

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
CALENDAR: 07  
PAGE 1 of 30  
CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS  
CHANCERY DIVISION  
CLERK DOROTHY BROWN

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

THOMAS DOPORCYK, individually, and on )  
behalf of all others similarly situated, )

Plaintiff, )

v. )

ROUNDY'S SUPERMARKETS, INC., )

ROUNDY'S ILLINOIS, LLC, d/b/a )

MARIANO'S, THE KROGER COMPANY, and )

KRONOS, INC., )

Defendants. )

Case No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Thomas Doporcyk, brings this Complaint ("Complaint") against Defendants Roundy's Supermarkets, Inc., Roundy's Illinois, LLC, d/b/a Mariano's Fresh Market, and The Kroger Company (collectively, "Mariano's") for terminating him after he complained about Defendants' failure to comply with federal clinical laboratory testing requirements and its practices of using unclean and potentially contaminated meters when performing glucose tests on its customers. Plaintiff Doporcyk, also brings this matter individually and on behalf of others as a class action against Mariano's and Kronos, Inc. ("Kronos") (collectively, "Defendants") to put a stop to Defendants' unlawful collection, use, storage, and disclosure of Plaintiff's and the proposed Class' sensitive biometric data. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

### NATURE OF THE ACTION

1. The Kroger Company operates over 2,000 supermarket stores located throughout the United States, including approximately 41 Mariano's stores in Illinois, including stores located in this Circuit.

2. When Mariano's hires an employee, he or she is enrolled in the Kronos employee database. Mariano's uses the employee database to monitor the time worked by each of their employees, including salaried employees.

3. While most retail establishments use conventional methods for tracking time worked (such as ID badge swipes or punch clocks), Mariano's employees are required to have their fingerprints scanned by a Kronos biometric timekeeping device.

4. Unlike ID badges or time cards, which can be changed or replaced if stolen or compromised – fingerprints are unique, permanent biometric identifiers associated with each employee. This exposes Mariano's employees to serious and irreversible privacy risks. For example, if a fingerprint database is hacked, breached, or otherwise exposed, employees have no means by which to prevent identity theft and unauthorized tracking.

5. Recognizing the need to protect its citizens from situations like these, Illinois enacted the Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.*, specifically to regulate companies that collect and store Illinois citizens' biometrics, such as fingerprints.

6. Despite this law, Mariano's disregards their employees' statutorily protected privacy rights and unlawfully collects, stores, and uses their biometric data in violation of the BIPA. Specifically, Mariano's has violated and continues to violate the BIPA because they did not and continue not to:

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 2 of 30

- a. Properly inform Plaintiff or the Class in writing of the specific purpose and length of time for which their fingerprints were being collected, stored, and used, as required by the BIPA;
- b. Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the Class's fingerprints, as required by the BIPA; and
- c. Receive a written release from Plaintiff or the members of the Class to collect, capture, or otherwise obtain their fingerprints, as required by the BIPA.

7. Additionally, and based on information and belief, Mariano's violates the BIPA by disclosing employee fingerprint data to an out-of-state third-party vendor, Kronos.

8. Like Mariano's, Kronos has violated and continues to violate the BIPA because it did not and continues not to:

- a. Properly inform Plaintiff or the Class in writing of the specific purpose and length of time for which their fingerprints were being collected, stored, and used, as required by the BIPA;
- b. Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the Class's fingerprints, as required by the BIPA; and
- c. Receive a written release from Plaintiff or the members of the Class to collect, capture, or otherwise obtain their fingerprints, as required by the BIPA.

9. On information and belief, Defendants are directly liable for, and had actual knowledge of, the BIPA violations alleged herein.

10. Accordingly, Plaintiff, individually and on behalf of the putative Class, seeks an Order: (1) declaring that Defendants' conduct violates the BIPA; (2) requiring Defendants to cease the unlawful activities discussed herein; and (3) awarding statutory damages to Plaintiff and the proposed Class.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 3 of 30

11. Plaintiff also seeks recovery for Mariano's retaliation against him in violation of the Illinois Whistleblower Act ("IWA"), 740 ILCS 174/1, *et seq.*

12. Specifically, in or about April 2015, certain Mariano's pharmacies began providing free glucose testing events for customers at their stores to promote the GE100 Bionime glucose testing meters sold in the store and to raise awareness for diabetes and hepatitis B vaccinations for patients with diabetes.

13. In order to perform clinical laboratory testing in the United States, facilities must comply with the federal Clinical Laboratory Improvement Amendments ("CLIA"), 42 C.F.R. § 493.1, *et seq.* Under CLIA, tests and test systems that meet risk, error, and complexity requirements are issued a CLIA certificate of waiver. 42 C.F.R. § 493.35.

