

**IN THE CIRCUIT COURT OF MCHENRY COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

NICKLAS NAS, individually and on behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	Case No.: 2023 LA 000172
vs.)	
)	
APTARGROUP, INC., JOHN DOE)	
VENDOR,)	
)	
Defendant.)	

**APTARGROUP, INC.’S ANSWER AND DEFENSES TO
PLAINTIFF’S CLASS ACTION COMPLAINT**

Defendant AptarGroup, Inc. (“AptarGroup”), by and through its attorneys, files this answer and defenses to Plaintiff’s Class Action Complaint. To the extent any allegation in the Complaint is not specifically or expressly admitted, the allegation is denied. AptarGroup denies all allegations contained in headings and unnumbered paragraphs. AptarGroup answers the corresponding numbered paragraphs of the Complaint as follows:

INTRODUCTION

1. BIPA defines a “biometric identifier” as any personal feature that is unique to an individual, including fingerprints. “Biometric information” is any information based on a biometric identifier, regardless of how it is converted or stored. 740 ILCS § 14/10. Collectively, biometric identifiers and biometric information are known as “biometrics.”

ANSWER: AptarGroup admits that Paragraph 1 purports to paraphrase from BIPA but denies that Paragraph 1 accurately reflects the totality of the statute. AptarGroup denies the remaining allegations in Paragraph 1.

2. This case concerns the misuse of individuals’ biometrics by Defendant. Using biometric enabled technology, Defendant has – either directly or through a vendor – captured, collected, stored, disseminated, and/or otherwise used the biometrics of Plaintiff and other Class members, without their informed written consent as required by law, in order to track their time at work.

ANSWER: AptarGroup denies the allegations in Paragraph 2.

3. BIPA provides, *inter alia*, that private entities, such as Defendant, may not obtain and/or possess an individual’s biometrics unless they first:

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

ANSWER: AptarGroup admits that Paragraph 3 purports to paraphrase sections from BIPA but denies that it accurately reflects the totality of the statute. AptarGroup denies the remaining allegations of Paragraph 3.

4. Compliance with BIPA is straightforward and inexpensive, and may be accomplished through a single, signed sheet of paper. BIPA’s requirements bestow a right to privacy in biometrics and a right to make an *informed* decision when electing whether to provide or withhold biometrics.

ANSWER: AptarGroup denies the allegations in Paragraph 4.

5. Defendant’s biometric timekeeping system works by extracting biometric information from individuals, such as handprints, fingerprints or portions thereof, and subsequently using the same for authentication and timekeeping purposes. The system includes the dissemination of biometrics to each other and third parties, such as data storage vendors and payroll services.

ANSWER: AptarGroup denies the allegations in Paragraph 5.

6. The Illinois Legislature has found that “biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, even sensitive information like Social Security numbers can be changed. Biometrics, however, are biologically unique to each individual and, once compromised, such individual has no recourse, is at a heightened risk for identity theft, and is likely to withdraw from biometric

facilitated transactions.” 740 ILCS 14/5. The risk is compounded when a person’s biometrics are also associated with their other personally identifiable information.

ANSWER: AptarGroup admits that Paragraph 6 quotes from certain sections of BIPA but denies that it accurately reflects the totality of the statute. AptarGroup denies the allegations in the last sentence of Paragraph 6.

7. The deprivation of the statutory rights conferred by BIPA constitutes the actual injuries the Illinois Legislature sought to prevent.

ANSWER: AptarGroup denies the allegations in Paragraph 7.

8. Plaintiff brings this action for statutory damages and other remedies as a result of Defendant’s conduct in violating Plaintiffs state biometric privacy rights.

ANSWER: AptarGroup admits that Paragraph 8 contains a characterization of Plaintiff’s claims but denies the remaining allegations in Paragraph 8.

9. On Plaintiff’s own behalf, and on behalf of the proposed Class defined below, Plaintiff seeks an injunction requiring Defendant to comply with BIPA, as well as an award of damages, including statutory damages, to the Class members, together with costs and reasonable attorneys’ fees.

ANSWER: AptarGroup admits that Plaintiff seeks to represent a class in this case but denies the remaining allegations in Paragraph 9.

