

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

JENNIFER ROTTNER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PALM BEACH TAN, INC., a Texas corporation,
PBT ACQUISITION I, LLC, a Texas limited
liability company, and JOHN DOE
DEFENDANTS 1-20, Illinois citizens,

Defendants.

Case No.: 2015-CH-16695

Hon. Celia G. Gamrath

**DEFENDANTS PALM BEACH TAN, INC. AND PBT ACQUISITION I,
LLC'S FIRST AMENDED ANSWER TO PLAINTIFF'S THIRD AMENDED
CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Defendants Palm Beach Tan, Inc. and PBT Acquisition I, LLC¹ (collectively, "Palm Beach Tan"), hereby file their First Amended Answer to the Third Amended Class Action Complaint and Demand for Jury Trial of Jennifer Rottner ("Complaint"), filed by Plaintiff Jennifer Rottner ("Plaintiff"). Except as may be expressly and specifically admitted herein, Palm Beach Tan denies each and every allegation alleged in the Complaint. Palm Beach Tan further demands a trial by jury on all issues. With respect to the specific paragraphs of the Complaint, Palm Beach Tan responds as follows:

In response to the first unnumbered paragraph, Palm Beach Tan admits that Plaintiff brings this lawsuit against Palm Beach Tan, states that the allegations of the first unnumbered paragraph constitute a legal conclusion to which no response is required, and otherwise denies the allegations

¹ Except where specifically indicated, both Palm Beach Tan, Inc. and PBT Acquisition I, LLC are referred to herein collectively as "Palm Beach Tan."

of the first unnumbered paragraph to the extent a response is required. Palm Beach Tan answers further as follows:

I. ANSWER

NATURE OF THE ACTION

1. Defendants operate Palm Beach Tan, a well-known chain of tanning salons located throughout the United States, including in Illinois.

RESPONSE: Palm Beach Tan admits that PBT Acquisition I, LLC operates tanning salons in Illinois and otherwise denies the allegations of Paragraph 1 except as specifically admitted herein.

2. When a consumer first purchases services at a Palm Beach Tan location, Defendants enroll them in a national membership database. This presumably allows its customers to use their memberships at any Palm Beach Tan location.

RESPONSE: Palm Beach Tan admits that a consumer must enroll in Palm Beach Tan's national membership database to purchase membership services. Palm Beach Tan further admits that this allows the member to use his or her membership at any Palm Beach Tan location.

3. While most membership management programs use conventional methods for verifying customers (like key fobs or identification cards), Defendants require their customers to scan their fingerprints.

RESPONSE: Denied.

4. Unlike key fobs or identification cards—which can be changed or replaced if stolen or compromised—fingerprints are unique, permanent biometric identifiers associated with the consumer. This exposes consumers to serious and irreversible privacy risks. For example, if a fingerprint database is hacked, breached, or otherwise exposed, consumers have no means by which to prevent identity theft and unauthorized tracking.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 4 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the allegations of Paragraph 4 are not directed to it, and so no response is required. To the extent a response is required, denied.

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

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 5 are not directed to it, and so no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, Palm Beach Tan admits that the Illinois legislature enacted BIPA but otherwise denies the remaining allegations of Paragraph 5, including that the statute was enacted to “protect” Illinois citizens “from situations like these.”

6. Despite this law, Defendants disregard their customers’ statutorily protected privacy rights and unlawfully collect, store, and use their biometric data in violation of the BIPA. Specifically, Defendants have violated (and continue to violate) the BIPA because they failed to (and continue to fail to):

- Properly inform Plaintiff or the Class in writing of the specific purpose or length of time for which their fingerprints were being collected, stored, and used, as required by the BIPA;
- Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiffs and the Class’s fingerprints, as required by the BIPA; and
- 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.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 6 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

7. Accordingly, this Complaint seeks an Order: (i) declaring that Defendants' conduct violates the BIPA; (ii) requiring Defendants to cease the unlawful activities discussed herein; and (iii) awarding liquidated damages to Plaintiff and the proposed Class.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 7 constitute a legal conclusion to which no response is required. To the extent a response is required, Palm Beach Tan admits that Plaintiff seeks relief in this lawsuit on behalf of herself individually and the putative class she purports to represent, but denies that Plaintiff or the putative class she purports to represent are entitled to any relief whatsoever.

PARTIES

8. Plaintiff Jennifer Rottner is a natural person and resident and citizen of the State of Illinois.

RESPONSE: Palm Beach Tan admits, upon information and belief, the allegations of Paragraph 8.

9. Defendant Palm Beach Tan, Inc. is a corporation existing under the laws of the State of Texas, with its headquarters and principal place of business located at 633 East State Highway 121 South, Suite 500, Coppel, Texas 75019. Palm Beach Tan, Inc. is the manager of Defendant PBT Acquisition I, LLC. Palm Beach Tan, Inc. conducts business throughout this County, the State of Illinois, and the United States.

RESPONSE: Palm Beach Tan admits the allegations contained in the first and second sentences of Paragraph 9. Palm Beach Tan otherwise denies the allegations of Paragraph 9 except as specifically admitted herein.

