

YES NO

EXHIBITS

CASE NO. 25CH 2910

DATE: 3-13-25

CASE TYPE: Class Action

PAGE COUNT: 18

CASE NOTE

Hearing Date: 5/13/2025 10:30 AM
Location: Court Room 2302
Judge: Moreland, Caroline Kate

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Firm No. 39042
FILED
3/13/2025 11:24 AM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
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31806989

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

GISELLE RODRIGUEZ, individually and)
on behalf of all others similarly situated,)
)
Plaintiff,)
v.)
)
LIVING PROOF, INC.,)
)
Defendant.)

Case No. 2025CH02910

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Giselle Rodriguez, individually and on behalf of all other persons similarly situated, brings this class action lawsuit against Defendant Living Proof, Inc. (“Defendant” or “Living Proof”) for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.* Plaintiff alleges the following facts based on personal knowledge, investigation by her counsel, and on information and belief where indicated.

NATURE OF THE ACTION

1. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant in collecting, storing, and using her and other similarly-situated individuals’ biometric identifiers and biometric information (collectively, “Biometrics”) without first obtaining their informed written consent, in direct violation of BIPA.

2. The Illinois Legislature has found that “[b]iometrics are unlike other unique identifiers” such as social security numbers, which can be changed if compromised. 740 ILCS 14/5(c). “Biometrics . . . are biologically unique to the individual; therefore, once compromised, the individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions.” *Id.*

FILED DATE: 3/13/2025 11:24 AM 2025CH02910

3. Recognizing the need to protect citizens from these risks, Illinois enacted BIPA, which prohibits private entities like Defendant from collecting, capturing, purchasing, receiving through trade, or otherwise obtaining an individual's Biometrics unless they first: (1) inform the person in writing that biometric identifiers or information will be collected or stored; (2) provide the person with written notice of the specific purpose and length of term for which such biometric identifiers or information is being collected, stored, and used; and (3) receive a written release signed by the person authorizing the collection of his or her biometric identifiers and information. *See* 740 ILCS 14/15(b).

4. In direct violation of these requirements, Defendant captured, collected, obtained, stored, and used—without first providing notice, making the required disclosures, and obtaining prior informed written consent—the facial geometry and associated personal identifying information of thousands of unwitting Illinois residents who used Defendant's Hair Quiz and Haircare Advisor applications from computers and other devices in Illinois.

5. To remedy the serious but often intangible harms that accompany invasions of biometric privacy rights, BIPA creates a private right of action authorizing “[a]ny person aggrieved by a violation of” BIPA to sue and recover liquidated damages of \$1,000 “for each violation” that is negligent, and \$5,000 “for each violation” that is intentional or reckless, plus reasonable attorneys' fees and costs including expert witness fees and litigation costs, as well as injunctive relief. *See* 740 ILCS 14/20(a).

6. Plaintiff brings this action to prevent Defendant from further violating the privacy rights of Illinois residents, and to recover statutory damages for Defendant's unauthorized collection, storage, obtainment, and use of those individuals' Biometrics in violation of BIPA.

PARTIES

7. Plaintiff Giselle Rodriguez is and has been at all times relevant a resident of the State of Illinois.

8. Defendant Living Proof, Inc. is a corporation organized under Delaware law with its headquarters and principle place of business at 1 Design Center Place, Boston, Massachusetts. Living Proof sells haircare products through its website and at various brick-and-mortar retail locations including throughout Illinois.

9. Living Proof does business in Illinois.

JURISDICTION AND VENUE

10. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209(a)(1), 735 ILCS 5/2-209(a)(2), 735 ILCS 5/2-209(b)(4), and 735 ILCS 5/2-209(c). The alleged tortious acts and conduct that are the subject of this action occurred in Illinois, Defendant transacts business in Illinois, and Defendant deliberately targeted and continues to target business activity in Illinois and purposefully avails itself of the laws, protections, and advantages of doing business in Illinois with Illinois consumers like Plaintiff, including by providing its online Hair Quiz and Haircare Advisor applications to consumers in Illinois and using those applications to collect and obtain Biometrics from Illinois residents while they were in Illinois.

11. Venue is proper under 735 ILCS 5/2-101(1) and 735 ILCS 5/2-102(a) because Defendant conducts business in this county and is thus a resident of this County, and under 735 ILCS 5/2-101(2) because this is the county in which the transaction, events and omissions giving rise to the claims, or some part thereof, occurred.

