

1 Leah M. Beligan, Esq. (SBN 250834)
2 lmbeligan@bbclawyers.net
3 Jerusalem F. Beligan, Esq. (SBN 211258)
4 jbeligan@bbclawyers.net
5 **BELIGAN LAW GROUP, LLP**
6 19800 MacArthur Blvd., Ste. 300
7 Newport Beach, CA 92612
8 Telephone: (949) 224-3881

6 James L. Simon, Esq. (*pro hac vice*
7 forthcoming)
8 james@simonsayspay.com
9 **SIMON LAW CO.**
10 5000 Rockside Road
11 Liberty Plaza – Suite 520
12 Independence, OH 44131
13 Telephone: (216) 816-8696

6 Michael L. Fradin, Esq. (*pro hac vice*
7 forthcoming)
8 mike@fradinlaw.com
9 **FRADIN LAW**
10 8401 Crawford Ave., Ste. 104
11 Skokie, IL 60076
12 Telephone: (847) 986-5889

11 *Attorneys for Plaintiff and the Putative Class*

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 Erishaun Ross, individual, and on behalf) Case No. **'23CV1443 LAB JLB**
15 of herself and all others similarly situated,)
16) **CLASS ACTION**
17 Plaintiff,) **COMPLAINT**
18 vs.)
19)
20 Netraduyme, Inc.; and DOES 1 through) **DEMAND FOR JURY TRIAL**
21 10, inclusive,)
22 Defendant(s).)
23)
24)
25)
26)
27)
28)

1 **PRELIMINARY STATEMENT**

2 Now comes Plaintiff, Erishaun Ross (“Plaintiff”), on behalf of herself and all
3 others similarly situated, through counsel, and pursuant to 740 ILCS 14/1 et. al. and
4 Fed. R. Civ. P. 23, against Defendant Netradyne, Inc. (“Netradyne”), its subsidiaries
5 and affiliates and DOES 1 through 10 (collectively, “Defendants”), to redress and
6 curtail Defendants’ unlawful collections, obtainments, use, storage, and disclosure of
7 Plaintiff’s sensitive and proprietary biometric identifiers and/or biometric information
8 (collectively referred to herein as “biometric data” and/or “biometrics”). Plaintiff
9 alleges as follows upon personal knowledge as to herself, her own acts and
10 experiences and, as to all other matters, upon information and belief including
11 investigation conducted by her attorneys.

12 **NATURE OF THE ACTION**

13 1. Netradyne’s self-described mission “is to transform road and safety by
14 using advanced vision technology to change the way drivers interact with the road
15 around them, therefore creating safer roadways for today and smarter roadways for
16 tomorrow.” <https://www.netradyne.com> (last visited Jul. 19, 2023).

17 2. To fulfill its mission, Netradyne sells consumers its proprietary “dash
18 cams’ and accompanying monitoring platform and services.

19 3. In other words, Netradyne customers can have a Netradyne dash cam
20 installed on the dashboard of any vehicle.

21 4. Netradyne customers then utilize Netradyne’s monitoring platform and
22 services to monitor and communicate with the driver of any vehicle which has the
23 Netradyne dash cam installed.

24 5. Netradyne uses facial recognition technology to “assess distracted
25 driving behaviors like drowsiness and texting while driving.” *Id.*

26 6. Netradyne, through its facial recognition technology, collects, stores,
27 possesses, otherwise obtains, uses, and disseminates drivers’ biometric identifiers or
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1 biometric information.

2 7. Facial geometry scans are unique, permanent biometric identifiers
3 associated with each user that cannot be changed or replaced if stolen or compromised.
4 Netradyne’s unlawful collection, obtainment, storage, and use of its users’ biometric
5 data exposes them to serious and irreversible privacy risks. For example, if
6 Netradyne’s database containing facial geometry scans or other sensitive, proprietary
7 biometric data is hacked, breached, or otherwise exposed, Netradyne users have no
8 means by which to prevent identity theft, unauthorized tracking or other unlawful or
9 improper use of this highly personal and private information.

10 8. The Illinois legislature enacted the Biometric Information Privacy Act
11 (“BIPA”) to protect residents’ privacy interests in their biometric data. *See Heard v.*
12 *Becton, Dickinson & Co.*, 440 F. Supp. 3d 960, 963 (N.D. Ill. 2020), citing *Rosenbach*
13 *v. Six Flags Entm't Corp.*, 2019 IL 123186, 432 Ill. Dec. 654, 129 N.E.3d 1197, 1199
14 (2019).

