

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

Jose Solorzano on behalf of himself)
and similarly situated laborers,)
known and unknown,)
)
)
Plaintiff,) Case No. 19CH1196
)
)
v.) Judge
)
)
El Guero de Crest Hill Inc.)
)
)
Defendant.)

CLASS ACTION COMPLAINT

Plaintiff Jose Solorzano (“Plaintiff”), on behalf of himself and similarly situated employees of Defendant, through her attorneys, against El Guero de Crest Hill Inc. (“Defendant”), states as follows:

I. NATURE OF THE CASE

1. This lawsuit arises under the of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, for Defendant’s obtaining of confidential and sensitive unique biometric information, specifically handprints of Plaintiff and other similarly situated employees without complying with the requirements of BIPA, including: (1) failing to inform Plaintiff and similarly situated employees in writing that such biometric information was being collected; (2) failing to inform Plaintiff and similarly situated employees in writing of the specific purpose and length of term for which such biometric information was being collected, stored or used; and (3) obtaining from Plaintiff and similarly situated employees a written release authorizing the collection of such biometric information. Plaintiff seeks to certify these claims as a class action pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-801.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court over Plaintiff's claims is proper pursuant to 735 ILCS 5/2-209(a)(1) because Defendant committed the violations complained of herein in Illinois and, pursuant to 735 ILCS 5/2-209(b)(4), because Defendant conducts and transacts business from and within the state of Illinois.

3. Venue is proper in this judicial district pursuant to 735 ILCS 5/2-101 in that Defendant maintains an office in Will County, Illinois and has conducted and transacted business within Will County, Illinois.

III. PARTIES

4. At all relevant times, Plaintiff:

- a. has been an individual as that term is intended by BIPA, 740 ILCS 14/10;
- b. has been an employee of Defendant from approximately January 2017 to January 2019 and from approximately April 2019 until the present;
- c. has worked for Defendant in this judicial district; and
- d. has resided in and been domiciled within Will County, Illinois, in this judicial district.

5. At all relevant times, Defendant El Guero:

- a. has been a corporation organized under the laws of the State of Illinois;
- b. has been a private entity as that term is defined in BIPA, 740 ILCS 14/10;
- c. has conducted business in this judicial district; and
- d. has been Plaintiff's employer.

IV. FACTUAL BACKGROUND

6. From approximately June 2017 to January 2018, then from approximately April 2019 until the present, Plaintiff has been employed by Defendant as an hourly employee.

7. From at least on or about June 2017, Defendant instituted a policy to collect biometric information from Plaintiff and other similarly situated employees of Defendant, specifically handprints, for the purpose of use on a biometric clock in and clock out system for the benefit of the employer.

8. The biometric information gathered by Defendant, specifically handprints, is unique and permanent information of Plaintiff and each similarly situated employee of Defendant.

9. Plaintiff and other similarly situated employees of Defendant were required to provide their biometric information, specifically handprints, to Defendant for purposes of use with Defendant's biometric clock in and clock out system.

10. Plaintiff and other similarly situated employees of Defendant are or were required to punch in and out of the employer's biometric time-keeping system using their unique biometric information at the beginning and end of each shift.

11. In 2008, the Illinois legislature enacted BIPA to safeguard the personal and sensitive biometric information of Illinois residents. Specifically, the Illinois legislature recognized the sensitivity of biometric information as unique and permanent identifiers particularly given the increased use of biometric information to access financial and other private information and the concern of the public about the safety of such private information. *See* legislative findings enumerated in BIPA, 740 ILCS 14/5.

12. As the Illinois Legislature recognized in passing BIPA, once an individual's biometric information is compromised, "the individual has no recourse, is at a heightened risk for identity theft." 740 ILCS 14/5(c).

13. As a result, the Illinois Legislature determined that the "public welfare, security, and safety will be served by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." 740 ILCS 14/5(g).