FACTUAL BACKGROUND

I. Illinois's Biometric Information Privacy Act.

12. Biometrics are unlike other identifiers because they are a permanent, biologically-unique identifier associated with the individual. Because one cannot simply change her fingerprints or facial geometry, the collection, use, storage, and handling of biometric identifiers and biometric information creates a heightened risk of identity theft. *See* 740 ILCS 14/5(c).

13. In 2008, Illinois enacted BIPA due to the “very serious need [for] protections for the citizens of Illinois when it [comes to their] biometric information.” Illinois House Transcript, 2008 Reg. Sess. No. 276.

14. BIPA makes it unlawful for a company to collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifier or information unless the company first:

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

740 ILCS 14/15(b).

15. BIPA defines “written release” as “informed written consent.” 740 ILCS 14/10.

16. BIPA defines “biometric identifier” to include “a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.” 740 ILCS 14/10.

17. BIPA defines “biometric information” as “any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s biometric identifier used to identify an individual.” 740 ILCS 14/10.

18. As alleged below, Defendant’s practice of capturing, collecting, obtaining, storing and using individuals’ biometric identifiers (specifically, scans of their face geometry) and associated biometric information without prior informed written consent violated BIPA § 15(b).

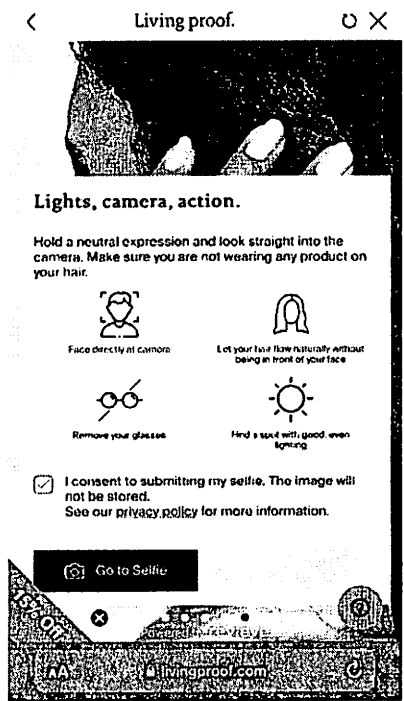
II. Defendant Collected and Obtained Plaintiff’s Biometrics.

19. Living Proof utilizes a Hair Quiz Feature that obtains consumers’ biometric identifiers and information.

20. The Hair Quiz Feature is available via the livingproof.com website.

21. Using machine learning and augmented reality technology, Defendant’s Hair Quiz Feature allows consumers to receive a personal hair assessment and product recommendations.

22. In order to use the Hair Quiz Feature, consumers are required to turn on and use, via an interface on Living Proof’s website, their device’s camera to take a real-time photograph of their face (*i.e.* a selfie). (See Figure 1.)

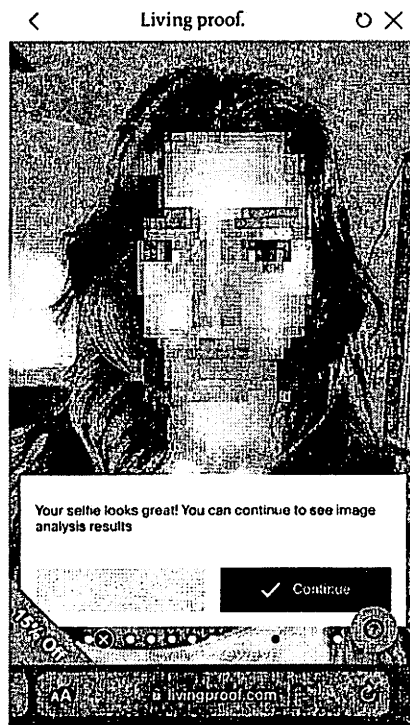


(Figure 1)

23. Each time a selfie is received, proprietary algorithms detect and capture from the photo a scan of the consumer’s unique facial geometry—such as the length, width, depth, and location of, as well as the distance and spacing between, various facial features or landmarks—as well as the consumer’s unique hair geometry.

24. This unique facial geometry and hair geometry data is stored in order for the process to work.

25. Living Proof then accesses and uses the consumer’s unique facial geometry and hair geometry data to perform a facial and hair analysis, generate a detailed report of the consumer’s hair-related characteristics, provide the consumer the analysis results, and identify products to recommend the consumer purchase. (See Figure 2.)



(Figure 2)

26. Living Proof requires the consumer to provide their name, age, and email address in order to see the product recommendations.

27. Defendant also accesses and uses the consumer's unique facial geometry and hair geometry data to develop future recommendations.

28. Defendant further accesses and uses the consumer's unique facial geometry and hair geometry data to improve the Hair Quiz Feature technologies.