15 9. Courts analogize an individual’s privacy interest in their unique
16 biometric data to their interest in protecting their private domain from invasion, such
17 as from trespass. *See Bryant v. Compass Group USA, Inc.*, 958 F.3d 617, 624 (7th Cir.
18 2020), as amended on denial of reh'g and reh'g *en banc*, (June 30, 2020) and opinion
19 amended on denial of reh'g *en banc*, 2020 U.S. App. LEXIS 20468, 2020 WL 6534581
20 (7th Cir. 2020).

21 10. In recognition of these concerns over the security of individuals’
22 biometrics – particularly in the City of Chicago, which has been selected by major
23 national corporations as a “pilot testing site[] for new applications of biometric-
24 facilitated financial transactions, including finger-scan technologies at grocery stores,
25 gas stations, and school cafeterias” (740 ILCS 14/5(b)) – the Illinois Legislature
26 enacted the BIPA, which provides, *inter alia*, that a private entity like Netradyne may
27 not obtain and/or possess an individual’s biometrics unless it: (1) informs that person
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1 in writing that biometric identifiers or information will be collected or stored; (2)
2 informs that person in writing of the specific purpose and length of term for which
3 such biometric identifiers or biometric information is being collected, stored and used;
4 (3) receives a written release from the person for the collection of his or her biometric
5 identifiers or information; and (4) publishes publicly-available written retention
6 schedules and guidelines for permanently destroying biometric identifiers and
7 biometric information. 740 ILCS 14/15(a)-(b).

8 11. The Illinois Legislature has found that “[b]iometrics are unlike other
9 unique identifiers that are used to access finances or other sensitive information.” 740
10 ILCS 14/5(c). “For example, social security numbers, when compromised, can be
11 changed. Biometrics, however, are biologically unique to the individual; therefore,
12 once compromised, the individual has no recourse, is at heightened risk for identity
13 theft, and is likely to withdraw from biometric-facilitated transactions.” *Id.*

14 12. Specifically, upon information and belief, Netradyne has created,
15 collected, and stored thousands of facial geometries, biometric identifiers, or
16 biometric information from countless Illinois residents who drove a vehicle with a
17 Netradyne camera installed. Such biometric identifiers or biometric information which
18 Netradyne extracts is unique to a particular individual in the same way that a
19 fingerprint uniquely identifies a particular individual.

20 13. Netradyne is a “private entity” as that term is broadly defined by BIPA
21 and Netradyne is subject to all requirements of BIPA. *See* 740 ILCS § 14/10.

22 14. The true names and capacities, whether individual, corporate, associate,
23 representative, alter ego or otherwise, of defendants named in this action as DOES 1
24 through 10 inclusive are presently unknown to Plaintiff, who therefore sues such
25 defendants by such fictitious names. Plaintiff will seek to amend this Complaint to
26 allege the true names and capacities of DOES 1 through 10 when the same have been
27 ascertained. Plaintiff is informed and believes, and based thereon alleges, that DOES
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1 1 through 10 were and/or are, in some manner or way, responsible for and liable to
2 Plaintiff and the Class Members for the events, happenings, and damages set forth
3 below.

4 15. Plaintiff is informed and believes, and based thereon alleges, that at all
5 relevant times mentioned herein, Defendants acted as agents, employees, supervisors,
6 partners, conspirators, servants and/or joint venturers of each other, and in doing the
7 acts hereafter alleged, were acting within the course, scope, and authority of such
8 agency, employment, partnership, conspiracy, enterprise and/or joint venture, and
9 with the express and/or implied permission, knowledge, consent, authorization and
10 ratification of their co-defendants.

11 **JURISDICTION AND VENUE**

12 16. This is a Class Action Complaint for violations of the Illinois Biometric
13 Information Privacy Act (740 ILCS 14/1 *et seq.*) brought pursuant to Fed. R. Civ. P.
14 23 seeking statutory and actual damages.

15 17. Venue is proper in this Court because Netradyne is headquartered and
16 registered to do business in California and therefore a substantial amount of the acts
17 and omissions giving rise to this action occurred within this judicial district.

18 18. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1332
19 because Plaintiff and the proposed class members are all residents of Illinois,
20 Netradyne is domiciled in California and the amount in controversy exceeds \$75,000.

