

**IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS**

DAISY WILSON, individually and on behalf)
of a class of similarly situated individuals,)

Plaintiff,

v.

PARK HOUSE NURSING &)
REHABILITATION CENTER, LLC, an)
Illinois limited liability company,)

Defendant.

No. 2019L 000174

CLASS ACTION COMPLAINT

Plaintiff, Daisy Wilson, individually and on behalf of similarly situated individuals, brings this Class Action Complaint against Defendant Park House Nursing & Rehabilitation Center, LLC (“Park House”), to stop its unlawful capture, collection, storage, and use of individuals’ biometric identifiers and/or biometric information in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (the “BIPA”), and to obtain redress for all persons injured by its conduct. Plaintiff alleges based upon personal knowledge as to her own acts and experiences, and as to all other matters, upon information and belief, including an investigation conducted by her attorneys.

INTRODUCTION

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

2. Defendant Park House is an operator of nursing home and rehabilitation facilities. Defendant captures, collects, stores, and otherwise uses Plaintiff's and other employees' biometrics without regard to the BIPA and the concrete privacy rights and pecuniary interests that BIPA protects. Defendant, using biometric scanning devices and related software technology, collects its employees' biometric information in the form of hand geometry (*i.e.* hand scans) for time keeping purposes.

3. Using its biometric hand scanning devices, Defendant extracts biometrics from its employees' hand geometry and subsequently transfers such information to third parties, such as payroll vendors, where the information is stored and repeatedly used to track employees' time.

4. In recognition of the concern over the security of individuals' biometrics, the Illinois Legislature enacted the BIPA, which provides, *inter alia*, that private entities, such as Defendant, may not obtain and/or possess an individual's biometrics unless it first:

- (1) informs that person in writing that biometric identifiers or biometric information will be collected or stored;
- (2) informs that person in writing of the specific purpose and the length of term for which such biometric identifiers or biometric information is being collected, stored and used;
- (3) receives a written release from the person for the collection of their biometric identifiers or biometric information; and
- (4) publishes a publicly available retention schedule and guidelines for permanently destroying biometric identifiers and biometric information.

740 ILCS 14/5.

5. For companies wishing to comply with the BIPA, compliance is straightforward. The necessary disclosures and a written release can be easily achieved through a single, signed

sheet of paper. BIPA's requirements bestow upon individuals a right to privacy in their biometrics and a right to make an informed decision when electing to provide or withhold their most sensitive information and on what terms.

6. BIPA's statutory scheme requires specific disclosures prior to collecting biometrics, which in turn allows individuals the opportunity to make a truly informed choice prior to providing private entities with their biometrics. Unlike other statutes that only create a right of action if there is a qualifying data breach, the BIPA strictly regulates the manner in which entities collect, store, and use biometrics and creates a private right of action for lack of statutory compliance.

7. In this case, Defendant elected to implement an invasive biometric time-keeping regime that relied on the illegal collection of the biometrics of its employees, thereby invading their substantive privacy rights under the BIPA.

8. The Illinois Legislature has determined that:

"biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, even sensitive information like Social Security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to each individual and therefore, once compromised, such individual has no recourse, is at a heightened risk for identity theft, and is likely to withdraw from biometric facilitated transactions."

740 ILCS 14/5. The risk is compounded when a person's biometric information is also associated with their personally identifiable information, such as cell phone numbers and addresses.

9. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant in capturing, collecting, storing, and using her biometrics, and those of hundreds of Defendant's employees throughout the state of Illinois, without informed written consent, in direct violation of the BIPA.

10. Defendant failed to honestly inform individuals, including Plaintiff, of the unlawful nature of the hand scanning system; failed to maintain a lawful biometric storage program, which deletes biometric information in the proscribed period; failed to provide the required disclosures at the time of collection; and failed to provide a retention and destruction schedule.

11. To the extent Defendant is still retaining Plaintiff's biometrics, such retention is unlawful and an ongoing infringement of her right to privacy regarding her biometrics as afforded by BIPA. Plaintiff would not have provided her biometrics to Defendant had she known that Defendant would retain such information for an indefinite period and subject such information to unauthorized disclosure to unknown third parties.