10. Defendant PBT Acquisition I, LLC is a limited liability company existing under the laws of the State of Texas, with its headquarters and principal place of business located at 633 East State Highway 121 South, Suite 500, Coppell, Texas 75019. PBT Acquisition I, LLC is registered to conduct business with the Illinois Secretary of State (file number 02939533). PBT Acquisition I, LLC conducts business throughout this County, the State of Illinois, and the United States.

RESPONSE: Palm Beach Tan admits the allegations contained in the first and second sentences of Paragraph 10. Palm Beach Tan otherwise denies the allegations of Paragraph 10 except as specifically admitted herein.

11. John Doe Defendants 1-20 are citizens of the State of Illinois and are currently or were previously franchisee owners of Palm Beach Tan salons located in this State.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 11 are not directed to it, and so no response is required. To the extent a response is required, Palm Beach Tan admits that Plaintiff alleges that “John Doe Defendants 1-20 are citizens of the State of Illinois and are currently or were previously franchisee owners of Palm Beach Tan salons located in this State,” admits that Palm Beach Tan salons located in the state of Illinois were franchisee owned prior to February 20, 2010, and denies that any John Doe Defendants are presently franchisee owners of Palm Beach Tan salons located in Illinois.

12. Plaintiff believes Respondents in Discovery Brooks Reed and Eric Hall, the CEO and CFO (respectively) of Palm Beach Tan, Inc., possess information essential to the determination of who should properly be named as additional defendants in this action. For example, Plaintiff believes these individuals (1) know of the identities of each member of PBT Acquisition I, LLC, (2) know whether Palm Beach Tan, Inc., PBT Acquisition I, LLC, and each

member of PBT Acquisition I, LLC have complied with corporate formalities sufficiently to be entitled to limited liability, and (3) know the identities of individuals responsible for the statutory torts alleged in this action.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 12 are not directed to it, and so no response is required. Palm Beach Tan further states that the Court terminated Brooks Reed and Eric Hall as respondents in discovery on June 9, 2016, and so no response is required. Palm Beach Tan further states that the allegations of Paragraph 12 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

JURISDICTION AND VENUE

13. 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 operate brick-and-mortar stores in Illinois. Additionally, PBT Acquisition is registered to conduct business in Illinois.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 13 constitute a legal conclusion to which no response is required. To the extent a response is required, Palm Beach Tan admits that PBT Acquisition I, LLC is registered with the Illinois Secretary of State and further states that it does not contest this Court's jurisdiction. Except as specifically admitted herein, Palm Beach Tan denies the allegations of Paragraph 13.

14. This Court has jurisdiction over Plaintiff Rottner because she is a resident of the State of Illinois.

RESPONSE: Palm Beach Tan admits, upon information and belief, the allegations of Paragraph 14.

15. Venue is proper in Cook County because Defendants operate brick-and-mortar stores in Cook County, conduct business transactions in Cook County, entered into a contract with

Plaintiff Rottner in Cook County, and the cause of action arose, in substantial part, in Cook County. Venue is additionally proper because Plaintiff Rottner resides in Cook County.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 15 constitute a legal conclusion to which no response is required. To the extent a response is required, Palm Beach Tan states that it does not contest that this Court has venue, and denies the remaining allegations of Paragraph 15.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

16. In the early 2000's, 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(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.

RESPONSE: Palm Beach Tan states that the referenced statute speaks for itself and is the best evidence of its complete contents. Palm Beach Tan further states that the allegations of Paragraph 16 are not directed to it, and so no response is required. To the extent a response is required, denied.

17. In late 2007, a biometrics company called Pay by Touch that 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.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 17 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the allegations of Paragraph 17 are not directed to it, and so no response is required. To the extent a response is required, Palm Beach Tan admits that Pay By Touch filed for bankruptcy in 2007 and otherwise denies the allegations of Paragraph 17.

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

RESPONSE: Palm Beach Tan states that the referenced transcript and statute speak for themselves and are the best evidence of their complete contents. Palm Beach Tan further states that the allegations of Paragraph 18 are not directed to it, and so no response is required. To the extent a response is required, Palm Beach Tan admits that BIPA was enacted in 2008 and that a single member of the Illinois legislature spoke the language quoted in substance, but otherwise denies the allegations of Paragraph 18.

19. The 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:

- (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).

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 19 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. Palm Beach Tan further states that the allegations of Paragraph 19 are not directed to it, and so no response is required. To the extent a response is required, Palm Beach Tan admits that the allegations of Paragraph 19 provide an incomplete quotation from 740 ILCS 14/15(b) and otherwise denies the allegations of Paragraph 19.

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.*

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 20 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. Palm Beach Tan further states that the allegations of Paragraph 20 are not directed to it, and so no response is required. To the extent a response is required, Palm Beach Tan denies that the allegations of Paragraph 20 provide a complete definition of the phrases “biometric identifiers” and/or “biometric information” as stated in 740 ILCS 14/10. Palm Beach Tan denies the remaining allegations of Paragraph 20.

21. The BIPA also establishes standards for how companies must handle Illinois consumers' biometric identifiers and biometric information. *See, e.g.,* 740 ILCS 14/15(c)-(d). For instance, the 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).