14. Mariano's pharmacies performing glucose tests are required to have a valid CLIA waiver.

15. In or about October 2015, Plaintiff noticed that his pharmacy, store number 8532, was performing glucose tests without a CLIA waiver.

16. Plaintiff raised his concerns with Elizabeth Seybold, the manager of clinical care for Roundy's Supermarkets, Inc., and was told that George Kowalski, the Vice President of Pharmacy, did not want to spend the money to get the CLIA waivers because he did not see the return on investment.

17. Plaintiff then looked up the CLIA waiver status of other stores and discovered that store numbers 8514 through 8518 and 8530 through 8534 did not have the required CLIA waivers. Plaintiff informed a fellow pharmacist via text message at store 8514, which had been opened since 2014 and had been required to perform blood glucose tests, that they were operating without a CLIA waiver.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 4 of 30

18. On January 31, 2016, Plaintiff emailed several of his coworkers to notify them of their stores' expiring CLIA waivers.

19. The next day, on February 1, 2016, Plaintiff received an email from Ms. Seybold asking Plaintiff why he was emailing other stores about their CLIA waiver status. Plaintiff responded to Ms. Seybold via text message explaining that he was concerned, based on the prior unethical business practices by Mariano's that he had observed, that the waivers would not be renewed.

20. Approximately one hour later, Plaintiff received a call from his direct supervisor, Reem Natafji, asking why he was concerned with the other stores' CLIA wavier statuses. Plaintiff stated that he was looking out for his fellow pharmacists. Ms. Natafji scoffed at Plaintiff's explanation and stated something along the lines of "it's not like you were set up for failure".

21. Three days later, on February 4, 2016, Ms. Natafji suspended Plaintiff.

22. One week later, Defendants fired Plaintiff over the phone.

23. Upon information and belief, Plaintiff was fired in direct retaliation for raising complaints about Mariano's unethical business practices and misconduct.

24. As a result of Defendants' actions, Plaintiff has suffered lost past wages and fringe benefits, loss of future income and fringe benefits, and compensatory damages.

#### **PARTIES**

25. Plaintiff Thomas Doporcyc is a resident and citizen of the State of Illinois.

26. Defendant Roundy's Supermarkets, Inc., is a Wisconsin company that is registered to do business in Illinois. Roundy's Supermarkets, Inc., operates retail stores in Illinois, including grocery stores and supermarkets, such as Mariano's stores, in this Circuit. Upon information and belief, Roundy's Supermarkets, Inc., maintains Mariano's employee files. It is the member

manager of Roundy's Illinois, LLC, and a subsidiary that operates supermarkets for The Kroger Company.

27. Defendant Roundy's Illinois, LLC d/b/a Mariano's Fresh Market, is an Illinois limited liability company that does business in Illinois as Mariano's and operates grocery stores or supermarkets in this State.

28. Defendant The Kroger Company is an Ohio corporation registered to do business in Illinois. In December 2015, The Kroger Company purchased Roundy's Supermarkets, Inc., which continues to operate as a subsidiary of The Kroger Company.

29. Defendant Kronos, Inc., is a Massachusetts corporation registered to do business in Illinois. Kronos conducts business in Illinois by providing biometric timekeeping devices to companies throughout the state, including Mariano's.

#### JURISDICTION AND VENUE

30. This Court has jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 because Defendants conduct business transactions in Illinois, have committed tortious acts in Illinois, and are registered to conduct business in Illinois.

31. Venue is proper in Cook County because Defendants conduct business transactions in Cook County, entered into a contract with Plaintiff in Cook County, and the cause of action arose, in substantial part, in Cook County. Venue is additionally proper because Plaintiff resides in Cook County.

#### FACTUAL BACKGROUND

##### I. The Biometric Information Privacy Act.

32. In the early 2000s, major national corporations started using Chicago and other locations in Illinois to test "new applications of biometric-facilitated financial transactions,

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 6 of 30

including finger-scan technologies at grocery stores, gas stations, and school cafeterias.” 740 ILCS 14/5(c). Given its relative infancy, an overwhelming portion of the public became weary of this then-growing yet unregulated technology. *See* 740 ILCS 14/5.

33. 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, like other unique biometric identifiers, 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 fingerprint scanners were completely unaware that the scanners were not actually transmitting fingerprint 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.

34. Recognizing the “very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information,” Illinois enacted BIPA in 2008. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS 14/5.