12. On behalf of herself and the proposed Class defined below, Plaintiff seeks an injunction requiring Defendant to comply with the BIPA, as well as an award of statutory damages to the Class, together with costs and reasonable attorneys' fees.

PARTIES

13. Defendant, Park House, is an Illinois limited liability corporation that conducts business throughout the State of Illinois, including in Madison County.

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

JURISDICTION AND VENUE

15. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209(b) in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant is organized under the laws of this State and headquartered within this State.

16. Venue is proper in this Court under 735 ILCS 5/2-101 because Defendant and/or its agents transact business throughout the State of Illinois, including in Madison County, Illinois.

FACTS SPECIFIC TO PLAINTIFF

17. During the relevant time period, Plaintiff worked at Park House Nursing & Rehabilitation Center, a nursing and rehab facility owned by Defendant in Chicago, Illinois, where she was subjected to Defendant's biometric time-keeping regime.

18. At this facility, Defendant relies on biometric hand scanning devices to extract its employees' biometrics. Such biometrics are then associated with employees' identities and used to track their work time.

19. After acquiring and installing biometric timekeeping devices at its facility, Defendant required its employees, including Plaintiff, to scan their hand geometry into the biometric timekeeping devices, subsequently capturing, collecting, storing, and disseminating their biometrics.

20. Prior to taking Plaintiff's biometrics, Defendant failed to inform Plaintiff in writing that her biometrics were being collected, stored, used, or disseminated, or publish any policy specifically about the collection, retention, use, deletion, or dissemination of biometrics.

21. Defendant also did not make publicly available any written policy as to a biometric retention schedule and guidelines for permanently destroying the collected biometrics.

22. Further, Defendant failed to disclose to Plaintiff the identities of third parties to which her biometrics would be transferred, nor did Defendant obtain consent for the same. Thus, Defendant has violated the BIPA on each occasion it disseminates biometrics to third parties.

23. To this day, Plaintiff is unaware of the status of her biometrics obtained by Defendant. Defendant has not informed Plaintiff whether it still retains her biometrics, and if it does, for how long it intends to retain such information.

24. Plaintiff has suffered pecuniary damages in the form of diminution in the unique identifying value of her biometrics, and other costs associated with identity protection and account monitoring.

25. Furthermore, Plaintiff's biometrics are economically valuable and such value will increase as the commercialization of biometrics continues to grow. Defendant's repeated use of Plaintiff's biometrics does and will continue to confer a benefit on Defendant for which Plaintiff was not sufficiently compensated.

26. At the time Plaintiff's biometrics were captured, Defendant did not have a publicly available policy of informing its users, including Plaintiff, on what happens to their biometrics after they are captured; whether the information is disseminated to a third party and, if so, which third party, and what would happen to the information if Defendant were to be acquired, sold, closed, or file for bankruptcy.

27. As a result of Defendant's conduct, Plaintiff experiences mental anguish, anxiety, and other injury when she thinks about the status of her biometrics and who has, or could have, access to such private information; what would happen to her biometrics if Defendant went bankrupt or otherwise sold its assets; whether Defendant will ever delete her biometric information; what would happen if Defendant were to experience a data breach; and how any such breach would result in irreparable harm to her identity. This harm is even more acute because an individual or entity with access to Plaintiff's biometrics could potentially access other financial accounts or health records which may currently, or at some time in the future, be secured through her biometrics.

28. The BIPA vests an individual state right to biometric privacy. Defendant's deprivation of Plaintiff's biometric privacy right constitutes the actual harm the Legislature sought to prevent.

CLASS ALLEGATIONS

29. Plaintiff brings this action on behalf of herself and a class of similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent a Class ("Class") as defined as follows:

Class: All individuals whose biometrics were captured, collected, stored, used, transmitted, or disseminated by Defendant within the state of Illinois any time within the applicable limitations period.

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

31. Upon information and belief, there are hundreds of Class members, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of Class members is currently unknown to Plaintiff, members can be easily identified through Defendant's records.

32. Plaintiff's claims are typical of the claims of the Class she seeks to represent, because the factual and legal bases of Defendant's liability to Plaintiff and the Class are the same, and because Defendant's conduct has resulted in similar injuries to Plaintiff and to the Class. As alleged herein, Plaintiff and the Class have all suffered damages as a result of Defendant's BIPA violations and various common law transgressions.