21 19. This Court has jurisdiction over this dispute pursuant to the Class Action
22 Fairness Act (“CAFA”) because the prospective class includes over 100 people and
23 the amount in controversy exceeds \$5,000,000.

24 20. At all relevant times, Plaintiff and the proposed Class are residents of the
25 state of Illinois and the violations of BIPA as detailed herein occurred while Plaintiff
26 and the proposed Class were located in Illinois.

27 21. At all relevant times, Netradyne is duly licensed and registered to transact
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1 business in California, and Netradyne has corporate offices in San Diego and its
2 principal place of business is located at 9171 Towne Centre Drive, Suite 110, San
3 Diego, California 92122.

4 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

5 22. Plaintiff realleges and incorporates by reference all allegations in all
6 preceding paragraphs.

7 23. At all relevant times, Plaintiff was a resident of Chicago, Illinois.

8 24. Plaintiff was employed by the Mission of Our Lady Mercy, Inc., which
9 is more commonly known as the Mercy Home for Boys & Girls (“Mercy Home”),
10 from approximately January 5, 2022 through approximately March 31, 2023.

11 25. In her employment for Mercy Home, Plaintiff regularly drove Mercy
12 Home’s vans.

13 26. At all relevant times, the van which Plaintiff drove for Mercy Home were
14 equipped with Netradyne dash cams which were used to monitor Plaintiff. At times,
15 Plaintiff would receive alerts that she was exhibiting distracted driver behavior. Such
16 alerts were premised upon Netradyne’s facial recognition technology.

17 27. Netradyne collected and retained Plaintiff’s biometric information each
18 time that she drove a Mercy Home van.

19 28. At all relevant times, Netradyne had no written policy, made available to
20 the public, establishing a retention schedule and guidelines for permanently destroying
21 biometric information when the initial purpose for collecting or obtaining such
22 biometric information has been satisfied or within three years of the individual’s last
23 interaction with Netradyne, whichever occurs first.

24 29. Ostensibly, the purpose of Netradyne’s collection of Plaintiff’s biometric
25 identifiers or biometric information was to alert Netradyne’s customer – Mercy Home
26 – that Plaintiff was exhibiting or indicating some type of distracted driving.

27 30. As such, Plaintiff’s biometric identifiers or biometric information should
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1 have been permanently destroyed by Netradyne immediately following such an alert.

2 31. However, Netradyne failed to permanently destroy Plaintiff's biometric
3 identifiers or biometric information following the conclusion of each alert and instead
4 retained Plaintiff's biometric identifiers or biometric information.

5 32. As such, Netradyne's retention of Plaintiff's biometric identifiers or
6 biometric information was unlawful and in violation of 740 ILCS § 14/15(a).

7 33. Netradyne did not inform Plaintiff in writing that it was collecting or
8 storing her biometric information.

9 34. Instead, Netradyne makes no effort inform drivers that Netradyne is
10 collecting or retaining their biometric information.

11 35. In fact, Netradyne made no mention of biometric information, collection
12 of biometric information, or storage of biometric information.

13 36. Moreover, Netradyne did not inform Plaintiff in writing of the specific
14 purpose and length of term for which her biometric information was being collected,
15 stored, and used.

16 37. Netradyne collected, stored, and used Plaintiff's biometric information
17 without ever receiving a written release executed by Plaintiff in which she consented
18 to or authorized Netradyne to do the same.

19 38. Netradyne collected, stored, and used Plaintiff's biometric information
20 without ever receiving Plaintiff's informed consent to do same.

21 39. Additionally, Netradyne disclosed, redisclosed, or otherwise
22 disseminated Plaintiff's biometric information (1) without Plaintiff's consent; (2)
23 without Plaintiff's authorization to complete a financial transaction requested or
24 authorized by Plaintiff; (3) without being required by State or federal law or municipal
25 ordinance; or (4) without being required pursuant to a valid warrant or subpoena issued
26 by a court of competent jurisdiction.

27 40. Upon information and belief, Netradyne disclosed, redisclosed, or
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1 otherwise disseminated Plaintiff's biometric information to its customer – Mercy
2 Home – and Netradyne's third party service providers for Netradyne's business
3 purposes including, but not limited to, third party providers that provide business
4 services to Netradyne, third party service providers that provide professional services
5 to Netradyne, and third-party service providers that provide technical support
6 functions to Netradyne.