29. The scan of face and hair geometry (*i.e.* the "face scan") captured from the photo is a distinct numerical representation of, *inter alia*, the unique shape and geometry of the consumer's face—including the contours of, and distance between, unique facial landmarks and features—that is highly detailed and can be used to identify the individual.

30. Every person's face has a unique geometry comprised of quantitative measurements such as the distances between key facial landmarks (*e.g.* eyes, eyebrows, nose, mouth) and the ratios between those distances. Once an image of an individual's face is scanned and its biometric measurements are captured, computers can store that information and use it, with facial recognition technology that exists now and continues to mature, to identify that individual any other time that individual's face appears on the internet or in public—even if that information is not accompanied by personal details like name, phone number, email address, etc.

31. This is all an automated process that the Defendant uses its technology to perform, without the user's/consumer's involvement or consent, whenever a selfie is used in connection with the Hair Quiz Feature.

32. Users cannot disable this technology, nor can they prevent Defendant from harvesting their biometric identifiers (*i.e.* scans of face geometry) whenever a selfie is used for the Hair Quiz Feature.

33. Because disabling this feature is not an option, use of the Hair Quiz Feature is *conditioned* on Defendant capturing, collecting, and obtaining consumers' Biometrics.

34. Defendant indiscriminately collects and/or obtains Biometrics of all users who use a selfie in connection with the Hair Quiz Feature, including minors incapable of providing informed consent.

III. Defendant Exclusively Controls The Biometrics.

35. Defendant alone exercises complete and exclusive control over the Biometrics captured, collected, obtained, and stored in connection with the Hair Quiz Feature. To be clear, Defendant alone controls and/or decides:

- Whether biometric identifiers or information are captured, collected, or obtained;
- Which biometric identifiers or information are captured, collected, or obtained;
- The type of Biometrics that are captured, collected, or obtained;
- How the biometric identifiers or information are used;
- Who can access and use the biometric identifiers or information;
- Which Biometrics are saved and the format in which they are stored;
- Whether information based on biometric identifiers is used to identify users (thus creating biometric information);
- Where Biometrics are stored;
- How long Biometrics are stored; and
- Whether Biometrics are encrypted or otherwise protected;
- Whether and when the biometric identifiers or information is destroyed;
- Who can destroy the biometric identifiers or information; and
- The algorithms, software, and process that are used to capture, collect, obtain, store, disclose, and use the Biometrics.

36. Users of the Hair Quiz Feature, in contrast, have no ability to control the Biometrics Defendant captured, collected, obtained, stored, and used.

37. Defendant prevents users from controlling whether Defendant captures, collects, or obtains Biometrics from the users' selfies, the location or manner in which their Biometrics are stored, or the manner in which their Biometrics are used or by whom.

38. Users cannot disable Defendant's capture, collection, or obtainment of Biometrics, or limit what Biometrics are captured, collected, or obtained.

39. Defendant prevents users from accessing, using, or destroying their Biometrics that Defendant captures, collects, obtains, stores, and uses.

40. Therefore, Defendant fully controls the Biometrics it harvests from photos used in connection with the Hair Quiz Feature.

IV. Defendant's Conduct Violates BIPA.

41. In violation of BIPA § 15(b)(1), Defendant did not inform Illinois consumers in writing that their biometric identifiers and biometric information would be collected from their selfies or stored, before the consumers provided Defendant a selfie via the Hair Quiz Feature and Defendant captured, collected, and/or otherwise obtained and stored the consumer's biometric identifiers and information from the consumer's selfie.

42. Living Proof admits it collects biometric information in connection with the Hair Quiz Feature for the purpose of uniquely identifying individuals.

43. In violation of BIPA § 15(b)(2), Defendant did not inform Illinois consumers in writing of the specific purpose and length of term for which their biometric identifiers or information would be collected, stored and used, before Defendant captured, collected, and/or otherwise obtained, and stored and used, the consumers' biometric identifiers and/or biometric information.

44. In violation of BIPA § 15(b)(3), Defendant did not receive written releases signed by Illinois consumers providing informed consent for Defendant to capture, collect, or otherwise obtain their biometric identifiers or biometric information, before Defendant captured, collected, and/or otherwise obtained Illinois consumers' biometric identifiers or biometric information.

V. Plaintiff's Experience with Defendant's Hair Quiz Feature.

45. Plaintiff has a Facebook account that is searchable by her name and features at least one publicly-available photo of her face.

46. Plaintiff used Defendant's Hair Quiz Feature by accessing the livingproof.com website from a mobile device in Illinois.

