

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

MARENYA MONTGOMERY,	)	
individually and on behalf of all others	)	
similarly situated,	)	
	)	Hon. Michael M. Mihm
Plaintiff,	)	
	)	Case No. 26-cv-01154
v.	)	
	)	
VAYAN GROUP, LLC,	)	
	)	
Defendant.	)	

**VAYAN GROUP, LLC’S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S CLASS ACTION COMPLAINT**

Vayan Group, LLC (“Vayan”), by and through its undersigned attorneys, for its Answer and Affirmative Defenses to Plaintiff’s Class Action Complaint, states as follows:

Nature of the Case

1. This is a class action for damages arising from Defendant's violations of BIPA. Defendant has violated BIPA by illegally collecting and disseminating Plaintiff’s biometric identifiers and biometric information (“biometrics”) without informed written consent, and is understood to have done the same to countless other similarly situated individuals.

ANSWER: Defendant admits that Plaintiff purports to bring this as a class action based on alleged violations of BIPA. Defendant denies the remaining allegations contained in Paragraph 1.

2. The Illinois legislature has recognized 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 has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric facilitated transactions.” *Id.*

ANSWER: Defendant admits that Plaintiff purports to state portions of 740 ILCS 14/5(c).

To the extent that the partial quotations contained in Paragraph 2 are not stated accurately, Defendant denies them.

3. In response to these concerns, the legislature enacted BIPA, which provides that a private entity may not obtain or possess a person's biometrics unless it: (1) informs that person in writing that biometrics will be collected or stored; (2) informs that person in writing of the specific purpose and length of term for which such biometrics are being collected, stored and used; (3) receives a written release from the person for the collection of his or her biometrics; and (4) publishes publicly available written retention schedules and guidelines for permanently destroying the biometrics it collects or stores. Furthermore, BIPA prohibits private entities from profiting in any way from a person's biometrics.

ANSWER: Defendant admits the Illinois legislature enacted BIPA. Defendant denies the allegations contained in Paragraph 3 to the extent they are inconsistent with BIPA.

4. Defendant provides quality inspection and manufacturing support services via technology and employee staffing for large manufacturers, especially automotive companies.

ANSWER: Defendant admits that it is a leading provider of technology-driven quality assurance, inspection, rework, and engineering support services for the manufacturing industry, specializing in the automotive sector.

5. To help make employee time and attendance tracking more accurate, Defendant requires its employees to use its biometric-based time clocks, which use an employee's biometrics, such as fingerprints, palm prints, and/or face scans, to punch in and out of work, instead of key fobs, identification numbers, or cards (the "Device":).

ANSWER: Defendant admits that it uses biometric-based time clocks, but denies the remaining allegations contained in Paragraph 5.

6. Unlike ID badges or timecards, which can be changed or replaced if stolen or compromised, fingerprints, palm prints, and face scans are unique, permanent biometric identifiers associated with each employee. This exposes employees who are required to use Defendant's Devices as a condition of their employment to serious and irreversible privacy risks.

ANSWER: Defendant denies the allegations contained in Paragraph 6.

7. Recognizing the need to protect its citizens from situations like these, Illinois enacted BIPA specifically to regulate companies that collect and store Illinois citizens' biometrics, such as fingerprints.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of what “situations like these” refers to or why specifically BIPA was enacted, and to the extent a response is required, denies the allegations contained in Paragraph 7.

8. Notwithstanding the clear and unequivocal requirements of BIPA, Defendant disregards the statutorily protected privacy rights of Illinois citizens and unlawfully collects, stores, disseminates, and uses their biometric information and biometric identifiers in violation of BIPA.

ANSWER: Defendant denies the allegations contained in Paragraph 8.

9. Specifically, Defendant violated and continues to violate BIPA because it did not and continues not to:

- a) Properly inform Plaintiff and others similarly situated in writing of the specific purpose and length of time for which their fingerprints were being collected, stored, disseminated and used, as required by BIPA; and
- b) Receive a written release from Plaintiff and others similarly situated to collect, store, disseminate or otherwise use their fingerprints, as required by BIPA.

ANSWER: Defendant denies the allegations contained in Paragraph 9, inclusive of subparts (a) and (b).

