and Subclasses are substantial, each believed to amount to thousands if not millions of persons. It is, therefore, impractical to join each member of the Class as a named Plaintiff. Further, the size and relatively modest value of the claims of the individual members of the Class renders joinder impractical. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation. Moreover, the Classes are ascertainable and identifiable from Defendants' records.

123. **Commonality and Predominance:** Pursuant to 735 ILCS 5/2-801(2), there are well-defined common questions of fact and law that exist as to all members of the Classes and that predominate over any questions affecting only individual members of the Classes. These common legal and factual questions, which do not vary from Class member to Class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

(a) whether Defendants collected or otherwise obtained Plaintiffs' and the Classes' biometric identifiers and/or biometric information;

(b) whether Defendants properly informed Plaintiffs and the Classes that they collected, used, and stored their biometric identifiers and/or biometric information;

(c) whether Defendants obtained written release (as defined in 740 ILCS 1410) to collect, use, and store Plaintiffs' and the Classes' biometric identifiers and/or biometric information;

(d) whether Defendants 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 3 years of their last interaction, whichever occurs first;

(e) whether Defendants used Plaintiffs' and the Classes' biometric identifiers and/or biometric information to identify them;

(f) whether Defendants destroyed Plaintiffs' and the Classes' biometric identifiers and/or biometric information once that information was no longer needed for the purpose for which it was originally collected; and

(g) whether Defendants' violations of BIPA were committed intentionally, recklessly, or negligently.

124. **Adequate Representation:** Pursuant to 735 ILCS 5/2-801 (3), Plaintiffs have retained and are represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiffs are able to fairly and adequately represent and protect the interests of such the Classes. Neither Plaintiffs nor their counsel have any interest adverse to, or in conflict with, the interests of the absent members of the Classes. Plaintiffs have raised viable statutory claims or the type reasonably expected to be raised by members of the Classes, and will vigorously pursue those claims. If necessary, Plaintiffs may seek leave of this Court to amend this Class Action Complaint to include additional Class representatives to represent the Classes, additional claims as may be appropriate, or to amend the Class definitions to address any steps that Defendants took.

125. **Superiority:** Pursuant to 735 ILCS 5/2-801(4), a class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is impracticable. Even if every member of the Classes could afford to pursue individual litigation, the Court system could not. It would be

unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Classes. Plaintiffs anticipate no difficulty in the management of this action as a class action. Class-wide relief is essential to compliance with BIPA.

COUNT I – FOR DAMAGES AGAINST DEFENDANTS
Violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*
(On behalf of Plaintiffs and the Classes)

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

127. Defendants Applebee's, Blaze Pizza, Chipotle, Noodles & Company, Portillo's, Red Lobster, Interactions, and SYNQ3 are corporations and/or limited liability companies and each qualify as a "private entity" under BIPA. See 740 ILCS 14/10.

128. BIPA requires that private entities, such as Defendants, obtain informed written consent from individuals before acquiring their biometrics. Specifically, BIPA makes it unlawful to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or customer's biometric identifiers or biometric information unless [the entity] first: (1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject . . . in writing of the specific purpose and length of for which a biometric identifier or biometric information is being captured, collected, stored, and used; and (3) receives

a written release executed by the subject of the biometric identifier or biometric information . . . ." 740 ILCS 14/15(b).

129. BIPA also requires that a private entity in possession of biometric identifiers and/or biometric information establish and maintain a publicly available retention policy. An entity which possesses biometric identifiers or information must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric information (entities may not retain biometric information longer than three years after the last interaction with the individual); and (ii) adhere to the publicly posted retention and deletion schedule.

130. Plaintiffs and the other Class members have had their "biometric identifiers," namely, their voiceprints, collected, captured, or otherwise obtained by Defendants when they interacted with the automated voice ordering systems utilized by Applebee's, Blaze Pizza, Chipotle, Noodles & Company, Portillo's, and Red Lobster locations in Illinois. 740 ILCS 14/10.

131. Each instance when Plaintiffs and the other Class members interacted with the automated voice ordering systems utilized by Applebee's, Blaze Pizza, Chipotle, Noodles & Company, Portillo's, and Red Lobster, Defendants captured, collected, stored, and/or used Plaintiffs' and the other Class members' voiceprint biometrics without valid consent and without complying with and, thus, in violation of BIPA.

132. Defendants' practices with respect to capturing, collecting, storing, and using their customers' voiceprint biometrics fail to comply with applicable BIPA requirements:

a. Defendants failed to inform Plaintiffs and the other members of the Classes in writing that their voiceprint biometrics were being collected and stored, prior to such collection or storage, as required by 740 ILCS 14/15(b)(1);

b. Defendants failed to inform Plaintiffs and the other Class members in writing of the specific purpose for which their voiceprint biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);

c. Defendants failed to inform Plaintiffs and the other Class members in writing the specific length of term their voiceprint biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);

d. Defendants failed to obtain a written release, as required by 740 ILCS 14/15(b)(3);

e. Defendants failed to provide a publicly available retention schedule detailing the length of time for which the biometrics are stored and/or guidelines for permanently destroying the biometrics they store, as required by 740 ILCS 14/15(a); and,

f. Defendants failed to obtain informed consent to disclose or disseminate the Class members' voiceprint biometrics for purposes of data retention and storage of the same, as required by 740 ILCS 14/15(d)(1).

133. By using their voiceprint biometric-based automated voice ordering systems to collect food orders at their Illinois restaurant locations, Defendants profited from Plaintiffs' and the other Class members' voiceprint biometric identifiers in violation of 740 ILCS 14/15(c).

134. Defendants knew, or were reckless in not knowing, that the voiceprint biometric technology that they utilized and which thousands of individuals within Illinois interacted with would be subject to the provisions of BIPA yet failed to comply with the statute.

135. By capturing, collecting, storing, using, and disseminating Plaintiffs' and the other Class members' voiceprint biometrics as described herein, Defendants denied Plaintiffs and the other Class members their rights to statutorily required information and violated their respective rights to biometric information privacy, as set forth in BIPA.

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

137. Defendants' violations of BIPA, a statute that has been in effect in all relevant times, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendants negligently failed to comply with BIPA.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs April Guy-Powell, Elizabeth Butucea Boscoianu, Kevin Harris, and Michelle Gilliam, on behalf of themselves and the proposed Classes, respectfully request that this Court enter an Order:

A. Certifying this case as a class action on behalf of the Classes defined above, appointing Plaintiffs as representatives of the Class, and appointing their counsel as Class Counsel;

B. Declaring that Defendants' actions, as set out above, violate BIPA, 740 ILCS 14/1, *et seq.*;

C. Awarding statutory damages of $5,000.00 for each and every intentional and reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or, alternatively, statutory damages of $1,000.00 for each and every violation pursuant to 740 ILCS 14/20(1) if Defendants' violations are found to have been committed negligently;

D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an order requiring Defendants to collect, store, and use biometric identifiers or biometric information in compliance with BIPA;

E. Awarding Plaintiffs and the Classes reasonable litigation expenses and attorneys' fees;

F. Awarding Plaintiffs and the Classes pre- and post-judgment interest, to the extent allowable; and

G. Awarding such other and further relief as equity and justice may require.

JURY TRIAL

Plaintiffs demand a trial by jury for all issues so triable.

Dated: August 24, 2022

Respectfully submitted,

/s/ Carl V. Malmstrom .
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**Pro Hac Vice Application Forthcoming*

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