PARTIES

10. At all relevant times, Plaintiff Nicklas Nas has been a resident and citizen of the state of Illinois.

ANSWER: AptarGroup lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore denies the same.

11. Defendant is a for-profit corporation that conducts substantial business throughout the state of Illinois and in McHenry County.

ANSWER: AptarGroup admits that it is a for-profit corporation and that it conducts business in the state of Illinois. AptarGroup denies the remaining allegations in Paragraph 11.

JURISDICTION AND VENUE

12. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant does business within this State and because Plaintiff's claims arise out of Defendant's unlawful in-state actions, as Defendant captured, collected, stored, and/or used Plaintiff's biometric identifiers and/or biometric information in this State.

ANSWER: Paragraph 12 consists of legal conclusions, to which no response is required. To the extent a response is deemed required, denied.

13. Venue is proper in this County pursuant to 735 ILCS 5/2-101, because Defendant conducts business in this County and thus resides there under § 2-102.

ANSWER: Paragraph 12 consists of legal conclusions, to which no response is required. To the extent a response is deemed required, denied.

FACTS SPECIFIC TO PLAINTIFF

14. Plaintiff worked as an employee for Defendant from 2014 to 2018.

ANSWER: AptarGroup lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 14 and therefore denies the same.

15. As part of the operational protocols set in place by Defendant, all employees are required to clock in and out of work using their fingerprints.

ANSWER: AptarGroup lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 15 and therefore denies the same.

16. During the relevant time period, including the time period when Plaintiff worked for Defendant, Defendant implemented biometric scanning and time-tracking devices and technology to monitor and manage their workers', including Plaintiff's time on the job. Such devices collect their users' biometric identifiers, *i.e.* fingerprints, and convert them to an electronic format *derived from* those identifiers, *i.e.* biometric information. Such conversion is necessary for storing biometrics on the device itself, and to allow Defendant to transmit biometric data to third parties, such as data storage or payroll vendors.

ANSWER: AptarGroup lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 16 and therefore denies the same.

17. Plaintiff was required to provide – and did in fact provide – biometric scans to Defendant and/or its vendor(s) each time Plaintiff clocked in and clocked out of a shift at work.

ANSWER: AptarGroup lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 17 and therefore denies the same.

18. Though Defendant – either directly and/or through vendor(s) – collected, stored, and used Plaintiff’s biometrics for timekeeping and access purposes, Defendant never provided Plaintiff with any written disclosures informing Plaintiff that it was collecting, storing, and using biometrics or explaining the purpose or length of term for which the biometrics were being collected and stored. Defendant never sought, nor has Plaintiff ever provided, any written consent relating to Defendant’s and/or its vendor(s) collection, use, or storage, or dissemination of the biometrics.

ANSWER: AptarGroup denies the allegations in Paragraph 18.

19. Though Defendant and/or its vendor(s) came into possession of Plaintiff’s biometrics, Defendant has failed to make publicly available any written biometric retention, storage or destruction policy.

ANSWER: AptarGroup denies the allegations in Paragraph 19.

20. In addition, Defendant disseminated electronic information derived from the scanning of Plaintiff’s biometric identifiers to third parties, including vendors for timekeeping, data storage, and payroll purposes, without obtaining Plaintiff’s consent to do so.

ANSWER: AptarGroup denies the allegations in Paragraph 20.

21. By failing to comply with BIPA, Defendant has violated Plaintiff’s substantive state rights to biometric privacy.

ANSWER: AptarGroup denies the allegations in Paragraph 21.

CLASS ALLEGATIONS

22. Plaintiff brings this action individually and on behalf of all similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent a Class defined as follows:

All individuals whose biometrics were captured, collected, stored, used, transmitted, and/or disseminated by or on behalf of Defendant within the state of Illinois at any time within the applicable limitations period (the “Class”).

ANSWER: AptarGroup admits that Paragraph 22 contains a characterization of Plaintiff's proposed class but denies the remaining allegations in Paragraph 22.

23. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officers or directors.