10. Plaintiff brings this action on behalf of herself and all others similarly situated to recover the statutory damages and attorneys’ fees and costs that BIPA authorizes for violations.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10, and to the extent a response is required, denies same. Defendant denies that Plaintiff is entitled to any damages.

Parties

11. At all relevant times, Plaintiff has been a resident and citizen of the State of Illinois.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11, and to the extent a response is required, denies same.

12. Defendant Vayan Group, LLC is a Delaware limited liability company that is currently registered to do business in Illinois, and has headquarters in Michigan.

ANSWER: Defendant admits the allegations contained in Paragraph 12.

13. Defendant Vayan Group, LLC is a limited liability company and qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

ANSWER: Defendant admits the allegations contained in Paragraph 13.

Jurisdiction and Venue

14. This Court has personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant is doing business within this State, transacts business within this State, and committed tortious acts within this State.

ANSWER: Defendant admits that personal jurisdiction is proper before the court because it is doing business in Illinois and transacts business in Illinois. Defendant denies that it engaged in tortious conduct within the State.

15. Venue is proper in this County under 735 ILCS 5/2-101, because Defendant conducted business in this County and because the transactions out of which this cause of action arises occurred in this County, as Plaintiff provided her biometrics to Defendant in this County.

ANSWER: Defendant admits that venue is proper. Defendant denies the remaining allegations contained in Paragraph 15.

Factual Allegations

I. Illinois’ Biometric Information Privacy Act

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

ANSWER: Defendant admits that Plaintiff purports to cite a portion of 740 ILCS 14/5(b). Defendant denies the allegation to the extent that it is inconsistent with BIPA. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegation contained in Paragraph 16, and to the extent a response is required, denies same.

17. In late 2007, a biometrics company called Pay By Touch, which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions-filed for bankruptcy. That bankruptcy was alarming to the Illinois Legislature because suddenly there was a serious risk that millions of fingerprint records, which are unique biometric identifiers and can be linked to people's sensitive financial and personal data, could now be sold, distributed, or otherwise shared through the bankruptcy proceedings without adequate protections for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who had used that company's biometric scanners were completely unaware that the scanners were not actually transmitting data to the retailer who deployed the scanner, but rather to the now-bankrupt company, and that their unique biometric identifiers could now be sold to unknown third parties.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17, and to the extent a response is required, denies same.

18. In 2008, Illinois enacted BIPAdue 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. To protect this highly sensitive personal information, BIPA imposes several requirements on companies relating to biometrics.

ANSWER: Defendant admits that Illinois enacted BIPA. Defendant denies the allegations to the extent they are inconstant with BIPA.

19. BIPA is an informed consent statute, and under BIPA, before obtaining an individual's biometric identifiers or biometric, information, a private entity must comply with the statute's notice and consent provisions. Specifically, BIPA makes it unlawful for a private entity to “collect, capture, purchase, receive through trade, or otherwise obtain a person's or a consumer's biometric identifiers and/or biometric information, unless it first:

- (1) informs the subject ... in writing that a biometric identifier or biometric information is being collected or stored;
- (2) informs the subject ... in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and
- (3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.”

740 ILCS 14/15(b).

ANSWER: Defendant admits that BIPA is an Illinois statute codified at 740 ILCS 14/1. Defendant denies the allegations contained in Paragraph 19 to the extent they are inconsistent with BIPA.

20. Biometric identifiers include retina and iris scans, voiceprints, scans of hand and face geometry, and, most importantly here, fingerprints. *See* 740 ILCS 14/10. Biometric information is separately defined to include any information based on an individual's biometric identifier that is used to identify an individual. *See id.*

ANSWER: Defendant admits that BIPA is an Illinois statute that is codified at 740 ILCS 14/1. Defendant denies the allegations contained in Paragraph 20 to the extent they are inconsistent with BIPA.

21. BIPA also establishes standards for companies' handling of biometric identifiers and biometric information. *See* 740 ILCS 14/15(c)-(d). For instance, BIPA requires companies to develop and comply with a written policy-made available to the public-establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting such identifiers or information has been satisfied or within three years of the individual's last interaction with the company, whichever occurs first. 740 ILCS 14/15(a).

ANSWER: Defendant admits that BIPA is an Illinois statute codified at 740 ILCS 14/1. Defendant denies the allegations contained in Paragraph 21 to the extent they are inconsistent with BIPA.