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 21 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. Palm Beach Tan further states that the allegations of Paragraph 21 are not directed to it, and so no response is required. To the extent a response is required, Palm Beach Tan admits that 740 ILCS 14/15(a), (c), and (d) address a private entity's handling of biometric identifiers and/or biometric information, and otherwise denies the remaining allegations of Paragraph 21.

22. Ultimately, the 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, the BIPA does not limit what kinds of biometric data may be collected, sent, transmitted, or stored. Nor does the BIPA limit to whom biometric data may be collected, sent, transmitted, or stored. The BIPA simply mandates that entities wishing to engage in that conduct must put in place certain reasonable safeguards.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 22 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. Palm Beach Tan further

states that the allegations of Paragraph 22 are not directed to it, and so no response is required. To the extent a response is required, Palm Beach Tan admits that BIPA addresses a private entity's handling of biometric identifiers and/or biometric information, and otherwise denies the remaining allegations of Paragraph 22

II. Palm Beach Tan Violates the Biometric Information Privacy Act.

23. By the time the BIPA passed through the Illinois House and Senate in mid-2008, most retailers who had experimented with using consumers' biometric data stopped doing so. That is because Pay By Touch's bankruptcy, described in Section I above, was widely publicized and brought attention to consumers' discomfort with the use of their biometric data in these situations.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 23 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the source referenced in accompanying footnote 1 speaks for itself and is the best evidence of its complete contents. Palm Beach Tan further states that the allegations of Paragraph 23 and footnote 1 are not directed to it, and so no response to the allegations of Paragraph 23 or footnote 1 is required. To the extent a response is required, denied.

24. Unfortunately, Palm Beach Tan, a corporation headquartered nearly one thousand miles from Illinois, failed to take note of the industry-wide shift in Illinois norms (and, worse, Illinois Law) governing the collection and use of biometric data. As a result, Palm Beach Tan continues to collect, store, and use its customers' biometric data in violation of the BIPA.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 24 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

25. Specifically, when consumers first purchase services at one of its locations, Palm Beach Tan requires them to scan their fingerprints to enroll them in its national membership

database. This presumably allows customers to subsequently “check-in” at other locations using their fingerprints.

RESPONSE: Denied.

26. Unfortunately, Palm Beach Tan fails to inform its customers of the purposes for which it collects their sensitive biometric data, and also fails to obtain written releases from customers before collecting their fingerprints.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 26 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

27. Worse, Palm Beach Tan fails to provide its customers with either a publicly available policy identifying a retention schedule or guidelines for permanently destroying customers’ fingerprints when the initial purpose for collecting or obtaining their fingerprints is no longer relevant.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 27 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

28. The Pay by Touch bankruptcy that catalyzed the passage of the BIPA highlights why conduct such as Palm Beach Tan’s—where consumers are aware that they are providing a fingerprint but are not aware of what other companies or vendors may be receiving that data or for what purposes—is so dangerous. That bankruptcy spurred Illinois citizens and legislators into realizing that it is crucial for consumers to understand when providing biometric identifiers such as a fingerprint, who exactly is collecting their biometric data, for what purposes it is being collected, and for how long. But Palm Beach Tan disregards these obligations, and instead, unlawfully collects, stores, and uses its customers’ biometric identifiers and information, without ever receiving the individual informed written consent required by the BIPA.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 28 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

29. The tanning industry which Palm Beach Tan competes in has been in decline for years, due to both regulatory pressure and social disfavor. As a result, it is likely that Palm Beach Tan will eventually declare bankruptcy—just like Pay By Touch did. The same concerns surrounding the Pay-By-Touch bankruptcy will apply with equal force to the Palm Beach Tan Bankruptcy.

RESPONSE: Denied.

30. Because Palm Beach Tan neither publishes a BIPA-mandated data retention policy nor discloses the purposes for its collection of biometric data, its customers have no idea what (potentially nefarious) uses Palm Beach Tan has for their biometric data. Nor do consumers know what might happen to their biometric data if and when Palm Beach Tan goes bankrupt or merges with another business.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 30 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

31. By and through the actions detailed above, Palm Beach Tan not only disregards its customers' privacy rights, but it also violates the BIPA.

RESPONSE: Denied.

III. Palm Beach Tan's BIPA Violations Deprived Consumers of the Value They Are Entitled To.

32. Consumers place value in data privacy and security, and they consider it in making purchasing decisions. In fact, little research has been performed since 2004 to establish whether people value privacy, since it is widely understood that they do. Research has since shifted to

examine the extent to which they value it, when balanced with other concerns, and how this changes based on specific circumstances.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 32 and accompanying footnote 2 are not directed to it, and so no response is required. Palm Beach Tan further states that the source referenced in footnote 2 speaks for itself is the best evidence of its complete contents. To the extent a response is required to the allegations of Paragraph 32 and accompanying footnote 2, denied.

33. Companies understand that the way they collect, store, and use consumers' personal information is factored into the price of the services they offer. Because of the value consumers place on data privacy and security, services that claim to offer better security practices are able to command higher prices than those without.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 33 and accompanying footnote 3 are not directed to it, and so no response is required. Palm Beach Tan further states that the sources referenced in footnote 3 speak for themselves and are the best evidence of their complete contents. To the extent a response is required to the allegations of Paragraph 33 and accompanying footnote 3, denied.