ANSWER: AptarGroup admits that Plaintiff seeks to exclude the individuals identified in Paragraph 23 from the putative class Plaintiff seeks to present, but AptarGroup denies the remaining allegations in Paragraph 23.

24. Upon information and belief, there are hundreds of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of members of the Class is currently unknown to Plaintiff, the members can be easily identified through Defendant's personnel records.

ANSWER: AptarGroup denies that the allegations in Paragraph 24.

25. Plaintiff's claims are typical of the claims of the members of the Class Plaintiff seeks to represent, because the factual and legal bases of Defendant's liability to Plaintiff and the other members are the same, and because Defendant's conduct has resulted in similar injuries to Plaintiff and to the Class. As alleged herein, Plaintiff and the Class have all suffered damages as a result of Defendant's BIPA violations.

ANSWER: AptarGroup denies the allegations in Paragraph 25.

26. There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members. Common questions for the Class include, but are not limited to, the following:

- a. **Whether Defendant's conduct is subject to BIPA;**
- b. **Whether Defendant made available to the public a written policy that establishes a retention schedule and guidelines for destroying biometrics;**
- c. **Whether Defendant obtained a written release from the Class before capturing, collecting, or otherwise obtaining their biometrics, directly and/or through vendor(s);**
- d. **Whether Defendant provided a written disclosure that explains the specific purposes, and the length of time, for which biometrics were being collected, stored and used before taking such biometrics, directly and/or through vendor(s);**

- e. **Whether Defendant and/or its vendor(s) disseminated or disclosed the Class members' biometrics to each other and third parties with their consent;**
- f. **Whether Defendant's conduct violates BIPA;**
- g. **Whether Defendant's violations of the BIPA are willful or reckless; and**
- h. **Whether Plaintiff and the Class are entitled to damages and injunctive relief.**

ANSWER: AptarGroup denies the allegations in Paragraph 26.

27. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions in that it conserves the resources of the courts and the litigants and promotes consistency of adjudication.

ANSWER: AptarGroup denies the allegations in Paragraph 27.

28. Plaintiff will adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and Plaintiff's counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither Plaintiff nor Plaintiff's counsel has any interest adverse to those of the other members of the Class.

ANSWER: AptarGroup denies the allegations in Paragraph 28.

29. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

ANSWER: AptarGroup denies the allegations in Paragraph 29.

COUNT I

Violation of the Illinois Biometric Information Privacy Act (Damages)

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

ANSWER: AptarGroup incorporates the foregoing responses as if fully set forth herein.

31. Defendant is a private entity under BIPA.

ANSWER: AptarGroup admits that it is a “private entity” as defined by BIPA but denies that it has violated BIPA or is in any way liable to Plaintiff.

32. BIPA requires any private entities, such as Defendant, to obtain informed written consent from individuals before collecting or acquiring their biometric identifiers or biometric information. 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).

ANSWER: AptarGroup admits that Paragraph 32 quotes from the cited sections of BIPA but denies that it accurately reflects the totality of the statute. AptarGroup denies the remaining allegations in Paragraph 32.

33. BIPA also requires private entities in possession of biometric identifiers and/or biometric information to make publicly available a biometric retention and destruction policy. Entities which possess 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.

ANSWER: AptarGroup admits that Paragraph 33 purports to paraphrase BIPA but denies that it accurately reflects the totality of the statute. AptarGroup denies the remaining allegations in Paragraph 33.

34. Plaintiff and the other Class members have had their “biometric identifiers,” namely their fingerprints, or information derived therefrom, *i.e.* “biometric information,” collected, captured, or otherwise obtained by Defendant.

ANSWER: AptarGroup denies the allegations in Paragraph 34.

35. Each instance Plaintiff and the other Class members were required to scan their fingerprints for timekeeping purposes, Defendant captured, collected, stored, and/or used Plaintiff’s and the other Class members’ biometric identifiers or biometric information without valid consent and without complying with and, thus, in violation of BIPA.

ANSWER: AptarGroup denies the allegations in Paragraph 35.