35. BIPA is an informed consent statute which achieves its goal by making it unlawful for a company to, among other things, “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifiers or biometric information, unless it first:

- a. Informs the subject in writing that a biometric identifier or biometric information is being collected or stored;

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 7 of 30

- b. 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
- c. Receives a written release executed by the subject of the biometric identifier or biometric information.

*See* 740 ILCS 14/15(b).

36. 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. *Id.*

37. BIPA also establishes standards for how companies must handle Illinois citizens’ biometric identifiers and biometric information. *See, e.g.*, 740 ILCS 14/15(c)-(d). For example, the BIPA prohibits private entities from disclosing a person’s or customer’s biometric identifier or biometric information without first obtaining consent for that disclosures. *See* 740 ILCS 14/15(d)(1).

38. BIPA also prohibits selling, leasing, trading, or otherwise profiting from a person’s biometric identifiers or biometric information (740 ILCS 14/15(c)) and 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).

**II. Defendants Violate the Biometric Information Privacy Act.**

39. By the time BIPA passed through the Illinois Legislature in mid-2008, most retailers who had experimented using consumers’ biometric data stopped doing so.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 8 of 30



40. Unfortunately, Defendants failed to take note of the industry-wide shift in Illinois norms – and in Illinois law – governing the collection and use of biometric data. As a result, Defendants continue to collect, store, and use their employees’ biometric data in violation of the BIPA.

41. Specifically, when employees first become hired at one of Mariano’s locations, they are required to have their fingerprints scanned by the Kronos fingerprint scanner to enroll them in Defendants’ employee database.

42. Upon information and belief, Mariano’s also fails to inform their employees that they disclose employees’ fingerprint data to an out-of-state third-party vendor, Kronos; fails to inform their employees of the purposes and duration for which it collects their sensitive biometric data, and fails to obtain written releases from employees before collecting their fingerprints.

43. Nor do Defendants provide the employees with a written, publicly available policy identifying their retention schedule, nor guidelines for permanently destroying employees’ fingerprints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant, as required by the BIPA.

44. The Pay by Touch bankruptcy that catalyzed the passage of the BIPA highlights why conduct such as Defendants’ – where individuals are aware that they are providing a fingerprint but not aware of to whom or for what purposes they are doing so – is dangerous. That bankruptcy spurred Illinois citizens and legislators into realizing that it is crucial for individuals to understand when providing biometric identifiers such as a fingerprint who exactly is collecting their biometric data, where it will be transmitted and for what purposes, and for how long. Defendants disregard these obligations and instead unlawfully collect, store, and use their

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 9 of 30

employees' biometric identifiers and information, without ever receiving the individual informed written consent required by BIPA.

45. Mariano's employees are not told what might happen to their biometric data if and when their local stores go out of business or, worse, if and when each of Defendants' entire businesses folds.

46. Because Defendants neither publish a BIPA-mandated data retention policy nor discloses the purposes for their collection of biometric data, Mariano's employees have no idea whether Defendants sell, disclose, re-disclose, or otherwise disseminate their biometric data. Nor are Plaintiff and the putative Class told to whom Defendants currently disclose their biometric data, or what might happen to their biometric data in the event of a merger or a bankruptcy.

47. By and through the actions detailed above, Defendants do not only disregard the Class' privacy rights, but they also violate BIPA.

**III. Plaintiff Thomas Doporcyk's Experience.**

48. Plaintiff Thomas Doporcyk began working for Defendants in December 2013 at the Gurnee, Illinois, Mariano's as a Pharmacy Manager and was transferred to the Northbrook, Illinois, store in 2015.

49. In this role, Plaintiff reported directly to Reem Natafji, the Area Manager for Mariano's Pharmacies. Plaintiff's duties primarily consisted of filling prescriptions, ordering medicines, patient counseling, administering immunizations, performing point of care testing, such as blood glucose and cholesterol tests, inventory management, and overseeing the department financials.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 10 of 30

50. Plaintiff earned approximately \$132,000 per year in base salary during his time at Mariano's. Plaintiff also earned a bonus of approximately \$5,000 in 2015. Plaintiff was fired before receiving his 2016 bonus.

51. When Plaintiff started his employment, Mariano's enrolled him in its employee database and required that he provide them with a scan of his fingerprint on the Kronos machine.

52. Defendants subsequently stored Plaintiff's fingerprint in their database(s).

53. Each time Plaintiff arrived to and departed from one Mariano's store, he was required to scan his fingerprint when clocking in and out, despite being a salaried (as opposed to hourly) employee.

54. Plaintiff has never been informed of the specific purposes or length of time for which Defendants collected, stored, or used his fingerprints.