34. Indeed, many companies offer two-tier pricing for the same service, one where they charge less if consumers allow them to access and share their personal information with third parties, and the other where they charge more if consumers prefer to keep their information private. For example, consumers have the option to pay \$44 to \$66 more per month for AT&T's fiber Gigapower service if they don't want AT&T to collect, share, and profit off their personal information. Similarly, Comcast and Amazon offer "pay-for-privacy" arrangements where they

give consumers discounts for agreeing to having their data shared with third parties for targeted advertising purposes.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 34 and accompanying footnotes 4 and 5 are not directed to it, and so no response is required. Palm Beach Tan further states that the sources referenced in footnotes 4 and 5 speak for themselves and are the best evidence of their complete contents. To the extent a response is required to the allegations of Paragraph 34 and accompanying footnotes 4 and 5, denied.

35. Fingerprint data is of special concern to consumers, and the way that companies collect, store, and use fingerprint data has a profound impact on the price of the services companies offer.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 35 are not directed to it, and so no response is required. To the extent a response is required, denied.

36. That fact is borne out by empirical studies. Indeed, economists can test the level of concern consumers have for maintaining privacy in specific types of personal information by conducting surveys. In these surveys, consumers are asked to rate how upset they would be if a particular type of data—including fingerprints—were mishandled in order to identify the degree to which consumers value maintaining privacy in that data.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 36 and accompanying footnote 6 are not directed to it, and so no response is required. Palm Beach Tan further states that the source referenced in footnote 6 speaks for itself and is the best evidence of its complete contents. To the extent a response is required to the allegations of Paragraph 36 and accompanying footnote 6, denied.

37. Studies show that consumers are generally upset by the prospect of their fingerprint data being mishandled. Customers value privacy in the collection and use of their fingerprints to a similar degree that they value privacy in the collection and use of their web browsing histories, home addresses, and geographic locations.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 37 and accompanying footnote 7 are not directed to it, and so no response is required. Palm Beach Tan further states that the source referenced in footnote 7 speaks for itself and is the best evidence of its complete contents. To the extent a response is required to the allegations of Paragraph 37 and accompanying footnote 7, denied.

38. It is well studied and widely known that privacy in web browsing history, home address, and geographic location affects purchasing decisions and the value of services, and that in a transaction where consumers have a choice between sharing and not sharing personal information, they'll choose to share only if offered a discount or some other benefit. Given that surveys demonstrate consumers value fingerprint privacy more than they do privacy in web browsing history, home address, and geographic location, fingerprint privacy affects purchasing decisions and the value of services as well.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 38 and accompanying footnotes 8 and 9 are not directed to it, and so no response is required. Palm Beach Tan further states that the sources referenced in footnotes 8 and 9 speak for themselves and are the best evidence of their complete contents. To the extent a response is required to the allegations of Paragraph 38 and accompanying footnotes 8 and 9, denied.

39. Thus, it is clear that consumers significantly value fingerprint privacy, and that services that compromise fingerprint privacy are worth substantially less than those that protect it.

Nevertheless, Palm Beach Tan hides the fact that they violate the BIPA in collecting, storing, and using fingerprint data when consumers purchase membership services.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 39 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

40. If consumers understood that it violates the BIPA when collecting, storing, and using their fingerprints, Palm Beach Tan would not be able to charge the same prices it does for membership services.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 40 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

41. Additionally, surveys have shown that consumers greatly value insight into what will be done with their personal information, who it will be shared with, and how they can control those processes. Where privacy protections are communicated clearly, individuals are likely to pay a premium for protection.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 41 and accompanying footnotes 10 and 11 are not directed to it, and so no response is required. Palm Beach Tan further states that the sources referenced in footnotes 10 and 11 speak for themselves and are the best evidence of their complete contents. To the extent a response is required to the allegations of Paragraph 41 and accompanying footnotes 10 and 11, denied.

42. Because Palm Beach Tan fails to inform its customers of the specific purpose and length of term for which it collects, stores, and uses their fingerprint data, and because Palm Beach Tan does not have a policy that governs the collection, storage, and use of this data, Plaintiff Rottner and the Class members have no idea how their fingerprints are being stored or used after they purchase Palm Beach Tan's membership services.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 42 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

43. If Palm Beach Tan explained to consumers that their fingerprints were not going to be adequately secured—and would in fact be retained indefinitely—consumers would stop purchasing Palm Beach Tan’s services or Palm Beach Tan would have to lower their prices significantly to get consumers to continue purchasing their services.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 43 constitute a legal conclusion to which no response is required. To the extent a response is required to the allegations of Paragraph 43, denied.

44. Palm Beach Tan was obligated to comply with the BIPA and because Plaintiff Rottner and the Class members paid for their Palm Beach Tan membership services and priced BIPA compliance into their willingness to purchase services from Palm Beach Tan. Thus, Palm Beach Tan’s BIPA violations and failure to disclose them deprived Plaintiff and the Class of the full value of the membership services they paid for, thereby causing them actual economic harm.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 44 constitute a legal conclusion to which no response is required. To the extent a response is required to the allegations of Paragraph 44, denied.

