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

FRANCISCO LOPEZ and LINDA FICK,)
individually and on behalf of similarly)
situated individuals,)
)
 Plaintiffs,)
)
 v.)
)
 MULTIMEDIA SALES & MARKETING,)
INC., a Delaware corporation, and INT)
INC., a Delaware corporation,)
)
 Defendants.)

4950902

No. 2017-CH-15750

Hon. Anna M. Loftus

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Francisco Lopez and Linda Fick (collectively, “Plaintiffs”), individually and on behalf of other similarly situated individuals, bring this Second Amended Class Action Complaint against Defendant Multimedia Sales & Marketing, Inc. (“MSM”) and Defendant INT Inc. (“INT”) (collectively, “Defendants”), to stop their unlawful capture, collection, use, storage, and dissemination of individuals’ biometric identifiers and/or biometric information in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (the “BIPA”), and to obtain redress for all persons injured by their conduct. Plaintiffs allege as follows based on personal knowledge as to their own acts and experiences, and as to all other matters, upon information and belief, including an investigation conducted by their attorneys.

INTRODUCTION

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

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2. This case concerns the misuse of individuals' biometrics by Defendants, leading providers of technical, creative, and business marketing solutions to their various commercial clients. Using biometrically-enabled technology, Defendants are capturing, collecting, disseminating, or otherwise using the biometrics of Plaintiffs and other Class members, without their informed written consent as required by law, in order to track their time when they "clock-in" and "clock-out" of their work shifts.

3. BIPA provides, *inter alia*, that private entities, such as Defendants, 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) publish publicly available retention guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a).

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

5. Defendants' biometric timekeeping system works by extracting biometric information from individuals, such as fingerprints or portions thereof, and subsequently using the

same for authentication and timekeeping purposes. The system includes the dissemination of biometrics to third parties, such as data storage vendors and payroll services. The biometrics are stored and repeatedly used each time a worker “clocks in” or “out” on the job.

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.

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

8. Plaintiffs bring this action for statutory damages and other remedies as a result of Defendants’ conduct in violating their state biometric privacy rights.

9. On behalf of themselves and the proposed Class defined below, Plaintiffs seek an injunction requiring Defendants to comply with BIPA, as well as an award of statutory damages to the Class members, together with costs and reasonable attorneys’ fees.

PARTIES

10. At all relevant times, Defendant INT Inc., has been a Delaware corporation registered with and authorized by the Illinois Secretary of State to transact business in Illinois. Defendant INT conducts business throughout Illinois, including in Cook County. Defendant INT is the parent organization of Defendant MSM.

11. At all relevant times, Defendant MSM, Inc., has been a Delaware corporation registered with and authorized by the Illinois Secretary of State to transact business in Illinois. Defendant MSM conducts business throughout Illinois, including in Cook County. Defendant MSM is a subsidiary of Defendant INT.

12. At all relevant times, Plaintiff Francisco Lopez has been a resident and citizen of the state of Illinois and was employed by Defendant MSM in Illinois.

13. At all relevant times, Plaintiff Linda Fick has been a resident and citizen of the state of Illinois and was employed by Defendant INT in Illinois.

JURISDICTION AND VENUE

14. This Court may assert personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States, because Defendants are doing business within this state and because Plaintiffs' claims arise out of Defendants' respective and collective unlawful in-state actions, as Defendants captured Plaintiffs' respective biometrics in this state.

15. Venue is proper in Cook County, pursuant to 735 ILCS 5/2-101, because Defendants are doing business in Cook County and thus reside there under § 2-102, and because the transaction out of which this cause of action arises occurred in Cook County, as Defendants and/or their agents captured Plaintiffs' respective biometrics in Cook County.

FACTS SPECIFIC TO PLAINTIFF

16. Defendant INT, together with its subsidiary Defendant MSM, are commercial providers of business marketing and technology services.

17. Defendants rely on new technologies, including biometrically-enabled technologies, to track their employees while such employees are at work.

18. During the relevant time period, Plaintiffs Linda Fick and Francisco Lopez worked for Defendants INC and MSM, respectively, at Defendants' shared headquarters located in Illinois.

19. Defendants' timekeeping practice relies on biometric scanning devices which scan their workers' fingerprints to track their workers' time.

20. Plaintiffs were required to scan their fingerprints into biometric timekeeping devices in order to "clock-in" and "clock-out" of each of their respective work shifts. Plaintiffs could only verify their attendance and timeliness using biometrically-enabled technology.

21. Plaintiffs relied on Defendants to not only provide a lawful and legally compliant system, but to also disclose all material information regarding the technology and system, including all relevant retention, destruction, and dissemination policies.

22. Defendants' biometric timekeeping regime allows for and resulted in the dissemination of Plaintiffs' and other Class members' biometrics to third parties, including vendors for timekeeping, data storage, and payroll purposes.

23. Prior to taking Plaintiffs' biometrics, Defendants did not inform Plaintiffs in writing that their biometrics were being collected, stored, used, or disseminated, or publish any policy specifically about the collection, retention, use, deletion, or dissemination of biometrics.

24. Defendants did not seek, and Plaintiffs never provided, any written consent relating to the collection, use, storage, or dissemination of their biometrics.

25. Prior to taking Plaintiffs' biometrics, Defendants did not make publicly available any written policy as to their biometric retention schedule, nor did they disclose any guidelines for permanently destroying the collected biometrics.

26. Additionally, Defendants did not obtain consent from Plaintiffs for any dissemination of their biometrics to third parties.

27. To this day, Plaintiffs are unaware of the status of their biometrics obtained by Defendants. Defendants have not informed Plaintiffs whether they still retain their biometrics, and if they do, for how long they intend to retain such information without their consent.