47. In order to use Defendant's augmented reality Hair Quiz Feature to receive a personal hair assessment and product recommendations, Defendant required Plaintiff to turn on and use, via an interface on Living Proof's website, her device's camera to take a real-time photograph of her face (*i.e.* a selfie).

48. When Plaintiff used Defendant's Hair Quiz Feature, she turned on and used, via an interface on Living Proof's website, her device's camera to take a real-time photograph of her face (*i.e.* a selfie), at which point algorithms were used to detect and capture from the photo a scan of Plaintiff's unique facial geometry—such as the length, width, depth, and location of, as well as the distance and spacing between, various of her facial features or landmarks—as well as her unique hair geometry.

49. Living Proof stored Plaintiff's unique facial geometry and hair geometry data, and accessed and used that data to perform a facial and hair analysis, generate a detailed report of Plaintiff's hair-related characteristics, and identify products to recommend that Plaintiff purchase.

50. Living Proof required Plaintiff to provide her name, age, and email address in order to see her product recommendations.

51. When Plaintiff used Defendant's Hair Quiz Feature, she provided Living Proof her name, age, and email address in order to see her product recommendations. Living Proof then provided Plaintiff product recommendations.

52. Defendant did not inform Plaintiff that it would capture, collect, and/or otherwise obtain her Biometrics whenever she used the Hair Quiz Feature.

53. Defendant did not inform Plaintiff that the Hair Quiz Feature will operate to capture, collect and/or otherwise obtain, and use, her Biometrics whenever a photograph is taken in connection with the Hair Quiz Feature.

54. Defendant never provided Plaintiff with the requisite statutory disclosures nor an opportunity to prohibit or prevent the capture, collection, storage, or use of her unique biometric identifiers and biometric information.

55. Defendant did not obtain written consent from Plaintiff before capturing, collecting, and/or otherwise obtaining, storing, or using her biometric identifier and biometric information.

56. Defendant did not provide Plaintiff with, nor did she ever sign, a written release allowing Defendant to capture, collect, otherwise obtain, store, or use her unique biometric identifiers or biometric information.

57. By capturing, collecting, obtaining, storing, and using Plaintiff's unique biometric identifiers and biometric information without her prior informed written consent, Defendant invaded Plaintiff's statutorily protected right to privacy in and control over her Biometrics.

58. Defendant's acts and omissions denied Plaintiff the opportunity to consider whether the terms of Defendant's capture, collection, obtainment, storage, and use of her biometric

identifiers and biometric information were acceptable given the attendant risks, and denied her the ability to use the undisclosed information in the way BIPA envisioned, all of which harmed her concrete interests that the legislature sought to protect by enacting BIPA.

CLASS ALLEGATIONS

59. **Class Definition:** Plaintiff brings this action on behalf of a class of all similarly-situated individuals (the “Class”) that is defined, subject to amendment, as follows:

All individuals who, while residing in the State of Illinois, had their biometric identifiers or biometric information collected, captured, received or otherwise obtained by Defendant in connection with the use of any hair quiz feature on any Living Proof website or platform.

60. Plaintiff represents and is a member of the Class. Excluded from the Class are Defendant and any entities in which Defendant has a controlling interest, Defendant’s employees and agents, the Judge to whom this action is assigned, and any member of the Judge’s staff and immediate family.

61. Certification of Plaintiff’s claims for classwide treatment is appropriate because Plaintiff can prove the elements of her claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

62. **Numerosity – 735 ILCS 5/2-801(1).** The number of persons within the Class is substantial, and is reasonably believed to include thousands of persons. It is, therefore, impractical to join each member of the Class as a named Plaintiff. Further, the size and relatively modest value of the claims of the individual members of the Class renders joinder impractical. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation. While the exact number of Class members is currently unknown, this information can be ascertained from Defendant’s and third-parties’ records. Class members can be notified about the pendency of this action through

recognized, Court-approved methods of notice dissemination, such as U.S. Mail, electronic mail, internet postings, and/or published notice.

63. **Commonality and Predominance – 735 ILCS 5/2-801(2).** This action involves common questions of law and fact, which predominate over any questions affecting Class members, including, without limitation:

- (a) whether Defendant captured, collected or otherwise obtained the Class members' biometric identifiers or biometric information;
- (b) whether Defendant controlled the Class members' biometric identifiers or biometric information;
- (c) whether Defendant informed the Class members in writing that their biometric identifiers and biometric information are being collected or stored;
- (d) whether Defendant informed Class members in writing of the specific purposes and length of term for which their biometric identifiers and biometric information are being collected, stored, and used;
- (e) whether Defendant received a signed written release (as defined in 740 ILCS 14/10) to capture, collect, obtain, use, and store each Class member's biometric identifiers and biometric information;
- (f) whether Defendant permanently destroyed the Class members' biometric identifiers and biometric information;
- (g) whether Defendant used the Class members' biometric identifiers or biometric information to identify them;
- (h) whether Defendant violated BIPA; and
- (i) whether Defendant's violations of BIPA were negligent, reckless, or intentional.