22. Ultimately, BIPA is simply an informed consent statute. Its narrowly tailored provisions place no absolute bar on the collection, sending, transmitting or communicating of biometric data. For example, BIPA does not limit what kinds of biometric data may be collected, sent, transmitted, or stored. Nor does BIPA limit to whom biometric data may be sent or transmitted, or how it is to be stored. BIPA simply mandates that entities wishing to engage in that conduct must make proper disclosures and implement certain reasonable safeguards.

ANSWER: Defendant admits that BIPA is an Illinois statute codified at 740 ILCS 14/1. Defendant denies the allegations contained in Paragraph 22 to the extent they are inconsistent with BIPA

23. As described throughout this Complaint, Defendant violated BIPA Section 15(a) by failing to provide a publicly-available written policy regarding its schedule and guidelines for retaining and permanently destroying biometrics, Defendant also violated all three prongs of BIPA Section 15(b) by collecting biometrics without informed written consent.

ANSWER: Defendant denies the allegations contained in Paragraph 23.

II. Facts Specific to Plaintiff

24. Plaintiff began working for ATCO Industries, LLC (“ATCO”) in or around August 2022 on a project in Normal, Illinois.

ANSWER: Defendant admits that Plaintiff performed work for ATCO in Normal, Illinois between October 20, 2022 and February 16, 2026.

25. During Plaintiff’s employment with ATCO, the company required Plaintiff and other employees to scan their fingerprints using a timekeeping device when they began work and when they ended work each day. Fingerprints were used to track time and attendance.

ANSWER: Defendant denies the allegations contained in Paragraph 25.

26. When Plaintiff first started working for ATCO, employees signed in by hand on a timesheet. Later, ATCO introduced the fingerprint scanner and told employees that they would lose their job if they did not use the device to clock in and out.

ANSWER: Defendant denies the allegations contained in Paragraph 26.

27. Fingerprints are classified as biometric information and/or biometric identifiers pursuant to BIPA. The conversion of fingerprints into mathematical algorithms is similarly classified as biometric information subject to BIPA.

ANSWER: Defendant states that Paragraph 27 contains a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 27.

28. Each time Plaintiff scanned her fingerprint using the ATCO device, ATCO stored Plaintiff’s biometric information and/or biometric identifiers in its employee database.

ANSWER: Defendant denies the allegations contained in Paragraph 28.

29. Plaintiff was never informed by ATCO of the specific purposes or length of time for which her biometric information and/or identifiers were being collected, stored, or used.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 29, and to the extent a response is required, denies same.

30. Plaintiff was never informed by ATCO of any biometric data retention policy, nor whether her biometric information and/or identifiers would ever be permanently deleted.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 30, and to the extent a response is required, denies same.

31. Plaintiff was never provided with, nor signed, a written release permitting ATCO to collect, store, use, or disseminate her biometric information and/or identifiers.

ANSWER: Defendant admits that Plaintiff never signed a written release.

32. Plaintiff has continuously and repeatedly been exposed to the risks and harmful conditions created by ATCO's violations of BIPA.

ANSWER: Defendant denies the allegations contained in Paragraph 32.

33. No amount of time or money can compensate Plaintiff if her biometric information and/or identifiers are compromised by the lax procedures by which ATCO captured, stored, used, and disseminated her and other similarly situated individuals' biometrics. Moreover, Plaintiff would not have provided her biometric information and/or identifiers if she had known that it would be retained for an indefinite period without written consent.

ANSWER: Defendant denies the allegations contained in Paragraph 33.

34. A showing of actual damages is not necessary to state a claim under BIPA. Nonetheless, Plaintiff has been aggrieved because she suffered an injury-in-fact based on ATCO's violations of her legal rights. ATCO intentionally interfered with Plaintiff's right to control her own sensitive biometric information and/or identifiers. Additionally, Plaintiff suffered an invasion of a legally protected interest when ATCO secured her personal and private biometric information and/or identifiers at a time when it had no right to do so, a gross invasion of her right to privacy.

ANSWER: Defendant admits that actual damages are not required to state a claim under BIPA. Defendant denies the remaining allegations contained in Paragraph 34.

35. In or around January 2024, ATCO rebranded and began operating as Vayan Group, LLC ("Defendant" or "Vayan"). Upon information and belief, Vayan is the successor to ATCO and continues the same business operations, employees, management, services, and customer relationships previously conducted under the ATCO name.