36. Defendant's practice with respect to capturing, collecting, storing, and using biometrics fails to comply with applicable BIPA requirements:

- a. **Defendant failed to inform Plaintiff and the members of the Class in writing that their biometrics were being collected and stored, prior to such collection or storage, as required by 740 ILCS 14/15(6)(1);**
- b. **Defendant failed to inform Plaintiff and the Class in writing of the specific purpose for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(6)(2);**
- c. **Defendant failed to inform Plaintiff and the Class in writing of the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(6)(2);**
- d. **Defendant failed to obtain a written release, as required by 740 ILCS 14/15(6)(3);**
- e. **Defendant failed to make publicly available any written 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. **Defendant failed to obtain informed consent to disclose or disseminate the Class's biometrics to third parties, as required by 740 ILCS 14/15(d)(1).**

ANSWER: AptarGroup denies the allegations in Paragraph 36.

37. By capturing, collecting, storing, using, and disseminating Plaintiff's and the Class's biometrics as described herein, Defendant denied Plaintiff and the Class their right to statutorily required information and violated their respective rights to biometric information privacy, as set forth in BIPA.

ANSWER: AptarGroup denies the allegations in Paragraph 37.

38. 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).

ANSWER: AptarGroup admits that Paragraph 38 purports to paraphrase from BIPA but denies that it accurately reflects the totality of the statute. AptarGroup denies the remaining allegations in Paragraph 38.

39. Defendant's violations of BIPA, a statute that has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with BIPA.

ANSWER: AptarGroup denies the allegations in Paragraph 39.

40. Accordingly, Plaintiff, individually and on behalf of the proposed Class, in the amount of liquidated damages or actual damages, whichever is greater. 740 ILCS § 14/20(1).

ANSWER: AptarGroup admits that Paragraph 40 contains a characterization of Plaintiff's case and that Plaintiff requests the relief set forth herein, but denies that AptarGroup engaged in any wrongdoing, denies that it violated BIPA, and denies that Plaintiff is entitled to any relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, respectfully requests that this Court enter an Order:

- a. **Defendant failed to inform Plaintiff and the members of the Class in writing that their biometrics were being collected and stored, prior to such collection or storage, as required by 740 ILCS 14/15(6)(1);**
- b. **Declaring that Defendant's actions, as set forth herein, violate BIPA;**
- c. **Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with BIPA;**
- d. **Awarding statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(2);**
- e. **Awarding statutory damages of \$1,000 for each negligent violation of BIPA, pursuant to 740 ILCS 14/20(1);**
- f. **Awarding reasonable attorneys' fees, costs, and other litigation expenses pursuant to 740 ILCS 14/20(3);**
- g. **Awarding pre- and post-judgment interest, as allowable by law; and**

- h. **Awarding such further and other relief as the Court deems just and equitable.**

ANSWER: AptarGroup denies that it has engaged in any wrongdoing, denies that it has violated BIPA, denies that this case is suitable for class treatment, denies that Plaintiff is similarly situated to other unnamed individuals, and denies that Plaintiff is entitled to any relief. AptarGroup denies any remaining allegations in this PRAYER FOR RELIEF.

COUNT II

Violation of the Illinois Biometric Information Privacy Act By John Doe Vendor (Damages)

- 41. Plaintiff incorporates the foregoing allegations as if fully set forth herein.**

ANSWER: AptarGroup incorporates the foregoing responses as if fully set forth herein.

42. Based on information and belief, Defendant APTARGROUP, INC worked with an unknown vendor (Defendant John Doe Vendor) when collecting, storing, and disseminating Plaintiff and other employee's biometric information.

ANSWER: AptarGroup denies the allegations in Paragraph 42.

43. Plaintiff does not currently know the name of the John Doe Vendor because it was never disclosed to Plaintiff. While Defendant APTARGROUP, INC. required Plaintiffs and other employees to provide their biometric information, it did not disclose the name of the vendor(s) who would receive, store, and/or disseminate their biometric information.

ANSWER: AptarGroup denies the allegations in Paragraph 43.

44. Prior to filing this lawsuit, Plaintiff's Counsel requested that Defendant APTARGROUP, INC. provide the information of the vendor(s) that were involved in the collection, storage, and/or dissemination of the Plaintiff's biometric information on Defendant APTARGROUP, INC.'s behalf. But employment counsel for APTARGROUP, INC. refused to provide that information.