55. Plaintiff has never been informed of any biometric data retention policy developed by Defendants, nor has he ever been informed of whether Defendants will ever permanently delete his fingerprint data.

56. Plaintiff has never been provided with nor ever signed a written release allowing Defendants to collect or store his fingerprints.

57. Plaintiff has never been provided with nor ever signed a written release allowing Defendants to disclose his biometric data to a third party.

58. Plaintiff has continuously and repeatedly been exposed to the risks and harmful conditions created by Defendants' willful violations of the BIPA alleged herein.

59. As a result of Defendants' conduct, Plaintiff has suffered a gross invasion of privacy.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 11 of 30

**IV. The Illinois Whistleblower Act.**

60. Under the IWA, employees are afforded protection for disclosing to authorities or refusing to participate in activities that violate state or federal laws, rules or regulations. 740 ILCS 174/15-20.

61. The IWA prohibits employers from retaliating against employees who disclose reasonably perceived illegalities to federal, state, or administrative authorities. 740 ILCS 174/15.

62. The IWA also prohibits employers from retaliating against employees who refuse to participate in any activity that would result in a violation of a state or federal law, rule, or regulation. 740 ILCS 174/20.

**V. Defendants Violate the Illinois Whistleblower**

63. In or about April 2015, certain Mariano's pharmacies began providing free glucose tests for customers in their stores in order to promote GE100 Bionime glucose testing meters and to raise awareness for diabetes and hepatitis B vaccinations for patients with diabetes.

64. In order to perform clinical laboratory testing in the United States, facilities must comply with the federal Clinical Laboratory Improvement Amendments ("CLIA"), 42 C.F.R. § 493.1, *et seq.* Under CLIA, certain tests and test systems that meet risk, error, and complexity requirements are issued a CLIA certificate of waiver. 42 C.F.R. § 493.35.

65. Mariano's pharmacies performing glucose tests are required to have a valid CLIA waiver.

66. Plaintiff immediately noticed some troubling details regarding glucose testing at Mariano's pharmacies. Although glucose testing meters draw blood to perform the test, the meters were not disinfected between customer tests, making it possible for bloodborne pathogens to spread between customers.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 12 of 30

67. According to the Centers for Disease Control and the glucose testing meters' manufacturing protocol, the meters should be disinfected between uses if used with multiple patients.

68. Plaintiff immediately raised these concerns with his direct supervisor, Reem Natafji, and Elizabeth Seybold, the manager of clinical care for Roundy's Supermarkets, Inc., via email.

69. In response, Ms. Natafji told Plaintiff that was old technology, and accused Plaintiff of not wanting to do the testing. Ms. Natafji asked Plaintiff if there was a problem doing the testing. Plaintiff stated no, he just wanted to do it right

70. Plaintiff subsequently refused to perform glucose tests using the contaminated meters until May 2015, when he was able to order disinfectant wipes that could be used to clean the meters between uses.

71. In or about October 2015, Plaintiff noticed that his Mariano's pharmacy was performing glucose tests without a CLIA waiver.

72. Plaintiff raised his concerns with Elizabeth Seybold, the manager of clinical care for Roundy's Supermarkets, Inc., who told him that George Kowalski, the Vice President of Pharmacy, did not want to spend the money to get CLIA waivers because he did not see the return on investment.

73. Plaintiff then looked up the CLIA waiver status of other stores and discovered that store numbers 8514 through 8518 and 8530 through 8534 did not have the waiver. Plaintiff informed store 8514, which had been opened since 2014 and had been required to perform blood glucose tests, that they were operating without a CLIA waiver.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 13 of 30

74. On the morning of January 31, 2016, Plaintiff emailed several of his coworkers to notify them of their stores' expiring CLIA waivers.

75. On February 1, 2016, Plaintiff received an email from Elizabeth Seybold rebuking him for informing his coworkers of their stores' expiring CLIA waivers.

76. Less than one hour after the email from Ms. Seybold, Plaintiff received a phone call from Reem Natafji reprimanding him for informing his coworkers of their stores' expiring CLIA waivers.

77. Three days later, on February 4, 2016, Reem Natafji abruptly suspended Plaintiff.

78. One week later, Defendants fired Plaintiff over the phone.

79. Prior to firing, Plaintiff had never received any warnings, disciplinary actions, write-ups, or any other form of discipline or poor performance review. Specifically, Plaintiff never received any documentation of any alleged violations of Defendants' code of conduct, employee handbook, and/or corporate standards.