ANSWER: Defendant admits the allegations contained in Paragraph 35.

36. Upon information and belief, Defendant is a mere continuation of ATCO and is therefore responsible for the acts and omissions of ATCO, including the collection, storage, and use of Plaintiff's biometric identifiers and biometric information.

ANSWER: Defendant admits that it assumed ATCO's liabilities. Defendant denies the remaining allegations contained in Paragraph 36.

37. Upon information and belief, Defendant maintains possession, custody, and control over biometric identifiers and biometric information collected from Plaintiff and other employees while operating under the ATCO name.

ANSWER: Defendant denies the allegations contained in Paragraph 37.

38. Plaintiff has incurred actual and ongoing harm in the form of monetary damages for the value of the collection and retention of her biometric information, in the form of monetary damages by not obtaining additional compensation as a result of being denied access to material information about ATCO's policies and practices, in the form of unauthorized disclosure of her confidential biometric information and identifiers to third parties, in the form of interference with her right to control her biometric data, and in the form of continuous exposure to substantial and irreversible loss of privacy.

ANSWER: Defendant denies the allegations contained in Paragraph 38.

39. As Plaintiff is not required to prove actual damages in order to state a claim under BIPA, she seeks statutory damages under BIPA as compensation for the injuries caused by Defendant, in addition to attorneys' fees and costs.

ANSWER: Defendant admits that Plaintiff need not prove actual damages to state a BIPA claim, but denies that it caused Plaintiff any injuries and denies the remaining allegations contained in Paragraph 39.

40. Defendant was aware of BIPA's requirements.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation contained in Paragraph 40 because the requirements of which Defendant is alleged to have been aware are not identified, and to the extent a response is required, denies same.

41. Accordingly, Defendant's conduct amounts to reckless, intentional, and knowing violations of BIPA.

ANSWER: Defendant denies the allegations contained in Paragraph 41.

42. By way of the foregoing actions, Defendant disregarded Plaintiff's and Illinois employees' legal rights in violation of BIPA.

ANSWER: Defendant denies the allegations contained in Paragraph 42.

43. The “Upon information and belief, Defendant has never sought or obtained written consent from Plaintiff to collect, store, or use her biometric identifiers and information, either as part of the legacy ATCO data or as part of any current policies under the Vayan name. Defendant continues to possess, store, and control Plaintiff’s biometric identifiers without her consent.”

ANSWER: Defendant denies the allegations contained in Paragraph 43.

III. Class Action Allegations

44. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to 735 ILCS 5/2-801.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation contained in Paragraph 44, and to the extent a response is required, denies same.

45. Subject to confirmation, clarification and/or modification based on discovery to be conducted in this action, the class that Plaintiff seeks to represent is defined as follows:

All persons, within the applicable statute of limitations, who had their biometric information or biometric identifiers collected, captured, received, otherwise obtained, or disclosed by ATCO and/or Defendant in Illinois, without their written release.

(the “Class”.)

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation contained in Paragraph 45, and to the extent a response is required, denies same.

46. Excluded from the Class are: (1) Defendant, any entity in which Defendant has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) the Judge to whom this case is assigned and any member of the Judge's staff or immediate family; and (3) Class counsel.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation contained in Paragraph 46, and to the extent a response is required, denies same.

47. The precise number of Class members is unknown to Plaintiff, but likely includes hundreds of individuals due to the size of ATCO and Defendant's projects. The true number of Class members is known by Defendant, and potential Class members may be identified and notified of the pendency of this action by first class mail, electronic mail, and/or published notice.

ANSWER: Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation contained in Paragraph 47, and to the extent a response is required, denies same.

48. Common questions of law and fact exist as to all Class members, and will predominate over questions affecting only individual members, including but not limited to the following:

- a) whether ATCO and/or Defendant collected, captured, or otherwise obtained Plaintiff's and the Class members' biometric identifiers or information;
- b) whether ATCO and/or Defendant issued a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's and the Class members' biometric identifiers or biometric information;
- c) whether ATCO and/or Defendant complies with any BIPA written policy (if one exists);
- d) whether ATCO and/or Defendant's BIPA violations were willful or reckless; and
- e) whether Plaintiff and the Class members are entitled to damages and injunctive relief.