ANSWER: AptarGroup denies the allegations in Paragraph 44.

45. Based on information and belief, Defendant John Doe Vendor is a private entity under BIPA.

ANSWER: AptarGroup lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 45 and therefore denies the same.

46. BIPA requires any private entities, including Defendant John Doe Vendor, to obtain informed written consent from individuals before collecting or acquiring their biometric identifiers or biometric information, and/or to ensure that an employer, like Defendant APTARGROUP, INC., has done so. 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).

ANSWER: AptarGroup admits that Paragraph 46 quotes from the cited sections of BIPA but denies that it accurately reflects the totality of the statute. AptarGroup denies the remaining allegations in Paragraph 46.

47. BIPA also requires private entities in possession of biometric identifiers and/or biometric information to make publicly available a biometric retention and destruction policy. Entities which possess 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.

ANSWER: AptarGroup admits that Paragraph 47 purports to paraphrase BIPA but denies that it accurately reflects the totality of the statute. AptarGroup denies the remaining allegations in Paragraph 47.

48. Plaintiff and the other Class members have had their “biometric identifiers,” namely their fingerprints, or information derived therefrom, *i.e.* “biometric information,” collected, captured, or otherwise obtained by Defendant John Doe Vendor.

ANSWER: AptarGroup denies the allegations in Paragraph 48.

49. Based on information and belief, each instance Plaintiff and the other Class members were required to scan their fingerprints for timekeeping purposes, Defendant John Doe Vendor was involved with the capture, collection, storage, and/or use of Plaintiff’s and the other Class members’ biometric identifiers or biometric information without valid consent and without complying with and, thus, in violation of BIPA.

ANSWER: AptarGroup denies the allegations in Paragraph 49.

50. Defendant John Doe Vendor's practice with respect to capturing, collecting, storing, and using biometrics fails to comply with applicable BIPA requirements:

- a. **Defendant failed to inform Plaintiff and the members of the Class in writing that their biometrics were being collected and stored, prior to such collection or storage, as required by 740 ILCS 14/15(6)(1);**
- b. **Defendant John Doe Vendor failed to inform Plaintiff and the Class in writing of the specific purpose for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(6)(2);**
- c. **Defendant John Doe Vendor failed to inform Plaintiff and the Class in writing of the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(6)(2);**
- d. **Defendant John Doe Vendor failed to obtain a written release, as required by 740 ILCS 14/15(6)(3);**
- e. **Defendant John Doe Vendor failed to make publicly available any written 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. **Defendant John Doe Vendor failed to obtain informed consent to disclose or disseminate the Class's biometrics to third parties, as required by 740 ILCS 14/15(d)(1).**

ANSWER: AptarGroup denies the allegations in Paragraph 50.

51. Through their involvement in capturing, collecting, storing, using, and disseminating Plaintiff's and the Class's biometrics as described herein, Defendant John Doe Vendor denied Plaintiff and the Class their right to statutorily required information and violated their respective rights to biometric information privacy, as set forth in BIPA.

ANSWER: AptarGroup denies the allegations in Paragraph 51.

52. 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).

ANSWER: AptarGroup admits that Paragraph 52 purports to paraphrase from BIPA but denies that it accurately reflects the totality of the statute. AptarGroup denies the remaining allegations in Paragraph 52.

53. Defendant John Doe Vendor's violations of BIPA, a statute that has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant John Doe Vendor negligently failed to comply with BIPA.

ANSWER: AptarGroup denies the allegations in Paragraph 53.

54. Accordingly, Plaintiff, individually and on behalf of the proposed Class, prays for damages against Defendant John Doe Vendor in the amount of liquidated damages or actual damages, whichever is greater. 740 ILCS § 14/20(1).