IV. Plaintiff Jennifer Rottner’s Experience.

45. Plaintiff Jennifer Rottner signed up and paid for a membership with Palm Beach Tan in 2003.

RESPONSE: Palm Beach Tan admits that Plaintiff signed up and paid for a membership with Palm Beach Tan, through Palm Beach Tan franchisee, Gold Coast Tan, L.P., in 2003.

46. During one of her visits, Palm Beach Tan enrolled her in its corporate membership database and required that she provide it with a scan of her fingerprint.

RESPONSE: Palm Beach Tan admits that Plaintiff enrolled as member of Palm Beach Tan, through Palm Beach Tan franchisee, Gold Coast Tan, L.P., in 2003. Palm Beach Tan denies the remaining allegations of Paragraph 46.

47. Palm Beach Tan subsequently stored Ms. Rottner's fingerprint data in its databases.

RESPONSE: Denied.

48. Each time Ms. Rottner visited Palm Beach Tan up until the present, she was required to scan her fingerprint before using its services.

RESPONSE: Denied.

49. Ms. Rottner has never been informed of the specific purposes or length of time for which Palm Beach Tan collected, stored, or used her fingerprints.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 49 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

50. Ms. Rottner has never been informed of any biometric data retention policy developed by Palm Beach Tan, nor has she ever been informed of whether Palm Beach Tan will ever permanently delete her fingerprint data.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 50 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

51. Ms. Rottner has never been provided with nor ever signed a written release allowing Palm Beach Tan to collect or store her fingerprints.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 51 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

52. Ms. Rottner has continuously and repeatedly been exposed to the risks and harmful conditions created by Palm Beach Tan's negligent violations of the BIPA alleged herein.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 52 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

53. As a result of Palm Beach Tan’s conduct, Ms. Rottner has experienced bodily injury in the form of mental anguish, mental injury, and humiliation. For example, Ms. Rottner experiences mental anguish and injury when thinking about what would happen to her biometric data if Palm Beach Tan went bankrupt, whether Palm Beach Tan will ever delete her biometric information, and whether (and to whom) Palm Beach Tan shares her biometric information.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 53 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

54. Ms. Rottner seeks liquidated damages under the BIPA as compensation for the injuries Pam Beach Tan has caused.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 54 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

CLASS ALLEGATIONS

55. **Class Definition:** Plaintiff Rottner brings this action pursuant to 735 ILCS 5/2-801 on behalf of herself and a class of similarly situated individuals, defined as follows:

All residents of the State of Illinois who had their fingerprints collected, captured, received, or otherwise obtained by Palm Beach Tan while residing in Illinois.

The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants’ subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff s counsel

and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

RESPONSE: Palm Beach Tan admits that Plaintiff purports to bring this lawsuit on behalf of a putative class, but Palm Beach Tan denies that Plaintiff's claims are proper individually or as a class action and further states that Plaintiff's claims cannot be maintained as a class action because they do not satisfy the prerequisites pursuant to 735 ILCS 5/2-801. Palm Beach Tan further states that the allegations of Paragraph 55 constitute a legal conclusion to which no response is required. To the extent a response is required, Palm Beach Tan denies the allegations of Paragraph 55 except as specifically admitted herein.

56. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but it is clear that individual joinder is impracticable. Defendants have collected, captured, received, or otherwise obtained biometric identifiers or biometric information from thousands of consumers who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendants' records.

RESPONSE: Palm Beach Tan admits that Plaintiff purports to bring this lawsuit on behalf of a putative class, but Palm Beach Tan denies that Plaintiff's claims are proper individually or as a class action and further states that Plaintiff's claims cannot be maintained as a class action because they do not satisfy the prerequisites pursuant to 735 ILCS 5/2-801. Palm Beach Tan further states that the allegations of Paragraph 56 constitute a legal conclusion to which no response is required. To the extent a response is required, Palm Beach Tan denies the allegations of Paragraph 56 except as specifically admitted herein.

57. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any

questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a) whether Palm Beach Tan collected, captured, or otherwise obtained Plaintiff s and the Class’s biometric identifiers or biometric information;
- b) whether Palm Beach Tan properly informed Plaintiff and the Class of its purposes for collecting, using, and storing their biometric identifiers or biometric information;
- c) whether Palm Beach Tan 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 Palm Beach Tan 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;
- e) whether Palm Beach Tan complies with any such written policy (if one exists);
- f) whether Palm Beach Tan used Plaintiff s and the Class’s fingerprints to identify them;
- g) whether Palm Beach Tan’s violations of the BIPA were committed negligently; and
- h) whether Palm Beach Tan was unjustly enriched as a result of its conduct described herein.