28. BIPA vests an individual state right to biometric privacy. Defendants' deprivation of Plaintiffs' biometric privacy right constitutes the actual harm the Legislature sought to prevent.

CLASS ALLEGATIONS

29. Plaintiffs bring this action on behalf of themselves and a Class and Subclass (together, the "Class," unless otherwise noted) of similarly situated individuals pursuant to 735 ILCS § 5/2-801. The Class and Subclass are defined as follows:

Class: All individuals whose biometric identifiers and/or biometric information were captured, collected, obtained, stored, used, or disseminated by Defendant INT Inc., within the state of Illinois any time within the applicable limitations period.

Subclass: All individuals whose biometric identifiers and/or biometric information were captured, collected, obtained, stored, used, or disseminated by Defendant Multimedia Sales & Marketing, Inc., within the state of Illinois any time within the applicable limitations period

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

31. 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 Plaintiffs, the members can be easily identified through Defendants' personnel records.

32. Plaintiffs' claims are typical of the claims of the Class members they seek to represent, because the factual and legal bases of Defendants' liability to Plaintiffs and the other Class members are the same, and because Defendants' conduct has resulted in similar injuries to

Plaintiffs and to the Class. As alleged herein, Plaintiffs and the other putative Class members have all suffered damages as a result of Defendants' BIPA violations.

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

- a. Whether Defendants collect, capture, store, use, and/or disseminate the biometrics of Class members;
- b. Whether Defendants developed a publicly available written policy which establishes a retention schedule and guidelines for permanently destroying biometrics;
- c. Whether Defendants obtained a written release from Class members before capturing, collecting, or otherwise obtaining workers' biometrics;
- d. Whether Defendants provided a written disclosure to their workers that explains the specific purposes, and the length of time, for which their biometrics were being collected, stored and used before taking their biometrics;
- e. Whether Defendants' conduct violates BIPA;
- f. Whether Defendants' violations of BIPA are willful and reckless; and
- g. Whether Plaintiffs and the Class members are entitled to damages and injunctive relief.

34. 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 or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

35. Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Class they seek to represent. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiffs and their 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 Plaintiffs nor their counsel have any interest adverse to those of the other members of the Class.

36. Defendants have acted and failed to act on grounds generally applicable to the Plaintiffs 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.

COUNT I

Violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*, (on behalf of Plaintiffs and the Class and Subclass)

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

38. Defendants are private entities under BIPA.

39. BIPA requires private entities, such as Defendants, to obtain informed written consent from individuals before acquiring their 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).

40. BIPA also requires that private entities in possession of biometric identifiers and/or biometric information establish and maintain a publicly available retention 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.

41. Plaintiffs and the other Class and Subclass members have had their “biometric identifiers,” namely their fingerprints, collected, captured, or otherwise obtained by Defendants. The biometrics of Plaintiffs and the Class and Subclass members were also used to identify them, and therefore constitute “biometric information” as defined by BIPA. 740 ILCS 14/10.

42. Defendants’ practice with respect to capturing, collecting, storing, using, and disseminating biometrics fails to comply with the applicable BIPA requirements. Plaintiffs and the other Class and Subclass members have been aggrieved by Defendants’ failure to adhere to the following BIPA requirements, with each such failure constituting a separate violation of BIPA:

- a. Defendants failed to inform Plaintiffs and the members of the Class and Subclass in writing that their biometrics were being collected and stored, as required by 740 ILCS 14/15(b)(1);
- b. Defendants failed to inform Plaintiffs and the Class and Subclass members in writing of the specific purpose for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);

- c. Defendants failed to inform Plaintiffs and the Class and Subclass members in writing the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- d. Defendants failed to obtain a written release as required by 740 ILCS 14/15(b)(3);
- e. Defendants failed to provide a publicly available retention schedule detailing the length of time biometric were stored and/or guidelines for permanently destroying the biometrics they store, as required by 740 ILCS 14/15(a); and
- f. Defendants failed to obtain consent to disclose or disseminate the biometrics of Plaintiffs and the Class and Subclass members biometrics, as required by 740 ILCS 14/15(d)(1).

43. By obtaining and operating an employee timekeeping system which uses biometrics that was devoid of the privacy protections required by BIPA, Defendants profited from the biometrics of Plaintiffs and the Class and Subclass members in violation of 740 ILCS 14/15(c). Defendants knew, or were reckless in not knowing, that the biometric systems they were using would be subject to the provisions of BIPA yet wholly failed to comply with the statute.

44. By capturing, collecting, storing, using, and disseminating the biometrics of Plaintiffs and the Class and Subclass members, Defendants denied Plaintiffs and the Class and Subclass their right to statutorily-required information and violated their respective rights to biometric information privacy, as set forth in BIPA.

45. 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).

46. Defendants' violations of BIPA, as set forth herein, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendants negligently failed to comply with BIPA.

47. Accordingly, with respect to Count I, Plaintiffs, on behalf of themselves and the proposed Class and Subclass, pray for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class and Subclass, respectfully requests that this Court enter an Order:

- a. Certifying the Class and Subclass as defined above, appointing Plaintiffs as class representatives and the undersigned as class counsel;
- b. Declaring that Defendants' actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiffs and the Class and Subclass by requiring Defendants to comply with BIPA requirements for the capture, collection, storage, use, and dissemination of biometric identifiers and biometric information;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(1);
- e. Awarding statutory damages of \$1,000 for each negligent violation of BIPA, pursuant to 740 ILCS 14/20(3);
- 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.

JURY DEMAND

Plaintiffs request a trial by jury of all claims that can be so tried.

Dated: May 6, 2019

Respectfully submitted,

FRANCISCO LOPEZ and LINDA FICK,
individually and on behalf of similarly situated
individuals,

By: /s/ Jad Sheikali
One of Plaintiffs' Attorneys

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