ANSWER: AptarGroup admits that Paragraph 54 contains a characterization of Plaintiff's case and that Plaintiff requests the relief set forth herein. AptarGroup denies the remaining allegations in Paragraph 54.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, respectfully requests that this Court enter an Order:

- i. Certifying the Class as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;**
- j. Declaring that Defendant John Doe Vendor's actions, as set forth herein, violate BIPA;**
- k. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant John Doe Vendor to comply with BIPA;**
- l. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(2);**
- m. Awarding statutory damages of \$1,000 for each negligent violation of BIPA, pursuant to 740 ILCS 14/20(1);**
- n. Awarding reasonable attorneys' fees, costs, and other litigation expenses pursuant to 740 ILCS 14/20(3);**

- o. **Awarding pre- and post-judgment interest, as allowable by law; and**
- p. **Awarding such further and other relief as the Court deems just and equitable.**

ANSWER: AptarGroup denies that it has engaged in any wrongdoing, denies that it has violated BIPA, denies that this case is suitable for class treatment, denies that Plaintiff is similarly situated to other unnamed individuals, and denies that Plaintiff is entitled to any relief. AptarGroup denies any remaining allegations in this PRAYER FOR RELIEF.

COUNT III

Violation of the Illinois Biometric Information Privacy Act (Injunctive Relief)

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

ANSWER: AptarGroup incorporates the foregoing responses as if fully set forth herein.

56. The Act provides for injunctive relief. 740 ILCS § 14/20(4).

ANSWER: AptarGroup admits that BIPA provides for injunctive relief.

57. Plaintiff and class members are entitled to an order requiring Defendants to make disclosures consistent with the Act and enjoining further unlawful conduct.

ANSWER: AptarGroup denies the allegations in Paragraph 57.

58. Plaintiff seeks an order requiring Defendants to publicly disclose a written policy establishing the specific purpose and length of term for which class members' biometric data has been collected, stored, and used. Additionally, Plaintiff seeks a disclosure from Defendant relative to its policy of permanently destroying class members' biometric data. 740 ILCS § 14/15(a).

ANSWER: AptarGroup admits that Plaintiff seeks relief as stated in Paragraph 58, but denies the remaining allegations in Paragraph 58.

59. Plaintiff seeks an order requiring Defendants to disclose whether Defendant retained their or any other class members' biometrics, and, if so, when and how such biometrics were permanently destroyed.

ANSWER: AptarGroup admits that Plaintiff seeks relief as stated in Paragraph 59 but denies the remaining allegations in Paragraph 59.

60. Plaintiff seeks an order requiring Defendants to disclose to whom it has disseminated, sold, or transferred Plaintiffs and class members' biometric data.

ANSWER: AptarGroup admits that Plaintiff seeks relief as stated in Paragraph 60 but denies the remaining allegations in Paragraph 60.

61. Plaintiff seeks an order requiring Defendants to disclose the standard of care that it employed to store, transmit, and protect class members biometrics.

ANSWER: AptarGroup admits that Plaintiff seeks relief as stated in Paragraph 61 but denies the remaining allegations in Paragraph 61.

62. Plaintiff seeks an order enjoining Defendants from future violations of the Act.

ANSWER: AptarGroup admits that Plaintiff seeks relief as stated in Paragraph 62 but denies any remaining allegations in Paragraph 62.

63. Plaintiff and class members do not know what Defendants have done (or intends to do) with their biometric data. Injunctive relief is necessary to afford Plaintiff and class members the safety and peace of mind envisioned by the passage of the Act.

ANSWER: AptarGroup denies the allegations in Paragraph 63.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, respectfully requests that this Court enter an Order:

- a. **Certifying this case as a class action, naming Plaintiff as class representatives and their counsel as class counsel;**
- b. **Declaring that Defendants have violated the Illinois Biometric Information Privacy Act, and enter a judgment in favor of Plaintiff and the class;**
- c. **Awarding injunctive and equitable relief as necessary to protect the interests of the Plaintiff and the class;**
- d. **Awarding reasonable attorneys' fees and costs of this action;**

- e. **Awarding such other general and equitable relief as this Court deems equitable and just.**

ANSWER: AptarGroup denies that it has engaged in any wrongdoing, denies that it has violated BIPA, denies that this case is suitable for class treatment, denies that Plaintiff is similarly situated to other unnamed individuals, and denies that Plaintiff is entitled to any relief. AptarGroup denies any remaining allegations in this PRAYER FOR RELIEF.