7 41. Netradyne's collection and retention of biometric information as
8 described herein is not unique to Plaintiff and is instead part of Netradyne's products
9 and services which Netradyne offers to all of its customers.

10 **RULE 23 CLASS DEFINITION AND ALLEGATIONS**

11 42. Plaintiff realleges and incorporates by reference all allegations in all
12 preceding paragraphs.

13 43. Plaintiff brings Claims for Relief in violation of BIPA as a class action
14 under Rule 23(a), (b)(2) and (b)(3). Plaintiff brings these claims on behalf of herself
15 and all members of the following Rule 23 Class:

16 **All Illinois residents who had their biometric information**
17 **collected by Netradyne at any point in the five (5) years**
18 **preceding the filing of this Complaint (the "Class**
19 **Members").**

20 44. In the alternative, and for the convenience of this Court and the parties,
21 Plaintiff may seek to certify other subclasses at the time the motion for class
22 certification is filed.

23 45. **Numerosity (Rule 23(a)(1)).** The Class Members are so numerous that
24 joinder of all members is impracticable. Plaintiff is informed and believes that there
25 are more than 1,000 people who satisfy the definition of the Class.

26 46. **Existence of Common Questions of Law and Fact (Rule 23(a)(2)).**
27 Common questions of law and fact exist as to Plaintiff and the Class Members
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1 including, but not limited to, the following:

- 2 a. Whether Netradyne possessed Plaintiff's and the Class Members'
3 biometric identifiers or biometric information without first
4 developing a written policy, made available to the public, establishing
5 a retention schedule and guidelines for permanently destroying
6 biometric identifiers and biometric information when the initial
7 purpose for collecting or obtaining such identifiers or information has
8 been satisfied or within three years of the individual's last interaction
9 with Netradyne, whichever occurs first.
- 10 b. Whether Netradyne collected, captured, purchased, received through
11 trade, or otherwise obtained Plaintiff's and the Class Members'
12 biometric identifiers or biometric information, without first: (1)
13 informing Plaintiff and the Class Members in writing that a biometric
14 identifier or biometric information is being collected or stored; (2)
15 informing Plaintiff and the Class Members in writing of the specific
16 purpose and length of term for which their biometric identifiers or
17 biometric information was being collected, stored, and used; and (3)
18 receiving a written release executed by Plaintiff and the Class
19 Members.
- 20 c. Whether Netradyne disclosed, redisclosed, or otherwise disseminated
21 Plaintiff's and the Class Members' biometric identifiers or biometric
22 information (1) without Plaintiff's and the Class Members' consent;
23 (2) without Plaintiff's and the Class Members' authorization to
24 complete a financial transaction requested or authorized by Plaintiff
25 and the Class Members; (3) without being required by State or federal
26 law or municipal ordinance; or (4) without being required pursuant to
27 a valid warrant or subpoena issued by a court of competent
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1 jurisdiction.

2 d. The damages sustained and the proper monetary amounts recoverable
3 by Plaintiff and the Class Members.

4 47. **Typicality (Rule 23(a)(3))**. Plaintiff's claims are typical of the Class
5 Members' claims. Plaintiff, like the Class Members, had her biometric identifiers and
6 biometric information collected, retained or otherwise possessed by Netradyne
7 without Netradyne's adherence to the requirements of BIPA as detailed herein.

8 48. **Adequacy (Rule 23(a)(4))**. Plaintiff will fairly and adequately represent
9 and protect the interests of the Class Members. Plaintiff has retained counsel
10 competent and experienced in complex class actions.

11 49. **Injunctive and Declaratory Relief (Rule 23(b)(2))**. Class certification
12 of the Rule 23 claims is appropriate under Rule 23(b)(2) because Netradyne acted or
13 refused to act on grounds generally applicable to the Class Members, making
14 appropriate declaratory relief with respect to the Class Members as a whole.