80. As a result of Defendants' actions, Plaintiff has suffered lost past wages and fringe benefits, loss of future income and fringe benefits, and compensatory damages.

#### CLASS ALLEGATIONS

81. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Named Plaintiff brings claims on his own behalf and as a representative of all other similarly situated individuals pursuant to the BIPA, 740 ILCS 14/1, *et seq.*, to recover statutory penalties, prejudgment interest, attorneys' fees and costs, and other damages owed.

82. As discussed *supra*, Section 14/15(b) of BIPA prohibits a company from, among other things, collecting, capturing, purchasing, receiving through trade, or otherwise obtaining a person's or a customer's biometric identifiers or biometric information, unless it first (1) informs

the individual in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the individual in writing of the specific purpose and length of time 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.

83. Plaintiff seeks class certification under Rule 23 of the Federal Rules of Civil Procedure for the following class of similarly situated employees under the BIPA:

All in individuals working for Kroger stores in the State of Illinois who had their fingerprints collected, captured, received, or otherwise obtained or disclosed by one or more of the Defendants during the applicable statutory period.

84. This action is properly maintained as a class action under Rules 23(a) and (b)

because:

- A. The class is so numerous that joinder of all members is impracticable;
- B. There are questions of law or fact that are common to the class;
- C. The claims of the Named Plaintiff are typical of the claims of the class; and,
- D. The Named Plaintiff will fairly and adequately protect the interests of the class.

**Numerosity**

85. The total number of putative class members exceeds fifty (50) individuals. The exact number of class members may easily be determined from Defendant's payroll records.

**Commonality**

86. There is a well-defined commonality of interest in the substantial questions of law and fact concerning and affecting the Class in that Named Plaintiff and all members of the Class have been harmed by Defendant's failure to comply with the BIPA. The common questions of law

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 15 of 30

and fact include, but not limited to the following:

- A. Whether Defendants collected, captured or otherwise obtained Plaintiff's and the Class's biometric identifiers or biometric information;
- B. Whether Defendants properly informed Plaintiff and the Class of its purposes for collecting, using, and storing their biometric identifiers or biometric information;
- C. Whether Defendants obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's and the Class's biometric identifiers or biometric information;
- D. Whether Defendants have disclosed or re-disclosed Plaintiff's and the Class's biometric identifiers or biometric information;
- E. Whether Defendants have sold, leased, traded, or otherwise profited from Plaintiff's and the Class's biometric identifiers or biometric information;
- F. Whether Defendants developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of their last interaction, whichever occurs first;
- G. Whether Defendants comply with any such written policy (if one exists);
- H. Whether Defendants used Plaintiff's and the Class's fingerprints to identify them; and
- I. Whether Defendant's violations of the BIPA were committed negligently.

87. Plaintiff anticipates that Defendant will raise defenses that are common to the class.

**Adequacy**

88. The Named Plaintiff will fairly and adequately protect the interests of all members of the class, and there are no known conflicts of interest between Named Plaintiff and class members. Plaintiff, moreover, has retained experienced counsel that are competent in the prosecution of complex litigation and who have extensive experience acting as class counsel.



**Typicality**

89. The claims asserted by the Named Plaintiff are typical of the class members she seeks to represent. The Named Plaintiff has the same interests and suffers from the same unlawful practices as the class members.

90. Upon information and belief, there are no other class members who have an interest individually controlling the prosecution of his or her individual claims, especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against one's employer. However, if any such class member should become known, he or she can "opt out" of this action pursuant to Rule 23.

**Predominance and Superiority**

91. The common questions identified above predominate over any individual issues, which will relate solely to the quantum of relief due to individual class members. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense if these claims were brought individually. Moreover, as the damages suffered by each class member are relatively small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it difficult for individual class members to vindicate their claims.

92. On the other hand, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantially more than if claims are treated as a class action. Prosecution of separate actions by individual class members would create a risk of

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 17 of 30

inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant and/or substantially impair or impede the ability of class members to protect their interests. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to, fashion methods to efficiently manage this action as a class action.

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

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

94. BIPA requires companies to obtain informed written consent from consumers 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 or a 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 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) (emphasis added).

95. BIPA also prohibits private entities from disclosing a person’s or customer’s biometric identifier or biometric information without first obtaining consent for that disclosure. *See* 740 ILCS 14/15(d)(1).

96. 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

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 18 of 30

schedule and guidelines for permanent deletion of biometric data (at most three years after the company's last interaction with the customer); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

97. Defendants fail to comply with these BIPA mandates.

98. Defendant Roundy's Supermarkets, Inc., is registered to do business in Illinois and thus qualifies as a "public entity" under BIPA. *See* 740 ILCS 14/10.