DEFENSES

Below are AptarGroup's defenses. By setting forth these defenses, AptarGroup does not assume any burden of proof as to any fact issue or other element of any cause of action or defense that properly belongs to Plaintiff. AptarGroup reserves the right to amend or supplement its defenses. In asserting defenses as to putative class members' claims, AptarGroup in no way concedes any class may properly be certified and reserves its rights to oppose certification of any class.

First Defense (Statute of Limitations)

Plaintiff's claims and the putative class members' claims are barred to the extent that they arose outside the applicable statutes of limitations. Plaintiff and the putative class cannot seek recovery for alleged violations that took place prior to the applicable statute of limitations, which is five years for the claims in this case.

Second Defense (AptarGroup Not Liable for Acts of Third Parties)

1. To the extent that Plaintiff and the putative class suffered any damages, such resulted, in whole or in part, from their own conduct and/or the conduct of third parties—namely, John Doe Vendor as referred to in this Complaint.

2. AptarGroup is not jointly and severally liable for the actions of third parties, including John Doe Vendor as referred to in this Complaint, whether through operation of *respondeat superior*, the law of agency, alter ego, common law joint and several liability, or any other theory of liability.

3. John Doe Vendor as referred to in this Complaint is not an agent or alter ego of AptarGroup.

4. To the extent Plaintiff alleges that AptarGroup is liable for the acts of John Doe Vendor as referred to in this Complaint regarding compliance with BIPA, Plaintiff's claims are barred.

**Third Defense
(Substantial Compliance)**

Plaintiff's and the putative class members' claims are barred because AptarGroup substantially complied with BIPA.

**Fourth Defense
(No Negligent, Intentional, or Reckless Conduct)**

Plaintiff's claims are barred in whole or in part by AptarGroup's good faith, and the absence of negligent, intentional, or reckless conduct. To the extent that BIPA applies to AptarGroup's conduct, AptarGroup is not liable because it relied in good faith upon a reasonable interpretation of BIPA's statutory language and any alleged violation was not negligent, intentional, or reckless.

**Fifth Defense
(Consent)**

To the extent Plaintiff alleges that AptarGroup is liable because Plaintiff's and/or putative class members' biometric information was collected without their consent, such claims are barred because Plaintiff and/or putative class members voluntarily consented (either implicitly or

expressly) to the collection of such information. Plaintiff voluntarily consented to submitting finger scans because she did so under circumstances under which any reasonable person should have known that her biometric data was being collected.

**Sixth Defense
(No Attorneys' Fees)**

1. Any request by Plaintiff or the putative class for attorneys' fees is contrary to public policy, and Plaintiff and/or the putative class cannot prove they are entitled to attorneys' fees for purported violations of BIPA.

2. Plaintiff and the putative class can recover attorneys' fees under BIPA only if they are the "prevailing party." *See* 740 ILCS 14/20.

3. Because Plaintiff's claims are unfounded, Plaintiff is not the "prevailing party" under BIPA and therefore is not entitled to attorneys' fees.

**Seventh Defense
(No Reasonable Estimate of Actual Damages)**

The claims of Plaintiff and the putative class are barred because the recovery requested would not be a reasonable estimate of any actual damages, but instead would amount to a disparate penalty, akin to punitive damages for strict liability, given that Plaintiff and the putative class members have not suffered any injury or incurred any harm to warrant such relief.

**Eighth Defense
(Failure to Mitigate Damages)**

Plaintiff and the putative class members have failed to mitigate their damages, if any, and any recovery should be reduced or denied accordingly. Plaintiff and the putative class members did not attempt to object to the conduct alleged in the Complaint, nor to use an alternative timekeeping method.

**Ninth Defense
(Adequate Remedy at Law)**

To the extent the Complaint seeks equitable relief against AptarGroup, such claims are barred because Plaintiff has adequate remedies at law. Specifically, the Complaint alleged that Plaintiff and the putative class are entitled to damages for alleged violations of BIPA, which will result in monetary recovery if any such alleged violations are proven.

