

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

JOSE SOLORZANO, on behalf of himself	)	
and other similarly situated laborers, known	)	
and unknown,	)	
	)	
Plaintiff,	)	Case No. 19-CH-1196
	)	
v.	)	Judge John C. Anderson
	)	
EL GUERO DE CREST HILL, INC., EL	)	
GUERO DE FARNSWORTH, INC., d/b/a	)	
EL GUERO FRESH MARKET, and RICARDO	)	
GARCIA,	)	
individually,	)	
	)	
Defendants.	)	

**FIRST AMENDED COMPLAINT**

Plaintiff Jose Solorzano (hereafter “Plaintiff”), on behalf of himself and other similarly situated employees, for his Complaint against El Guero de Crest Hill, Inc., El Guero de Farnsworth, Inc. (d/b/a El Guero Fresh Market), and Ricardo Garcia (hereafter “Defendants”), states as follows:

**I. NATURE OF THE CASE**

1. This lawsuit arises under the Illinois Biometric Information Protection Act (“BIPA”), 740 ILCS 14/1 *et seq.*, for Defendants’ 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 time for which such biometric information was being collected, stored, or used; and (3) failing to obtain 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 Defendants committed the violations complained of herein in Illinois, and, pursuant to 735 ILCS 5/2-209(b)(4), because Defendants conduct and transact 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 Defendants maintain an office in Will County, Illinois, and have 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 Defendants from approximately June 2017 to January 2018 and from approximately April 2019 until the present;
  - c. has worked for Defendants 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 de Crest Hill, Inc.:
- 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.

6. At all relevant times, El Guero de Farnsworth, Inc. (d/b/a El Guero Fresh Market):
  - 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. on information and belief, has used the same or similar biometric timekeeping scheme as Plaintiff's employer.
7. At all relevant times, Ricardo Garcia:
  - a. has been an owner and/or officer of each of the named El Guero stores;
  - b. among other things, has had authority to hire and fire Plaintiff and the Class and to authorize payment of wages to Plaintiff and the Class; and
  - c. operates within this judicial district and within the state of Illinois.

#### **IV. FACTUAL BACKGROUND**

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

9. From at least on or about June 2017, Defendants instituted a policy to collect biometric information from Plaintiff and other similarly situated employees of Defendants, specifically handprints, for the purpose of use on a biometric timekeeping system for Defendants' benefit.

10. The biometric information gathered by Defendants, specifically handprints, is unique and permanent information belonging to Plaintiff and each similarly situated employee of Defendants.

11. Plaintiff and other similarly situated employees of Defendants were required to provide their biometric information, specifically handprints, to Defendants for the purpose of using it with Defendants' biometric timekeeping system.

12. Plaintiff and other similarly situated employees of Defendants' are or were required to punch in and out of the employer's biometric timekeeping system using their unique biometric information at the beginning and end of each shift.

13. In 2008, the Illinois legislature enacted BIPA to safeguard Illinois residents' personal, sensitive biometric information. 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 public concern about the safety of such private information. *See* legislative findings enumerated in BIPA, 740 ILCS 14/5.

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

15. 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).

16. The Illinois legislature established clear and unambiguous requirements for all private entities in Illinois – such as Defendants in this case – that possess or collect, capture, purchase, or receive biometric identifiers or information, 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 biometric information or a biometric identifier 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 biometric information or a biometric identifier 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).

17. 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 Defendants, from:

- a. Selling, leasing, trading, or otherwise profit from an individual's biometric identifiers or information, 740 ILCS 14/15(c); and
- b. Disclosing, redisclosing, or otherwise disseminating an individual's biometric identifiers or information except under certain limited and enumerated circumstances, 740 ILCS 14/15(d).

18. 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).

19. To ensure compliance with the requirements 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).

20. In this matter, Defendants have failed to comply with the requirements of BIPA outlined in Paragraph 13, *supra*, in that Defendants have 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.

21. Further, as a result of Defendants' failure to comply with the requirements of BIPA enumerated in paragraph 14, *supra*, specifically to establish a publicly available policy relating to the acquisition, retention and use of their biometric identifier or biometric information, Plaintiff and other similarly situated employees of Defendants do not know whether Defendants have

safeguarded their biometric identifier or biometric information in compliance with the other requirements of BIPA outlined in paragraphs 15 – 17, *supra*.

22. As a result of Defendants’ failure to comply with the safeguards relating to the acquisition, retention, and use of biometric information or biometric identifiers, Plaintiff has suffered and continues to suffer emotional distress.

## **V. CLASS ACTION ALLEGATIONS**

23. Plaintiff seeks to represent a class of Defendants’ employees for whom Defendants have obtained handprints to use in Defendants’ biometric timekeeping system during the limitations period (the “BIPA Class”).

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

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

- c. 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 Defendants have employed at least 100 workers in Will County Illinois during the Class Period;
- d. 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 Defendants required the Class to use their handprints to clock in and clock out;
  - ii. Whether Defendants collected the Class’s “biometric identifiers” or “biometric information” as defined by BIPA;
  - iii. Whether Defendants 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 Defendants complied with requirements of BIPA to safeguard the biometric identifiers and information of the Class, 740 ILCS 14/15(c-d).

- e. The class representative and the members of the class have been equally affected by Defendants' practices;
- f. The class representative and the members of the class have been equally affected by Defendants' failure to adhere to the requirements of the BIPA;
- g. The class representative, class members and Defendants have a commonality of interest in the subject matter and remedies sought and the class representative will 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, Defendants and the Court.

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

27. 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)**

28. Plaintiff and similarly situated employees incorporate and re-allege paragraphs 1 through 27 as though set forth herein.

29. Defendants are "private entit[ies]" under BIPA. 740 ILCS 14/10.

30. Plaintiff and the Class' handprints qualify as "biometric identifier[s]" as defined by BIPA. 740 ILCS 14/10.

31. Defendants have obtained, stored, and used "biometric information" from Plaintiff and the Class through their acquisition and retention of information based on Plaintiff and the Class' handprints.



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

33. Defendants repeatedly violated BIPA by capturing or collecting Plaintiff and the Class' handprints without first informing them in writing that Defendants were doing so.

34. Defendants repeatedly violated BIPA by capturing or collecting Plaintiff and the Class' handprints without first informing them in writing of the specific purpose *and* length of time for which their biometric information would be collected, stored, and used.

35. Defendants repeatedly violated 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 they collected, stored, and/or used Plaintiff's and the Class' biometric information.

36. Defendants knew or should have known of BIPA's requirements.

37. As a result, Defendants' BIPA violations were reckless or, in the alternative, negligent.

WHEREFORE, Plaintiff, on behalf of himself and similarly situated employees, prays for a judgment against Defendants 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 Defendants 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: December 6, 2019

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