ANSWER: Defendant denies the allegations contained in Paragraph 48.

49. The claims asserted by Plaintiff are typical of the claims of Class members she seeks to represent. Plaintiff has the same interest and suffers from the same unlawful practices as the Class members. Upon information and belief, there are no other Class members who have an interest in individually controlling the prosecution of their individual claim, especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation for small value claims. However, if any such Class members should become known, they can "opt out" of this action pursuant to 735 ILCS 5/2-801.

ANSWER: Defendant denies the allegations contained in Paragraph 49.

50. Plaintiff will fairly and adequately represent and protect the interests of the Class members as required by 735 ILCS 5/2-801(3). Plaintiff is an adequate representative because her interests do not conflict with the interests of the Class members. Further, Plaintiff has retained counsel competent and experienced in class action litigation, and has been appointed class counsel in BIPA class actions, and Plaintiff intends to prosecute this action vigorously. Therefore, the interests of the Class members will be fairly and adequately protected.

ANSWER: Defendant denies the allegations contained in Paragraph 50.

51. A class action is an appropriate method for the fair and efficient adjudication of the controversy under 735 ILCS 5/2-801(4). In this regard, the Class members' interest in individually controlling the prosecution of separate actions is low given the magnitude, burden, and expense of individual prosecutions against large corporations such as Defendant. Further, neither Plaintiff nor her counsel are aware of any ongoing litigation concerning this controversy already begun by any of the Class members. It is desirable to concentrate this litigation in this forum to avoid burdening the courts with individual lawsuits. Individualized litigation presents a potential for inconsistent or contradictory results and also increases the delay and expense to all parties and the court system presented by the legal and factual issues of this case. By contrast, the class action procedure here will have no management difficulties. Defendant's records will easily identify the Class members. Defendant's conduct is common to all Class members; therefore, the same common documents and testimony will be used to prove Plaintiff's claims as well as the claims of the Class members. Finally, proceeding as a class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

ANSWER: Defendant denies the allegations contained in Paragraph 51.

COUNT I

Violation of 740 ILCS 14/1, *et seq.*
(On Behalf of Plaintiff and the Class)

52. Plaintiff hereby incorporates paragraphs I through 51 above by reference as if fully set forth herein.

ANSWER: Defendant incorporates its responses to Paragraphs 1 through 51 above as and for its response to Paragraph 52.

53. BIPA requires companies to obtain informed written consent from individuals before acquiring their biometric data. Specifically, BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's biometric identifiers or biometric information unless [the entity] first:

- (1) informs the subject ... in writing that a biometric identifier or biometric information is being collected or stored;
- (2) informs the subject ... in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and
- (3) receives a written release executed by the subject of the biometric identifier or biometric information ..."

740 ILCS 14/15(b).

ANSWER: Defendant admits that Plaintiff purports to state portions of 740 ILCS 14/5(b).

To the extent that the partial quotations contained in Paragraph 53 are not stated accurately, Defendant denies them.

54. BIPA also mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention (and-importantly-deletion) policy. Specifically, those companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data (*i.e.*, when the business relationship ends); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a). Unfortunately, Defendant fails to comply with these BIPA mandates, too.

ANSWER: Defendant admits that Plaintiff purports to state portions of 740 ILCS 14/5(a).

To the extent that the partial quotations contained in Paragraph 54 are not stated accurately, Defendant denies them. Defendant denies the remaining allegations contained in Paragraph 54.

55. ATCO Industries, LLC (“ATCO”), and Defendant Vayan Group, LLC (“Vayan” or “Defendant”) are each “private entities” under BIPA. *See* 740 ILCS 14/10.

ANSWER: Defendant admits the allegations contained in Paragraph 55.

56. Plaintiff and Class members had their biometric identifiers (fingerprints) and/or biometric information (conversion of fingerprints into mathematical algorithms) collected while employed by ATCO in Illinois, as described above.

ANSWER: Defendant admits that Plaintiff’s biometric information was obtained while she was employed by ATCO. Defendant denies the remaining allegations contained in Paragraph 56.

57. Upon information and belief, Vayan, as the successor and continuation of ATCO, continues to collect, capture, store, transfer, and/or use biometric identifiers and/or biometric information from employees using the same or similar Devices and systems previously operated under ATCO.

ANSWER: Defendant denies the allegations contained in Paragraph 57.