99. Roundy's Illinois, LLC, d/b/a Mariano's Fresh Market is an Illinois limited liability company and thus qualifies as a "public entity" under BIPA. *Id.*

100. Defendant The Kroger Company is an Ohio corporation registered to do business in Illinois and thus qualifies as a "public entity" under BIPA. *Id.*

101. Defendant Kronos, Inc., is a Massachusetts corporation registered to do business in Illinois and thus qualifies as a "public entity" under BIPA. *Id.*

102. Plaintiff and the Class are individuals who had their "biometric identifiers" collected by Defendants (in the form of their fingerprints), as explained in detail in Section II, *supra*. *See* 740 ILCS 14/10.

103. Plaintiff's and the Class's biometric identifiers were used to identify them and, therefore, constitute "biometric information" as defined by BIPA. *See* 740 ILCS 14/10.

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

105. Upon information and belief, Mariano's stores systematically disclosed Plaintiff's and the Class's biometric identifiers and biometric information to an out-of-state third-party vendor, Kronos.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 19 of 30

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

107. Defendants do not provide a publicly available retention schedule or guidelines for permanently destroying its customers' biometric identifiers and biometric information as specified by the BIPA. *See* 740 ILCS 14/15(a).

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

109. On behalf of himself and the Class, Plaintiff seeks: (1) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with the BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (2) statutory damages of \$5,000 for each willful and/or reckless violation of the BIPA or, in the alternative, statutory damages of \$1,000 for each negligent violation of the BIPA pursuant to 740 ILCS 14/20(1); and (3) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

**SECOND CAUSE OF ACTION**  
**Negligence**  
**(On Behalf of Plaintiff and the Class)**

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

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 20 of 30

111. Defendants owed Plaintiff and the Class a duty of reasonable care. That duty required that Defendants exercise reasonable care in the collection and use of Plaintiff's and the Class's biometric data.

112. Additionally, Defendants owed Plaintiff and the Class a heightened duty – under which Defendants assumed a duty to act carefully and not put Plaintiff and the Class at undue risk of harm – because of the business relationship of the parties.

113. Defendants breached their duties by failing to implement reasonable procedural safeguards around the collection and use of Plaintiff's and the Class's biometric identifiers and biometric information.

114. Specifically, Defendants breached their duties by failing to properly inform Plaintiff and the Class in writing of the specific purpose or length for which their fingerprints were being collected, stored, and used.

115. Defendants also breached their duties by failing to provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the Class's fingerprint data.

116. Defendants' breach of their duties proximately caused and continues to cause an invasion of Plaintiff's and the Class's privacy.

**THIRD CAUSE OF ACTION  
Violation of the Illinois Whistleblower Act  
(On Behalf of Plaintiff, Individually)**

117. Plaintiff incorporates each of the above paragraphs as if fully set forth herein.

118. In or about April 2015, Mariano's began providing free glucose tests for customers in their stores in order to promote GE100 Bionime glucose testing meters and to raise awareness for diabetes and hepatitis B vaccinations for patients with diabetes.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 21 of 30

119. Mariano's pharmacies performing glucose tests are required to have a valid CLIA waiver.

120. Plaintiff immediately noticed that the glucose testing meters were not cleaned in between customer tests, making it possible for bloodborne pathogens to spread between customers.

121. Plaintiff immediately raised these concerns with his direct supervisor, Reem Natafji, and Elizabeth Seybold, the manager of clinical care for Roundy's Supermarkets, Inc., via email.

122. In response, Ms. Natafji told Plaintiff that was old technology, and accused Plaintiff of not wanting to do the testing. Ms. Natafji asked Plaintiff if there was a problem doing the testing. Plaintiff stated no, he just wanted to do it right

123. Plaintiff subsequently refused to perform glucose tests using the contaminated meters until May 2015, when he was able to order disinfectant wipes that could be used to clean the meters between uses.

124. In or about October 2015, Plaintiff noticed that his Mariano's pharmacy was performing glucose tests without a CLIA waiver.

125. Plaintiff raised his concerns with Elizabeth Seybold, who told him that George Kowalski, the Vice President of Pharmacy, did not want to spend the money to get CLIA waivers because he did not see the return on investment.

126. Plaintiff then looked up the CLIA waiver status of other stores and discovered that store numbers 8514 through 8518 and 8530 through 8534 did not have the waiver. Plaintiff informed store 8514, which had been opened since 2014 and had been required to perform blood glucose tests, that they were operating without a CLIA waiver.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 22 of 30

127. On the morning of January 31, 2016, Plaintiff emailed several of his coworkers to notify them of their stores' expiring CLIA waivers.