RESPONSE: Palm Beach Tan admits that Plaintiff purports to bring this lawsuit on behalf of a putative class, but Palm Beach Tan denies that Plaintiff’s claims are proper individually or as a class action and further states that Plaintiff’s claims cannot be maintained as a class action because they do not satisfy the prerequisites pursuant to 735 ILCS 5/2-801. Palm Beach Tan further states that the allegations of Paragraph 57 constitute a legal conclusion to which no response is required. To the extent a response is required, Palm Beach Tan denies the allegations of Paragraph 57 except as specifically admitted herein.

58. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Class.

RESPONSE: Palm Beach Tan admits that Plaintiff purports to bring this lawsuit on behalf of a putative class, but Palm Beach Tan denies that Plaintiff's claims are proper individually or as a class action and further states that Plaintiff's claims cannot be maintained as a class action because they do not satisfy the prerequisites pursuant to 735 ILCS 5/2-801. Palm Beach Tan further states that the allegations of Paragraph 58 constitute a legal conclusion to which no response is required. To the extent a response is required, Palm Beach Tan denies the allegations of Paragraph 58 except as specifically admitted herein.

59. **Appropriateness:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Class.

RESPONSE: Palm Beach Tan admits that Plaintiff purports to bring this lawsuit on behalf of a putative class, but Palm Beach Tan denies that Plaintiff's claims are proper individually or as a class action and further states that Plaintiff's claims cannot be maintained as a class action because

they do not satisfy the prerequisites pursuant to 735 ILCS 5/2-801. Palm Beach Tan further states that the allegations of Paragraph 59 constitute a legal conclusion to which no response is required. To the extent a response is required, Palm Beach Tan denies the allegations of Paragraph 59 except as specifically admitted herein.

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

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

RESPONSE: Palm Beach Tan re-alleges and incorporates by reference its responses to the preceding paragraphs as if fully set forth herein.

61. The BIPA requires companies to obtain informed written consent from consumers before acquiring their biometric data. Specifically, the 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).

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 61 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, Palm Beach Tan admits that the allegations of Paragraph 61 provide an incomplete quotation from 740 ILCS 14/15(b) and otherwise denies the allegations of Paragraph 61.

62. The 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 (at most three years after the company’s last interaction with the consumer); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 62 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, denied.

63. Unfortunately, Palm Beach Tan negligently fails to comply with these BIPA mandates.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 63 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

64. Palm Beach Tan is an individual, partnership, corporation, limited liability company, association, or other group, and thus qualifies as a “private entity” under the BIPA. *See* 740 ILCS 14/10.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 64 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, admitted.

65. Plaintiff and the Class are individuals who had their “biometric identifiers” collected by Palm Beach Tan (in the form of their fingerprints), as explained in detail in Section II. *See* 740 ILCS 14/10.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 65 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, denied.

66. Plaintiffs and the Class’s biometric identifiers were used to identify them, and therefore constitute “biometric information” as defined by the BIPA. *See* 740 ILCS 14/10.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 66 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, denied.

67. Palm Beach Tan violated 740 ILCS 14/15(b)(3) by negligently failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and biometric information.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 67 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, denied.

68. Palm Beach Tan violated 740 ILCS 14/15(b)(1) by negligently failing to inform Plaintiff and the Class in writing that their biometric identifiers and biometric information were being collected and stored.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 68 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, denied.

69. Palm Beach Tan violated 740 ILCS 14/15(b)(2) by negligently failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or biometric information was being collected, stored, and used.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 69 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, denied.

70. Palm Beach Tan violated 740 ILCS 14/15(a) by negligently failing to publicly provide a retention schedule or guideline for permanently destroying its customers' biometric identifiers and biometric information.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 70 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, denied.

71. By negligently collecting, storing, and using Plaintiffs and the Class's biometric identifiers and biometric information as described herein, Palm Beach Tan violated Plaintiffs and the Class's rights to privacy in their biometric identifiers or biometric information as set forth in the BIPA, 740 ILCS 14/1, *et seq.*

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 71 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, denied.

72. Moreover, because Palm Beach Tan failed to inform Plaintiff and the Class that it was unlawfully collecting, storing, retaining, and disclosing their biometric identifiers and biometric information, Palm Beach Tan was able to charge more for its services than its otherwise would have. Accordingly, Plaintiff and the Class paid Palm Beach Tan more than they rightfully should have.

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 72 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

73. On behalf of herself and the Class, Plaintiff seeks: (1) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Palm Beach Tan to comply with the BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (2) liquidated damages of \$1,000 per violation for each of Palm Beach Tan's negligent violations 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).

RESPONSE: Palm Beach Tan states that the allegations of Paragraph 73 constitute a legal conclusion to which no response is required. Palm Beach Tan further states that the referenced statute speaks for itself and is the best evidence of its complete contents. To the extent a response is required, Palm Beach Tan denies that Plaintiff and the putative class she purports to represent are entitled to any relief whatsoever.

SECOND CAUSE OF ACTION
Unjust Enrichment
(On Behalf of Plaintiff and the Class)
(Alleged for Purposes of Preserving on Appeal)

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

RESPONSE: Palm Beach Tan re-alleges and incorporates by reference its responses to the preceding paragraphs as if fully set forth herein.