15 50. **Predominance and Superiority of Class Action (Rule 23(b)(3))**. Class
16 certification of the Rule 23 claims is also appropriate under Rule 23(b)(3) because
17 questions of law and fact common to the Class Members predominate over questions
18 affecting only individual members of the class, and because a class action is superior
19 to other available methods for the fair and efficient adjudication of this litigation.
20 Netradyne's common and uniform policies and practices illegally deprived Plaintiff
21 and the Class Members of the privacy protections which BIPA seeks to ensure; thus,
22 making the question of liability and damages much more manageable and efficient to
23 resolve in a class action, compared to hundreds of individual trials. The damages
24 suffered by individual Class Members are small compared to the expense and burden
25 of individual prosecution. In addition, class certification is superior because it will
26 obviate the need for unduly duplicative litigation that might result in inconsistent
27 judgments about Netradyne's practices.

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1 51. Plaintiff intends to send notice to all Class Members to the extent
2 required by Fed. R. Civ. P. 23.

3 **COUNT ONE: VIOLATION OF 740 ILCS § 14/15(a)**
4 **(Brought by Plaintiff on behalf of herself and the Class Members against all**
5 **Defendants)**

6 52. Plaintiff realleges and incorporates by reference all allegations in all
7 preceding paragraphs.

8 53. A private entity in possession of biometric identifiers or biometric
9 information must develop a written policy, made available to the public, establishing
10 a retention schedule and guidelines for permanently destroying biometric identifiers
11 and biometric information when the initial purpose for collecting or obtaining such
12 identifiers or information has been satisfied or within three years of the individual's
13 last interaction with the private entity, whichever occurs first. Absent a valid warrant
14 or subpoena issued by a court of competent jurisdiction, a private entity in possession
15 of biometric identifiers or biometric information must comply with its established
16 retention schedule and destruction guidelines. 740 ILCS § 14/15(a).

17 54. Netradyne collected Plaintiff's and the Class Members' facial geometries
18 and created biometric templates of the Plaintiff's and the Class Members' faces which
19 qualifies as biometric information as defined by BIPA.

20 55. At all relevant times, Netradyne had no written policy, made available to
21 the public, establishing a retention schedule and guidelines for permanently destroying
22 biometric information when the initial purpose for collecting or obtaining such
23 biometric information has been satisfied or within three years of the individual's last
24 interaction with Netradyne, whichever occurs first.

25 56. Ostensibly, the purpose of Netradyne's collection of Plaintiff's and the
26 Class Members' biometric identifiers or biometric information was to alert
27 Netradyne's customers that Plaintiff and the Class Members may have been exhibiting
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1 indicators of distracted driving.

2 57. As such, Plaintiff's and the Class Members' biometric identifiers or
3 biometric information should have been permanently destroyed by Netradyne
4 immediately following the conclusion of such alerts.

5 58. However, Netradyne failed to permanently destroy Plaintiff's and the
6 Class Members' biometric identifiers, or biometric information following the
7 conclusion of each virtual try-on experience and instead retained Plaintiff's and the
8 Class Members' biometric identifiers or biometric information.

9 59. As such, Netradyne's retention of Plaintiff's and the Class Members'
10 biometric information was unlawful and in violation of 740 ILCS § 14/15(a).

11 **COUNT TWO: VIOLATION OF 740 ILCS § 14/15(b)**

12 **(Brought by Plaintiff on behalf of herself and the Class Members against all**
13 **Defendants)**

14 60. Plaintiff realleges and incorporates by reference all allegations in all
15 preceding paragraphs.

16 61. No private entity may collect, capture, purchase, receive through trade,
17 or otherwise obtain a person's or a customer's biometric identifier or biometric
18 information, unless it first:

- 19 a. informs the subject or the subject's legally authorized
20 representative in writing that a biometric identifier or
21 biometric information is being collected or stored;
- 22 b. informs the subject or the subject's legally authorized
23 representative in writing of the specific purpose and length of
24 term for which a biometric identifier or biometric information
is being collected, stored, and used; and
- 25 c. receives a written release executed by the subject of the
26 biometric identifier or biometric information or the subject's
27 legally authorized representative. 740 ILCS § 14/15(b).
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1 62. Netradyne did not inform Plaintiff and the Class Members in writing that
2 Netradyne was collecting or storing their biometric information.

3 63. Instead, Netradyne makes no effort inform drivers that Netradyne is
4 collecting or retaining their biometric information.

5 64. In fact, Netradyne made no mention of biometric information, collection
6 of biometric information, or storage of biometric information.

7 65. Moreover, Netradyne did not inform Plaintiff and the Class Members in
8 writing of the specific purpose and length of term for which their biometric
9 information was being collected, stored, and used.