14. The Illinois Legislature established clear and unambiguous requirements for all private entities in Illinois which are in possession of or collect, capture, purchase or receive biometric identifiers or information, including Defendant, including:

- a. The establishment of a publicly available policy establishing a retention schedule and guidelines for permanently destroying biometric identifiers or information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever comes first, 740 ILCS 14/15(a);
- b. Informing the subject or the subject's legally authorized representative *in writing* that a biometric identifier or biometric information is being *collected* or *stored*, 740 ILCS 14/15(b)(1) (emphasis added);
- c. Informing the subject or the subject's legally authorized representative *in writing* of the specific purpose *and* length of term for which a biometric identifier or biometric information is being collected, stored *and* used, 740 ILCS 14/15(b)(2) (emphasis added); and
- d. Obtaining a *written* release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative for the collection of this sensitive information, 740 ILCS 14/15(b)(3) (emphasis added).

15. To further safeguard the public, the Illinois Legislature has prohibited all private entities in Illinois which are in possession of biometric identifiers or information, including Defendant, from:

- a. Selling, leasing, trading, or otherwise profit from an individual's biometric identifiers or information, 740 ILCS 14/15(c); and

- b. Disclose, redisclose, or otherwise disseminate an individual's biometric identifiers or information except under certain limited and enumerated circumstances, 740 ILCS 14/15(d).

16. Finally, the Illinois Legislature requires all private entities in Illinois which are in possession of biometric identifiers or information, including Defendant, to:

- a. Store, transmit, and protect from disclosure an individual's biometric identifiers or information using a reasonable standard of care, 740 ILCS 14/15(e)(1); and
- b. Store, transmit, and protect from disclosure an individual's biometric identifiers or information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information. 740 ILCS 14/15(e)(2).

17. To ensure compliance with the requirement of BIPA, the Illinois Legislature provided individuals whose rights under the Act have been violated with the right to bring a private action against a private entity and recover:

- a. \$1,000 in liquidated damages for *each* violation where a private entity has negligently violated a provision of the Act, 740 ILCS 14/15(20)(1);
- b. \$5,000 in liquidated damages or actual damages, whichever is greater, for *each* violation where a private entity has intentionally or recklessly violated a provision of the Act, 740 ILCS 14/15(20)(2);
- c. Reasonable attorneys' fees and costs, 740 ILCS 14/15(20)(3); and
- d. Other relief, including injunctive relief, as a court deems appropriate, 740 ILCS 14/15(20)(4).

18. In this matter, Defendant has failed to comply with the requirements of BIPA as outlined in paragraph 13, *supra* in that Defendant has failed to:

- a. Establish a policy available to Plaintiff and other similarly situated employees establishing a retention schedule and guidelines for permanently destroying biometric identifiers or information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever comes first;
- b. Inform Plaintiff and other similarly situated employees *in writing* that a biometric identifier or biometric information is being collected or stored;

- c. Inform Plaintiff and other similarly situated employees *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
- d. Obtain from Plaintiff and other similarly situated employees a *written* release for the collection of their biometric identifier or biometric information.

19. Further, as a result of Defendant's failure to comply with the requirements of BIPA enumerated in paragraph 14, *supra*, specifically to establish a publicly available policy relating to the obtaining, retention and use of their biometric identifier or biometric information, Plaintiff and other similarly situated employees of Defendant do not know whether Defendant has safeguarded their biometric identifier or biometric information in compliance with the other requirements of BIPA outlined in paragraphs 15 – 17, *supra*.

20. As a result of Defendant's failure to comply with the safeguards related to the obtaining, retention and use of biometric identifier or biometric information by Defendant, Plaintiff has suffered and continues to suffer emotional distress.

V. CLASS ACTION ALLEGATIONS

21. Plaintiff seeks to represent a class of employees of Defendant for whom Defendants has obtained handprints for use with Defendant's biometric clock in and clock out system during the limitations period (the "BIPA Class").