33. 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 limited to, the following:

- a. Whether Defendant collects, captures, stores, uses, and/or transfers the biometrics of Class members;
- b. Whether Defendant developed and made available to the public a written policy that establishes a retention schedule and guidelines for destroying biometrics;
- c. Whether Defendant obtained a written release from Class members before capturing, collecting, or otherwise obtaining employees' biometrics;
- d. Whether Defendant provided a written disclosure, to Class members, that explains the specific purposes, and the length of time, for which their biometrics were being collected, stored and used before taking their biometrics;
- e. Whether Defendant's conduct violates the BIPA;
- f. Whether Defendant's conduct is fraudulent;
- g. Whether Defendant's conduct is negligent;
- h. Whether Defendant's conduct constitutes an invasion of privacy;
- i. Whether Defendant's violations of the BIPA are willful or reckless; and
- j. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

34. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

35. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class she seeks to represent. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Class.

36. Defendant has acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

COUNT I

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

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

38. Defendant is a "private entity" under BIPA.

39. Plaintiff and the Class had their biometric identifiers, namely their hand geometry, collected, captured, received or otherwise obtained and/or used by Defendant. Plaintiff's and the other class members' biometric identifiers were also used as to identify them, and therefore constitute "biometric information" as defined by the BIPA. 740 ILCS 14/10.

40. Each instance when Plaintiff and the Class scanned their hand geometry into Defendant's biometric timekeeping devices, Defendant captured, collected, stored, and/or used Plaintiff's and the Class members' biometrics without complying with the BIPA.

41. Defendants practice in capturing, collecting, storing, using, and transferring biometrics fails to comply with the applicable BIPA requirements. Plaintiff and other Class

members have been aggrieved by Defendant's failures to adhere to the following BIPA requirements, with each such failure constituting a separate and distinct violation:

- a. Defendant failed to inform Plaintiff and the Class in writing that their biometrics were being collected and stored, as required by 740 ILCS 14/15(b)(1);
- b. Defendant failed to inform Plaintiff and the Class in writing of the specific purpose and specific length of term for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- c. Defendant failed to obtain a written release, as required by 740 ILCS 14/15(b)(3);
- d. Defendant failed to provide a publicly available retention schedule detailing the length of time the biometrics are stored and/or guidelines for permanently destroying the biometrics it stores, as required by 740 ILCS 14/15(a); and
- e. Defendant failed to obtain consent to disclose or disseminate Plaintiff and the Class members' biometrics, as required by 740 ILCS 14/15(d)(1).

42. By unlawfully capturing, collecting, storing, using, and disseminating Plaintiff's and the Class members' biometrics as described herein, Defendant denied Plaintiff and the Class their right to statutorily-required information and violated their respective rights to biometric information privacy, as set forth in the BIPA.

43. Had Defendant informed Plaintiff that she was not being provided with the required information regarding her biometrics and the biometric timekeeping program as required by law, she would not have provided her biometrics to Defendant, or would have requested alternate accommodations.

44. Had Defendant informed Plaintiff that she would be asked to participate in an illegal biometric scanning program, she would not have provided her biometrics to Defendant, or she, at least, would have been able to make an informed decision as to whether the benefit of participating in Defendant's system outweighed the risk of irreparable identity theft.

45. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of the BIPA and, alternatively, \$1,000 for each negligent violation of the BIPA.

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

47. Accordingly, with respect to Count I, Plaintiff, on behalf of herself and the proposed Class, prays for the relief set forth below.

PRAYER FOR RELIEF

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

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

- e. Awarding statutory damages of \$1,000 for each negligent violation of the BIPA, pursuant to 740 ILCS 14/20(3);
- f. Awarding monetary damages, equitable relief, and/or punitive damages for Defendant's common law violations in an amount to be determined at trial;
- g. Awarding reasonable attorneys' fees, costs, and other litigation expenses pursuant to 740 ILCS 14/20(3);
- h. Awarding pre- and post-judgment interest, as allowable by law; and
- i. Awarding such further and other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: February 7, 2019

Respectfully Submitted,

DAISY WILSON, individually and on
behalf of a class of similarly situated individuals

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