58. ATCO and/or Defendant systematically and automatically collected, used, stored, and disclosed Plaintiff’s and Class members’ biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS 14/15(b)(3).

ANSWER: Defendant denies the allegations contained in Paragraph 58.

59. Upon information and belief, ATCO and/or Defendant disclosed Plaintiff's and Class members' biometric identifiers and/or biometric information to other currently unknown third parties who hosted the biometric information in data centers.

ANSWER: Defendant denies the allegations contained in Paragraph 59.

60. ATCO and/or Defendant did not inform Plaintiff and Class members in writing that their biometric identifiers and/or biometric information was being collected, stored, used, or disseminated, nor did they inform Plaintiff and Class members in writing of the specific purpose and length of term for which the biometric identifiers and/or information were collected, stored, used, or disseminated, as required by 740 ILCS 14/15(b)(1)-(2).

ANSWER: Defendant admits that no consent form was provided to Plaintiff. Defendant denies the remaining allegations contained in Paragraph 60.

61. ATCO and/or Defendant did not provide a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as required by BIPA. See 740 ILCS 14/15(a).

ANSWER: Defendant denies the allegations contained in Paragraph 61.

62. ATCO and/or Defendant violated 740 ILCS 14/15(b)(3) by negligently, recklessly, or intentionally failing to obtain written releases from Plaintiff and Class members before collecting, using, and storing their biometric identifiers and/or biometric information.

ANSWER: Defendant denies the allegations contained in Paragraph 62.

63. By collecting, storing, and using Plaintiff's and Class members' biometric identifiers and/or biometric information as described herein, ATCO and/or Defendant violated Plaintiff's and Class members' rights to privacy in their biometric identifiers or biometric information as set forth in BIPA. See 740 ILCS 14/1 et seq.

ANSWER: Defendant denies the allegations contained in Paragraph 63.

64. On behalf of herself and the Class, Plaintiff seeks statutory damages of \$5,000 for each willful and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and reasonable attorneys' fees, costs, and expenses pursuant to 740 ILCS 14/20(3).

ANSWER: Defendant denies that Plaintiff or the Class are entitled to any damages.

ANSWER TO PRAYER FOR RELIEF

Defendant denies that Plaintiff is entitled to serve as a class representative or that she is entitled to any of the relief requested in the Complaint.

AFFIRMATIVE DEFENSES

Having answered the Complaint, Defendant states by way of affirmative defense as follows:

FIRST AFFIRMATIVE DEFENSE **(Lack of Standing to Assert Claims for Liquidated Damages)**

Plaintiff lacks standing to assert BIPA claims for liquidated damages. The provisions for liquidated damages do not eliminate the precondition that Plaintiff suffer some harm to recover such damages. Because Plaintiff only alleges a technical statutory violation and does not allege actual damages, Plaintiff cannot recover liquidated damages under BIPA because such a recovery would not be a reasonable estimate of actual damages given that Plaintiff has suffered no harm.

A plaintiff must sustain an actual injury in order to recover liquidated damages. Liquidated damages are intended to be an estimate of actual damages, and if the alleged statutory violation results in no injury at all, the only possible estimate of actual damages for violating BIPA would be zero. Allowing a claim for liquidated damages to proceed would open the floodgates to the potential for disproportionate penalties of the kind that courts generally refuse to enforce. Illinois law prevents plaintiffs from receiving statutory windfalls where they have suffered no actual injury.

SECOND AFFIRMATIVE DEFENSE **(Violation of Due Process)**

Plaintiff's claims are barred in whole or in part because an award of statutory liquidated damages would violate Vayan's rights under the Due Process Clause of the United States Constitution. Specifically, Plaintiff alleges statutory damages of \$1,000 for each alleged violation of BIPA and any such recovery is grossly excessive and disproportionate to the procedural and/or technical violation(s) of BIPA, if any, where Plaintiff has not suffered any injury or harm. Any award of statutory damages, therefore, would violate Vayan's due process rights.

THIRD AFFIRMATIVE DEFENSE
(Unenforceable Penalty)

Plaintiff's prayer for relief is barred in whole or in part because Plaintiff is not entitled to recover statutory liquidated damages under BIPA as she has suffered no injury to warrant such relief. As a result, the recovery of statutory damages would not be a reasonable estimate of actual damages. Instead, such recovery amounts to a disparate penalty and should be deemed unenforceable.