**Tenth Defense
(Unconstitutional)**

Any award of statutory or liquidated damages to Plaintiff, who does not allege any actual damages, or any member of the putative class who likewise does not claim any actual damages, would constitute a grossly excessive penalty and would therefore violate the AptarGroup's rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, and comparable provisions of the Illinois Constitution. BIPA's substantive requirements under 740 ILCS 14/15 and the statutory or liquidated damages provisions under 740 ILCS 14/20 are also unconstitutionally vague and therefore void under the Fourteenth Amendment and comparable provisions of the Illinois Constitution, including because they do not provide adequate notice of what the statute requires, the conduct the statute prohibits, or potential damages, and they also vest the reviewing court with undue discretion to arbitrarily assess liability and fashion damages awards. In addition, any finding of liability under 740 ILCS 14/15(a), (b) or (d), or award of damages for such violation, under the circumstances of this case, would violate AptarGroup's rights against compelled speech under the First Amendment to the United States Constitution and comparable provisions of the Illinois Constitution.

**Eleventh Defense
(Estoppel, Waiver, Laches)**

The claims of Plaintiff and the putative class are barred by estoppel, waiver, laches, unclean hands, and/or other equitable defenses because Plaintiff and putative class members voluntarily participated in the conduct alleged in the Complaint and never objected to the conduct alleged in the Complaint before filing this lawsuit. For instance, Plaintiff knowingly and voluntarily chose to accept the benefits and costs of participating in the finger scan based timekeeping system alleged in the Complaint.

**Twelfth Defense
(No Biometric Information)**

Any information collected from Plaintiff and the putative class does not constitute “biometric information” or “biometric identifiers” under BIPA. Upon information and belief, AptarGroup does not store any “biometric information” or “biometric identifiers”.

**Thirteenth Defense
(Assumption of the Risk)**

The claims of Plaintiff and the putative class are barred by the doctrine of primary assumption of the risk. Specifically, Plaintiff knowingly assumed the risk inherent in participating in a timekeeping program that used finger scans to authenticate employees—that is, that cloud computing would be used to store her data.

**Fourteenth Defense
(Lack of Injury)**

Plaintiff’s claims and the putative class members’ claims fail, in whole or in part, because they have not sustained any cognizable injury or damages. Plaintiff does not allege any injury beyond a technical statutory violation.

**Fifteenth Defense
(Unjust Enrichment)**

Plaintiff's claims and the putative class members' claims are barred, in whole or in part, because any recovery from AptarGroup would result in Plaintiff being unjustly enriched. Specifically, Plaintiff has already recovered for her alleged injuries in settlements with other defendants for the same underlying claims.

**Sixteenth Defense
(Preemption)**

Plaintiff's claims and the putative class members' claims are preempted, in whole or in part, by federal law, including the Stored Communications Act ("SCA"), 18 U.S.C. §§ 2701 et seq.

PRAYER

WHEREFORE, having answered the Complaint, AptarGroup respectfully requests:

1. That Plaintiff take nothing for each and every claim for relief averred in the Complaint;
2. That judgment on the Complaint, and each and every claim for relief therein, be entered in favor of AptarGroup and against Plaintiff; and
3. For such other and further relief as the Court deems just and proper.

Dated: November 9, 2023

Respectfully submitted,

BY: /s/ Elizabeth B. Herrington
Elizabeth B. Herrington (ARDC# 6244547)
Monica C. Pedroza (ARDC # 6325799)
MORGAN, LEWIS & BOCKIUS LLP
110 N. Wacker Drive, Suite 2800
Chicago, IL 60606
(312) 324-1445 Telephone
(312) 324-1001 Facsimile
beth.herrington@morganlewis.com
monica.pedroza@morganlewis.com

Counsel for Defendant AptarGroup, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2023, I caused a true and correct copy of the foregoing **Answer and Affirmative Defenses** to be served on the below Counsel of Record via electronic mail:

Mark Hammervold
HAMMERVOLD LAW, LLC
IL Bar No. 6320744
155 S. Lawndale Ave.
Elmhurst, IL 60126
(405) 509-0372
mark@hammervoldlaw.com

/s/ Elizabeth B. Herrington
Elizabeth B. Herrington