22. Plaintiff and the Class are similar because they were all subject to the same practices that violated the BIPA, specifically being required to scan their handprints.

23. Count I is brought pursuant to 735 ILCS 5/2-801 because:

- a. the class is so numerous that joinder of all members is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant has employed at least 100 workers in Will County Illinois during the Class Period;
- b. There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members. These common questions of law and fact include, without limitation:

- i. Whether Defendant required the Class to use their handprints to clock in and clock out;
 - ii. Whether defendant collected the Class's "biometric identifiers" or "biometric information" as defined by BIPA;
 - iii. Whether Defendant complied with procedures set forth in BIPA in obtaining, storing and using the biometric identifiers or information of the Class, 740 ILCS 14/15(a-b); and
 - iv. whether Defendant complied with requirements of BIPA to safeguard the biometric identifiers and information of the Class, 740 ILCS 14/15(c-d).
- c. The class representative and the members of the class have been equally affected by Defendant's practices;
 - d. The class representative and the members of the class have been equally affected by Defendant's failure to adhere to the requirements of the BIPA;
 - e. The class representative, class members and Defendant have a commonality of interest in the subject matter and remedies sought and the class representative is able to fairly and adequately represent the interest of the classes. If individual actions were required to be brought by each member of the class injured or affected, the result would be a multiplicity of actions creating a hardship on the class members, Defendant and the Court.

24. Therefore, a class action is an appropriate method for the fair and efficient adjudication of this lawsuit.

25. The books and records of Defendant are material to Plaintiff's case as they disclose how and when Plaintiff and the Class scanned their fingerprints in Defendant's biometric time clock system and what information Defendant provided Plaintiff and the Class about the collection, retention, use, and dissemination of the biometric identifiers and information.

COUNT I
Violation of Biometric Information Privacy Act
(Class Action)

26. Plaintiff and similarly situated employees incorporate and re-allege paragraphs 1 through 25 as though set forth herein.

27. Defendant is a “private entity” under the BIPA. 740 ILCS 14/10.

28. Plaintiff and the Class’ handprints qualify as “biometric identifier[s]” as defined by BIPA. 740 ILCS 14/10.

29. Defendant has obtained stored and used “biometric information” from Plaintiff and the Class through its acquisition and retention of information based on Plaintiff and the Class’ handprints.

30. Defendant violated the BIPA by capturing or collecting Plaintiff and the Class’ handprints without creating a written policy, made available to the Plaintiff and the Class, establishing a retention schedule and destruction guidelines for its possession of biometric identifiers and information.

31. Defendant repeatedly violated the BIPA by capturing or collecting Plaintiff and the Class’ handprints without first informing them in writing that Defendant was doing so.

32. Defendant repeatedly violated the BIPA by capturing or collecting Plaintiff and the Class’ handprints without first informing them in writing of the specific purpose *and* length of term for which their biometric information is being collected, stored and used.

33. Defendant repeatedly violated the BIPA by capturing or collecting Plaintiff and the Class’ handprints without first obtaining a written release from Plaintiff and each member of the Class each time it collected, stored and/or used their biometric information.

34. Defendant knew or should have known of the requirements of the BIPA.

35. As a result, Defendant’s violations of the BIPA were reckless or, in the alternative, negligent.

WHEREFORE, Plaintiff, on behalf of him/herself and similarly situated employees, prays for a judgment against Defendant as follows:

- A. Awarding liquidated monetary damages to Plaintiff and the Class for each violation of the BIPA as provided by 740 ILCS 14/20(1)-(2);
- B. Enjoining Defendant from committing further violations of the BIPA as authorized by 740 ILCS 14/20(4);
- C. Awarding Plaintiff's reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by 740 ILCS 14/20(3); and
- D. Such other and further relief as this Court deems appropriate and just.

Respectfully submitted,

Dated: August 15, 2019

s/Christopher J. Williams
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