75. Plaintiff and the Class conferred benefits on Palm Beach Tan by paying Palm Beach Tan for tanning related services. As a result, Palm Beach Tan received and retained money belonging to Plaintiff and the Class.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 75 is required in light of the Court's dismissal of Plaintiff's claim for unjust enrichment by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 75 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

76. Palm Beach Tan appreciates and has knowledge of such benefits.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 76 is required in light of the Court's dismissal of Plaintiff's claim for unjust enrichment by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 76 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

77. Under the BIPA, Plaintiff and the Class were entitled to certain procedural safeguards concerning their fingerprint data.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 77 is required in light of the Court's dismissal of Plaintiff's claim for unjust enrichment by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 77 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

78. Under principles of equity and good conscience, because Palm Beach Tan failed to comply with the BIPA, Palm Beach Tan should not be allowed to retain the full amount of money Plaintiff and the Class paid to Palm Beach Tan.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 78 is required in light of the Court's dismissal of Plaintiff's claim for unjust enrichment by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 78 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

79. Accordingly, Plaintiff seeks an order declaring that Palm Beach Tan's conduct constitutes unjust enrichment, and awarding Plaintiff and the Class restitution in an amount to be calculated at trial.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 79 is required in light of the Court's dismissal of Plaintiff's claim for unjust enrichment by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 79 constitute a legal conclusion to which no response is required. To the extent a response is required, Palm Beach Tan denies that Plaintiff and the putative class she purports to represent are entitled to any relief whatsoever.

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

80. Plaintiff incorporates the foregoing allegations as is fully set forth herein.

RESPONSE: Palm Beach Tan re-alleges and incorporates by reference its responses to the preceding paragraphs as if fully set forth herein.

81. Palm Beach Tan owed Plaintiff a duty of reasonable care. That duty required that Palm Beach Tan exercise reasonable care in the collection and use of Plaintiffs biometric information. Specifically Palm Beach Tan was required to collect, retain, store, and use Plaintiffs

and the Class's biometric information and identifiers in compliance with the standards set forth by the BIPA.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 81 is required in light of the Court's dismissal of Plaintiff's claim for negligence by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 81 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

82. Additionally, Palm Beach Tan owed Plaintiff a heightened duty-under which Palm Beach Tan assumed a duty to act carefully and not put Plaintiff at undue risk of harm because of the business relationship of the Parties.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 82 is required in light of the Court's dismissal of Plaintiff's claim for negligence by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 82 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

83. Palm Beach Tan breached its duties by failing to implement reasonable procedural safeguards around the collection and use of Plaintiffs biometric identifiers and biometric information.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 83 is required in light of the Court's dismissal of Plaintiff's claim for negligence by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 83 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

84. Specifically, Palm Beach Tan breached its duties by failing to properly inform Plaintiff in writing of the specific purpose or length of time for which her fingerprints were being collected, stored, and used.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 84 is required in light of the Court's dismissal of Plaintiff's claim for negligence by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 84 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

85. Palm Beach Tan also breached its duties by failing to provide a publicly available retention schedule and guidelines for permanently destroying Plaintiffs fingerprints.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 85 is required in light of the Court's dismissal of Plaintiff's claim for negligence by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 85 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

86. Palm Beach Tan's breach of its duties proximately caused and continues to cause Plaintiff mental anguish and mental injury. For example, Plaintiff experiences mental anguish when thinking about what would happen to her biometric data if Palm Beach Tan went bankrupt, whether Palm Beach Tan will ever delete her biometric information, and whether (and to whom) Palm Beach Tan shares her biometric information.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 86 is required in light of the Court's dismissal of Plaintiff's claim for negligence by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 86 constitute a legal conclusion to which no response is required. To the extent a response is required, denied.

87. Accordingly, Plaintiff seeks an order declaring that Palm Beach Tan's conduct constitutes negligence, and awarding Plaintiff and the Class damages in an amount to be calculated at trial.

RESPONSE: Palm Beach Tan states that no response to the allegations of Paragraph 87 is required in light of the Court’s dismissal of Plaintiff’s claim for negligence by Order on July 18, 2016. Palm Beach Tan further states that the allegations of Paragraph 87 constitute a legal conclusion to which no response is required. Palm Beach Tan denies that Plaintiff and the putative class she purports to represent are entitled to any relief whatsoever.

PRAYER FOR RELIEF

Palm Beach Tan denies that Plaintiff and the putative class she purports to represent are entitled to any relief whatsoever. Wherefore, Palm Beach Tan respectfully requests that this Court enter judgment in its favor, and that this Court award Palm Beach Tan its fees and costs, and provide such further and additional relief as this Court deems appropriate and just.

II. AFFIRMATIVE AND OTHER DEFENSES

The following defenses are asserted against Plaintiff and each member of any putative class:

1. Plaintiff’s and the putative class members’ claims are barred, in whole or in part, by the applicable statutes of limitation. Specifically, with respect to Plaintiff, any conduct alleged to have violated BIPA occurred years before the statute was enacted in 2008. Relatedly, with exceptions not applicable in this case, a new law does not create liability for past conduct. *See* 5 ILCS 70/4. Thus, Plaintiff’s and the putative class members’ claims are barred, in whole or any part, for the independent reason that any conduct alleged to have violated BIPA occurred years before the statute was enacted in 2008.