128. On February 1, 2016, Plaintiff received an email from Elizabeth Seybold rebuking him for informing his coworkers of their stores' expiring CLIA waivers.

129. Less than one hour after the email from Ms. Seybold, Plaintiff received a phone call from Reem Natafji scolding him for informing his coworkers of their stores' expiring CLIA waivers.

130. Three days later, on February 4, 2016, Reem Natafji abruptly suspended Plaintiff.

131. One week later, Defendants fired Plaintiff over the phone.

132. Plaintiff's complaints constitute disclosures under the Illinois Whistleblower Act, 740 ILCS 174/15.

133. Defendants retaliated against Plaintiff by suspending and ultimately firing him one week after making complaints to Reem Natafji, Plaintiff's immediate supervisor.

134. Plaintiff's discharge from his employment with Defendants is causally related to his complaints, culminating in his email on January 31, 2016.

135. Defendants' retaliation against Plaintiff for his refusal to participate in activities he reasonably believed were illegal violates the Illinois Whistleblower Act, 740 ILCS 174/15.

136. As a result of the retaliation, Plaintiff should be reinstated with the same seniority status that he would have had but for Defendants' violation.

137. As a result of the retaliation, Plaintiff should be awarded back pay with interest.

138. As a result of the retaliatory discharge, Plaintiff should be awarded compensation for any damages sustained as a result of the violation including litigation costs, expert witness fees, and reasonable attorneys' fees.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 23 of 30

**FOURTH CAUSE OF ACTION  
Violation of the Illinois Whistleblower Act  
(On Behalf of Plaintiff, Individually)**

139. Plaintiff incorporates each of the above paragraphs as if fully set forth herein.

140. In or about April 2015, certain Mariano's pharmacies began providing free glucose tests for customers in their stores in order to promote GE100 Bionime glucose testing meters and to raise awareness for diabetes and hepatitis B vaccinations for patients with diabetes.

141. Plaintiff immediately that the meters were not cleaned in between customer tests, making it possible for bloodborne pathogens to spread between customers.

142. Plaintiff immediately raised these concerns with his direct supervisor, Reem Natafji, and Elizabeth Seybold, the manager of clinical care for Roundy's Supermarkets, Inc., via email.

143. In response, Ms. Natafji told Plaintiff that was old technology, and accused Plaintiff of not wanting to do the testing. Ms. Natafji asked Plaintiff if there was a problem doing the testing. Plaintiff stated no, he just wanted to do it right

144. Plaintiff subsequently refused to perform glucose tests using the contaminated meters until May 2015, when he was able to order disinfectant wipes that could be used to clean the meters between uses.

145. On February 4, 2016, Reem Natafji abruptly suspended Plaintiff.

146. One week later, Defendants fired Plaintiff over the phone.

147. Plaintiff exercised his rights under the Illinois Whistleblower Act, 740 ILCS 174/20, by refusing to participate in activities he believed to be illegal.

148. Defendants retaliated against Plaintiff by firing him after refusing to administer tests to customers with contaminated glucose meters.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 24 of 30



149. Plaintiff's discharge from his employment with Defendants is causally related to his refusal to administer tests to customers with contaminated glucose meters.

150. Defendants' retaliation against Plaintiff for his refusal to participate in activities he reasonably believed were illegal violates the Illinois Whistleblower Act, 740 ILCS 174/20.

151. As a result of the retaliation, Plaintiff should be reinstated with the same seniority status that he would have had but for Defendants' violation.

152. As a result of the retaliation, Plaintiff should be awarded back pay with interest.

153. As a result of the retaliatory discharge, Plaintiff should be awarded compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorneys' fees.

**FIFTH CAUSE OF ACTION  
Common Law Retaliatory Discharge  
(On Behalf of Plaintiff, Individually)**

154. Plaintiff incorporates each of the above paragraphs as if fully set forth herein.

155. In or about April 2015, Mariano's began providing free glucose tests for customers in their stores in order to promote GE100 Bionime glucose testing meters and to raise awareness for diabetes and hepatitis B vaccinations for patients with diabetes.

156. Mariano's pharmacies performing glucose tests are required to have a valid CLIA waiver.

157. Plaintiff immediately noticed that the meters were not cleaned in between customer tests, making it possible for bloodborne pathogens to spread between customers.