64. **Adequacy of Representation – 735 ILCS 5/2-801(3).** Plaintiff has retained and is represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiff and her counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiff is able to fairly and adequately represent and protect the

interests of such a Class. Neither Plaintiff nor her counsel have any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiff has raised viable statutory claims of the type reasonably expected to be raised by members of the Class, and will vigorously pursue those claims. If necessary, Plaintiff may seek leave of this Court to amend this Class Action Complaint to include additional Class representatives to represent the Class, additional claims and/or parties as may be appropriate, or to amend the Class definition.

65. **Superiority – 735 ILCS 5/2-801(4).** A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is impracticable. Even if every member of the Class could afford to pursue individual litigation, the Court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Class. Plaintiff anticipates no difficulty in the management of this action as a class action. Class-wide relief is essential to compliance with BIPA.

COUNT I
Violation of 740 ILCS 14/15(b)
(On Behalf of Plaintiff and the Class)

66. Plaintiff restates and re-alleges all paragraphs of this Complaint as though fully set forth herein.

67. BIPA requires private entities such as Defendant to obtain informed written consent

from individuals before acquiring their Biometrics. Specifically, BIPA makes it unlawful for any private entity to “collect, capture, purchase, receive through trade, or otherwise obtain a person’s . . . biometric identifier 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).

68. Defendant is a corporation, limited liability company and/or other group, and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

69. Plaintiff and the Class members are individuals whose “biometric identifiers” and “biometric information,” as defined by the BIPA—including, without limitation, scans of their facial geometry—were captured, collected, purchased, received through trade, or otherwise obtained, stored, and used by Defendant.

70. Defendant violated BIPA by collecting, capturing, purchasing, receiving through trade, or otherwise obtaining Plaintiff’s and the Class members’ biometric identifiers and biometric information without first making the required written disclosures to, and obtaining informed written consent and a signed written release from, each of them. *See* 740 ILCS 14/15(b).

71. In so doing, Defendant deprived Plaintiff and the Class of their statutory right to maintain the privacy of and control over their biometric identifiers and biometric information.

72. Defendant’s conduct intentionally or recklessly violated BIPA with respect to Plaintiff and the Class members.

73. In the alternative, Defendant's conduct negligently violated BIPA with respect to Plaintiff and the Class members.

74. Accordingly, Plaintiff, on behalf of herself and the Class, seeks: (1) declaratory relief; (2) statutory damages of \$5,000 for each intentional or reckless violation of BIPA or, in the alternative, statutory damages of \$1,000 for each negligent violation, pursuant to 740 ILCS 14/20; (3) injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA's requirements for the capture, collection, receipt, obtainment, storage, and use of biometric identifiers and biometric information, as described herein; and (4) reasonable attorney's fees and costs and other litigation expenses pursuant to 740 ILCS 14/20.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Giselle Rodriguez, on behalf of herself and the proposed Class, respectfully request that this Court enter an Order:

A. Certifying this case as a class action on behalf of the Class defined above (or on behalf of any other class the Court deems appropriate);

B. Appointing Plaintiff as representative of the Class, and her undersigned attorneys as class counsel;

C. Declaring that Defendant's acts and omissions, as set out above, violate BIPA, 740 ILCS 14/1, *et seq.*;

D. Awarding pursuant to 740 ILCS 14/20 statutory damages of \$5,000 for each and every intentional or reckless violation of BIPA, or alternatively, statutory damages of \$1,000 for each and every negligent violation if the Court finds that Defendant's violations were negligent;

E. Awarding injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Class, including, *inter alia*, requiring Defendant to comply with BIPA's requirements for the capture, collection, obtainment, storage, and use of biometric identifiers and biometric information, and to permanently destroy Plaintiff's and the Class members' biometric identifiers and biometric information;

F. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20;

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

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

JURY DEMAND

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a trial by jury on all issues so triable.

Dated: March 13, 2025

Respectfully submitted,

GISELLE RODRIGUEZ, individually and on behalf of
all others similarly situated, Plaintiff

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Living Proof's Online Haircare Quiz Unlawfully Captures Illinois Users' Facial Geometries, Class Action Lawsuit Claims](#)