10 66. Netradyne collected, stored, and used Plaintiff’s and the Class Members’
11 biometric information without ever receiving a written release executed by Plaintiff
12 and the Class Members which would consent to or authorize Netradyne to do same.

13 67. As such, Netradyne’s collection of Plaintiff’s and the Class Members’
14 biometric information was unlawful and in violation of 740 ILCS § 14/15(c).

15 **COUNT THREE: VIOLATION OF 740 ILCS § 14/15(d)**

16 **(Brought by Plaintiff on behalf of herself and the Class Members against all**
17 **Defendants)**

18 68. Plaintiff realleges and incorporates by reference all allegations in all
19 preceding paragraphs.

20 69. No private entity in possession of a biometric identifier or biometric
21 information may disclose, redisclose, or otherwise disseminate a person's or a
22 customer's biometric identifier or biometric information unless:

23 (1) the subject of the biometric identifier or biometric
24 information or the subject's legally authorized representative
25 consents to the disclosure or redisclosure;

26 (2) the disclosure or redisclosure completes a financial
27 transaction requested or authorized by the subject of the
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1 biometric identifier or the biometric information or the subject's
2 legally authorized representative;

3 (3) the disclosure or redisclosure is required by State or federal
4 law or municipal ordinance; or

5 (4) the disclosure is required pursuant to a valid warrant or
6 subpoena issued by a court of competent jurisdiction. 740 ILCS
7 § 14/15(d).

8 70. While discovery will ascertain all of the ways in which Netradyne
9 disclosed, redisclosed, or otherwise disseminated Plaintiff's and the Class Members'
10 biometric information, Netradyne disclosed, redisclosed, or otherwise disseminated
11 Plaintiff's biometric information to its customer – Mercy Home – and Netradyne's
12 third party service providers for Netradyne's business purposes including, but not
13 limited to, third party providers that provide business services to Netradyne, third
14 party service providers that provide professional services to Netradyne, and third-
15 party service providers that provide technical support functions to Netradyne.

16 71. Netradyne's disclosures, redisclosures, or otherwise disseminating of
17 Plaintiff's and the Class Members' biometric information was unlawful and in
18 violation of 740 ILCS § 14/15(d).

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, individually, and on behalf of the Class Members, Plaintiff
21 prays for: (1) certification of this case as a class action pursuant to Fed. R. Civ. P. 23
22 appointing the undersigned counsel as class counsel; (2) a declaration that Netradyne
23 has violated BIPA, 740 ILCS 14/1 *et seq.*; (3) statutory damages of \$5,000.00 for the
24 intentional and reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or
25 alternatively, statutory damages of \$1,000.00 per violation pursuant to 740 ILCS
26 14/20(1) in the event the court finds that Netradyne's violations of BIPA were not
27 willful; (4) reasonable attorneys' fees and costs and other litigation expense pursuant
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1 to 740 ILCS 14/20(3); (5) actual damages; and (6) for any other relief the Court deems
2 appropriate.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff and the Class Members hereby demand a jury trial on all causes of
5 action and claims with respect to which they each have a state and/or federal
6 constitutional right to a jury trial.

7 DATED: August 1, 2023

Respectfully submitted,
8 **BELIGAN LAW GROUP, LLP**

9
10 By: /s/ Leah M. Beligan
Leah M. Beligan, Esq.
lbeligan@bbclawyers.net
11 Jerusalem F. Beligan, Esq.
jbeligan@bbclawyers.net
12 19800 MacArthur Blvd., Ste. 300
Newport Beach, CA 92612
13 Telephone: (949) 224-3881

14 **THE LAW OFFICES OF SIMON &
SIMON**

15
16 By: /s/ James L. Simon
James L. Simon (*pro hac vice*
17 forthcoming)
james@bswages.com
18 5000 Rockside Road
Liberty Plaza – Suite 520
19 Independence, OH 44131
20 Telephone: (216) 525-8890

21 By: /s/ Michael L. Fradin
Michael L. Fradin, Esq. (*pro hac vice*
22 forthcoming)
mike@fradinlaw.com
23 8401 Crawford Ave., Ste. 104
Skokie, IL 60076
24 Telephone: 847-986-5889

25 *Attorneys for Plaintiff and the Putative Class*

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Netradyne Dash Cams Collected Illinois Drivers' Biometric Data Without Consent, Class Action Says](#)