158. Plaintiff immediately raised these concerns with his direct supervisor, Reem Natafji, and Elizabeth Seybold, the manager of clinical care for Roundy's Supermarkets, Inc., via email.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 25 of 30

159. In response, Ms. Natafji told Plaintiff that was old technology, and accused Plaintiff of not wanting to do the testing. Ms. Natafji asked Plaintiff if there was a problem doing the testing. Plaintiff stated no, he just wanted to do it right

160. Plaintiff subsequently refused to perform glucose tests using the contaminated meters until May 2015, when he was able to order disinfectant wipes that could be used to clean the meters between uses.

161. In or about October 2015, Plaintiff noticed that his Mariano's pharmacy was performing glucose tests without a CLIA waiver.

162. Plaintiff raised his concerns with Elizabeth Seybold, who told him that George Kowalski, the Vice President of Pharmacy, did not want to spend the money to get CLIA waivers because he did not see the return on investment.

163. Plaintiff then looked up the CLIA waiver status of other stores and discovered that store numbers 8514 through 8518 and 8530 through 8534 did not have the waiver. Plaintiff informed store 8514, which had been opened since 2014 and had been required to perform blood glucose tests, that they were operating without a CLIA waiver.

164. On the morning of January 31, 2016, Plaintiff emailed several of his coworkers to notify them of their stores' expiring CLIA waivers.

165. On February 1, 2016, Plaintiff received an email from Elizabeth Seybold rebuking him for informing his coworkers of their stores' expiring CLIA waivers.

166. Less than one hour after the email from Ms. Seybold, Plaintiff received a phone call from Reem Natafji scolding him for informing his coworkers of their stores' expiring CLIA waivers.

167. Three days later, on February 4, 2016, Reem Natafji abruptly suspended Plaintiff.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 26 of 30

168. One week later, Defendants fired Plaintiff over the phone.

169. Plaintiff exercised his rights by disclosing reasonably perceived illegalities at Mariano's and by refusing to participate in activities he believed to be illegal.

170. Defendants retaliated against Plaintiff by firing him a week after his complaints and refusal regarding contaminated glucose testing meters and expired CLIA waivers.

171. Plaintiff's discharge from his employment with Defendants is causally related to his complaints and refusal.

172. At all relevant times, there existed a clear mandate of Illinois public policy prohibiting discharge from employment for refusing to participate in activities that an employee reasonably believes to be illegal.

173. As a result of the retaliatory discharge, Plaintiff should be awarded past lost wages and future loss of earnings, as well as loss of past and future fringe benefits.

174. As a result of the retaliatory discharge, Plaintiff should be awarded damages for past and future pain and suffering, damages for emotional trauma, and his incidental and consequential damages.

175. As a result of the retaliatory discharge, Plaintiff is entitled to an award of punitive damages.

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 27 of 30

**PRAYER FOR RELIEF**

Wherefore, Plaintiff Thomas Doporcyk, on behalf of himself, individually, and on behalf of the Class, respectfully requests that this Court enter an Order:

A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff Doporcyk as Class Representative, and appointing Stephan Zouras, LLP, as Class Counsel;

B. Declaring that Defendants' actions, as set forth above, violate the BIPA;

C. Awarding actual and/or statutory damages for *each* of Defendants' violations of the BIPA, pursuant to 740 ILCS 14/20(1);

D. Declaring that Defendants' actions, as forth out above, violate the IWA;

E. Declaring that Defendants' actions, as forth out above, constitute Negligence;

F. Declaring that Defendants' actions, as forth out above, constitute Common Law Retaliatory Discharge;

G. Awarding Plaintiff past lost wages and fringe benefits, future loss of earnings and fringe benefits, compensatory damages, and punitive damages in an amount to be determined at trial;

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

I. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

J. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 28 of 30

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

**JURY TRIAL**

Plaintiff demands a trial by jury for all issues so triable.

Date: June 9, 2017

Respectfully Submitted,

/s/ Ryan F. Stephan

Ryan F. Stephan  
James B. Zouras  
Haley R. Jenkins  
Stephan Zouras, LLP  
205 N. Michigan Avenue  
Suite 2560  
Chicago, Illinois 60601  
312.233.1550  
312.233.1560 *f*  
rstephan@stephanzouras.com  
jzouras@stephanzouras.com  
hjenkins@stephanzouras.com

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 29 of 30

**CERTIFICATE OF SERVICE**

I, the attorney, hereby certify that on June 9, 2017, I electronically filed the attached with the Clerk of the Court using the Electronic Filing System which will send such filing to all attorneys of record.

/s/ Ryan F. Stephan

ELECTRONICALLY FILED  
6/9/2017 11:18 AM  
2017-CH-08092  
PAGE 30 of 30