2. The numerical code associated with Plaintiff’s membership account, however, was generated as early as 2003. Palm Beach Tan did not “collect, capture, purchase, receive[] through trade, or otherwise obtain” anything from Plaintiff at that time or on any subsequent visit to an Illinois salon.

3. Plaintiff and the putative class members consented to, and assumed the risk of, the conduct alleged in the Third Amended Complaint because they consciously and voluntarily accessed Palm Beach Tan's Illinois tanning salons by use of the alleged "fingerprint scanner" referred to in the Third Amended Complaint.

4. Plaintiff's and the putative class members' claims are barred, in whole or in part, for failure to mitigate their claimed damages.

5. If Plaintiff or the putative class members she purports to represent have sustained any damages, any such damages were proximately caused by the acts and omissions of Plaintiff, the putative class she purports to represent, or the intervening acts of others, and these acts and omissions were the sole causes of Plaintiff's alleged damages and those alleged damages of the putative class she purports to represent.

6. Plaintiff's and the putative class members' claims are barred, in whole or in part, as a result of Plaintiff's and the putative class' negligence or other fault.

7. Any damages alleged to be suffered by Plaintiff or the putative class members should be apportioned or reduced in accordance with their fault or legal responsibility or that of other parties, persons, or entities who caused such alleged damages.

9. Plaintiff's and the putative class members' claims are barred, in whole or in part, by the doctrines of laches, estoppel, acquiescence, unclean hands, and/or waiver. Specifically, with respect to Plaintiff, and upon information and belief, the putative class members, they intentionally and repeatedly exposed themselves and participated many times to the conduct subject of the Third Amended Complaint and further unreasonably delayed before pursuing their purported rights.

10. BIPA is unconstitutional as Plaintiff seeks to have it applied in this case, including because the liquidated damages sought for an alleged technical statutory violation are punitive,

grossly disproportionate to any harm caused, and lacking in any nexus to the specific harm alleged, thereby violating due process.

11. BIPA is unconstitutional as Plaintiff seeks to have it applied in this case because the judgment Plaintiff seeks for herself and on behalf of the putative class, if awarded, would violate due process through the combination of a statutory scheme that potentially imposes minimum statutory damages awards on a per-consumer basis with the class action mechanism that aggregates such claims, thereby violating due process.

12. The claims of Plaintiff and the putative class members she purports to represent are barred, in whole or in part, because liquidated damages cannot be recovered under BIPA absent a showing of actual harm and neither Plaintiff nor the putative class members she purports to represent do not allege any actual damages or harm.

13. BIPA is unconstitutional because it impermissibly constitutes special legislation in violation of the Illinois Constitution because it confers a special benefit on certain entities by excluding them from the scope of the statute, but not others.

14. Plaintiff's and the putative class members' claims are barred, in whole or in part, for lack of standing. Specifically, with respect to Plaintiff, she has not suffered any distinct and palpable injury because of any alleged BIPA violation by Palm Beach Tan or that is traceable to Palm Beach Tan, which did not acquire the salons visited by Plaintiff until 2010.

15. Palm Beach Tan reserves the right to amend this Answer to add, delete, or modify affirmative defenses based upon legal theories which may or will be divulged through clarification or amendment of Plaintiff's Complaint, through discovery, or through further legal analysis of Plaintiffs' and the putative class' claims and positions in this litigation.

Dated: October 19, 2020

/s/ Jared Eisenberg
Michael P. Lynn, P.C. (mlynn@lynllp.com)
Texas Bar No. 12738500
John D. Volney (jvolney@lynllp.com)
Texas Bar No. 24003118
Jared Eisenberg (jeisenberg@lynllp.com)
Texas Bar No. 24092382
Barira Munshi (bmunshi@lynllp.com)
Texas Bar No. 24095924
Lynn Pinker Hurst & Schwegmann, L.L.P.
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
(214) 981-3800 Telephone
(214) 981-3839 Facsimile

and

Joseph A. Cancila, Jr. (jcancila@rshc-law.com)
Sondra A. Hemeryck (shemeryck@rshc-law.com)
Harnaik (Nick) Kahlon (nkahlon@rshc-law.com)
RILEY SAFER HOLMES & CANCILA LLP
Atty. No: 60128 (Firm ID)
70 West Madison Street, Suite 2900
Chicago, Illinois 60602
(312) 471-8700 Telephone
(312) 471-8701 Facsimile

**ATTORNEYS FOR PALM BEACH TAN,
INC. AND PBT ACQUISITION I, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2020, a copy of Defendants Palm Beach Tan, Inc. and PBT Acquisition I, LLC's First Amended Answer to the Third Amended Class Action Complaint and Demand for Jury Trial was served on the following counsel of record for Plaintiff by email:

Jay Edelson

jedelson@edelson.com

David I. Mindell

dmindell@edelson.com

J. Eli Wade-Scott

ewadescott@edelson.com

Theo J. Benjamin

tbenjamin@edelson.com

EDELSON PC

350 North LaSalle Street, 14th Floor

Chicago, Illinois 60654

/s/ Shandice Sluch

Shandice Sluch