FOURTH AFFIRMATIVE DEFENSE
(Laches)

Plaintiff's claims are barred in whole or in part by the doctrine of laches as to the Defendant's alleged collection and use of her biometric identifiers and/or biometric information. Plaintiff's unreasonable delay in asserting her purported rights under BIPA has caused undue prejudice to the Defendant, who would have taken action it otherwise would not have taken had Plaintiff asserted her rights sooner.

FIFTH AFFIRMATIVE DEFENSE
(Equitable Doctrines of Estoppel, Waiver, Ratification and/or Acquiescence)

Plaintiff's claims are barred in whole or in part because Plaintiff had actual or constructive knowledge of and/or expressly or impliedly agreed to Defendant's time-keeping system to clock in and clock out for each of her shifts, and thereby should be deemed to have authorized and consented to Defendant's time-keeping system as a condition of her employment. Plaintiff's claims, therefore, are barred in whole or in part by the equitable doctrines of estoppel and/or waiver and the equitable doctrines of ratification and acquiescence based on Plaintiff's approval and participation in the conduct that forms the basis of her complaint.

SIXTH AFFIRMATIVE DEFENSE
(Good Faith and Substantial Compliance)

Plaintiff's claims are barred in whole or in part by Defendant's good faith conduct and the absence of any negligent, reckless or intentional actions or omissions in violation of BIPA. Defendant acted reasonably, reasonably relied upon third-party hardware, software and management service providers including without limitation Workeasy.team, and has substantially complied with BIPA, which predominantly acts as a consent statute, in light of Plaintiff's actual or constructive knowledge, continued use and explicit or implicit consent of the Defendant's timekeeping system. At all times material to this action, Defendant acted lawfully and in good faith and without any intent to deny Plaintiff any rights under federal, state or local law.

SEVENTH AFFIRMATIVE DEFENSE
(Plaintiff's and Putative Class Members' Claims Are Barred because
BIPA violates the Special Legislation Clause of the Illinois Constitution)

Plaintiff's and/or the putative class members' claims are barred because BIPA violates the special legislation clause of the Illinois Constitution. The Illinois Constitution provides that the "General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter of judicial determination." Ill. Const. art. IV, § 13. The purpose of the special legislation clause is to prevent arbitrary legislative classifications that discriminate in favor of a select group without a reasonable basis. When evaluating legislation under the special legislation clause, courts consider whether: (1) the statute discriminates in favor of a select group; and (2) the classification created by the statute is arbitrary. The ultimate question is whether the classifications created by the statute are reasonable because they are reasonably related to achievement of the statute's legitimate goal and the particular attribute on which the classifications are based constitutes a plausible distinction in view of the statute's legitimate goal.

Here, the classifications created by BIPA are not reasonable because the classifications are not reasonably related to the achievement of the statute's legitimate goals. Rather, the classifications are arbitrary. BIPA excludes from its requirements a "financial institution or an affiliate of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley Act of 1999 and the rules promulgated thereunder." *See* 740 ILCS § 14/25(c). BIPA also excludes from its requirements "a contractor, subcontractor, or agent of a State agency or local unit of government when working for that State agency or local unit of government." *Id.* § 14/25(e). The exclusion of financial institutions, affiliates of financial institutions, and contractors, subcontractors and agents of State and local governments is arbitrary and not reasonably related to the achievement of BIPA's legitimate goals. This Court, therefore, should find that BIPA violates the special legislation clause of the Illinois Constitution.

EIGHTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

Upon information and belief, Plaintiff and/or members of the putative class failed to mitigate their damages. Plaintiff and/or members of the putative class consented to Defendant's allegedly improper conduct and then failed to seek to learn from Defendant the status of their alleged biometric information, request that such biometric information be destroyed, or engage in any other mitigating conduct prior to filing suit. To the extent that Plaintiff and/or members of the putative class failed to mitigate their damages, any damages awarded should be limited or reduced accordingly.

RESERVATION OF RIGHTS

Defendant reserves the right to assert any additional defenses which it may discover or develop during the pendency of this action.

Dated: April 23, 2026

Respectfully submitted,

/s/ Catherine A. Miller

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and the CM/ECF system sent notification of such filing to all attorneys of record.

/s/ Catherine A. Miller