

YES NO

EXHIBITS

CASE NO. 2021 CH 2508

DATE: 5/24/2021

CASE TYPE: Class Action

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CASE NOTE

Return Date: No return date scheduled
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Courtroom Number: 2301
Location: District 1 Court
Cook County, IL

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

FAVIOLA CASAS, on behalf of herself)	
and all other persons similarly situated,)	Case No. 2021CH02508
known and unknown,)	
)	Judge
Plaintiff,)	
)	
v.)	
)	
OBERWEIS DAIRY, INC.)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

Faviola Casas (“Plaintiff”) files this Class Action Complaint (“Complaint”) against Oberweis Dairy, Inc. (“Defendant”) for violations of the Illinois Biometric Information Privacy Act.

SUMMARY OF CLAIMS

1. Defendant is dairy company that produces and sells milk, ice cream, cheese, and other products.
2. Plaintiff was employed by Defendant in North Aurora, Illinois from approximately May 2020 to March 2021.
3. During her employment, Defendant directed her and other employees to use a biometric time clock system to record their time worked.
4. Defendant directed Plaintiff and other employees to scan their fingerprints in Defendant’s biometric time clock each time they started and finished working.
5. Unlike an employee identification number or employee identification card, fingerprints are *unique* and *permanent* identifiers.

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6. By requiring employees to scan their fingerprints to record their time, instead of identification numbers or badges only, Defendant ensured that one worker could not clock in for another.

7. Thus, there's no question that Defendant achieved a labor management benefit from using a biometric time clock.

8. But there's equally no question that Defendant placed employees at risk by using their biometric identifiers to "punch the clock."

9. In enacting the Biometric Information Privacy Act, the Illinois legislature recognized that biologically unique identifiers, like fingerprints, can never be changed when compromised, and thus subject a victim of identity theft to heightened risk of loss.

10. As a result, Illinois restricted private entities, like Defendant, from collecting, storing, using, or transferring a person's biometric identifiers and information without adhering to strict informed-consent procedures established by the Biometric Information Privacy Act.

11. Defendant collected, stored, used, and transferred the unique biometric fingerprint identifiers, or information derived from those identifiers, of Plaintiff and others similarly situated without following the detailed requirements of the Biometric Information Privacy Act.

12. As a result, Defendant violated the Biometric Information Privacy Act and compromised the privacy and security of the biometric identifiers and information of Plaintiff and other similarly-situated employees.

JURISDICTION AND VENUE

13. This Court has personal jurisdiction over Defendant because, during the relevant time period, Defendant did business in Illinois and was registered to do business in Illinois, and committed the statutory violations alleged in this Complaint in Illinois.

14. Cook County is an appropriate venue for this litigation because Defendant has one or more offices in Cook County and does business there.

THE PARTIES

15. Plaintiff is an individual who is a resident of Illinois.

16. Defendant is an Illinois corporation.

REQUIREMENTS OF THE BIOMETRIC INFORMATION PRIVACY ACT

17. In enacting the Biometric Information Privacy Act, the Illinois legislature recognized that the full ramifications of biometric technology are not yet fully known and so the public will benefit from “regulations on the collection, use, safeguarding, handling, storage retention, and description of biometric identifiers and information.” 740 ILCS 14/5(f)-(g).

18. The Biometric Information Privacy Act prohibits a “private entity” from capturing or collecting biometric identifiers or information from an individual unless that private entity first obtains the individual’s written consent or employment-related release authorizing the private entity to capture or collect an individual’s biometric identifiers and/or biometric information. 740 ILCS 14/15(b)(3).

19. Relatedly, the Biometric Information Privacy Act prohibits a private entity from capturing or collecting biometric identifiers or information from an individual unless that private entity first informs the individual, in writing, of the following: (a) that the private entity is collecting biometric identifiers or information, (b) the purpose of such collection, and (c) the length of time the private entity will retain the biometric identifiers or information. 740 ILCS 14/15(b)(1)-(2).

20. In addition, the Biometric Information Privacy Act prohibits a private entity from possessing biometric identifiers or information unless it creates and follows a written policy, made

available to the public, establishing a retention schedule and destruction guidelines for its possession of biometric identifiers and information. 740 ILCS 14/15(a).

21. Finally, the Biometric Information Privacy Act prohibits a private entity from disclosing or otherwise disseminating biometric identifiers or information without first obtaining an individual's consent for that disclosure or dissemination, unless the disclosure or dissemination was (a) in furtherance of an authorized financial transaction, (b) authorized by law, or (c) pursuant to a valid warrant or subpoena. 740 ILCS 14/15(d).

BACKGROUND FACTS

22. When Plaintiff scanned her fingerprint in Defendant's biometric time clock, Defendant captured and stored Plaintiff's fingerprint, or personal identifying information derived from Plaintiff's fingerprint.

23. When Plaintiff scanned her fingerprint in Defendant's biometric time clock, Defendant disclosed her fingerprint – or personal identifying information derived from her fingerprint – to Defendant's timekeeping vendor.

24. Before requiring Plaintiff to use a biometric time clock, Defendant never provided Plaintiff any written materials stating that it was collecting, retaining, or disclosing her fingerprint or personal identifying information derived from her fingerprint.

25. Before requiring Plaintiff to use a biometric time clock, Defendant never obtained Plaintiff's written consent, or release as a condition of employment, authorizing the collection, storage, dissemination, or use of her fingerprint or personal identifying information derived from Plaintiff's fingerprint.

26. Defendant violated Plaintiff's privacy by capturing or collecting her unique biometric identifiers and information and sharing those identifiers and information with its time-

keeping vendor, without her consent.

CLASS ACTION ALLEGATIONS

27. Plaintiff seeks to represent a class of Defendant's employees who scanned their fingerprints in Defendant's biometric time clock system in Illinois between May 24, 2016 and the present without first executing a written release ("the Class").

28. Plaintiff and the Class are similar to one another because they were all subject to the same allegedly illegal practices: scanning their fingerprints in Defendant's biometric time clock system despite Defendant failing to adhere to the requirements of the Biometric Information Privacy Act.

29. The Class includes more than 50 members.

30. As a result, the Class is so numerous that joining of all class members in one lawsuit is not practical.

31. The issues involved in this lawsuit present common questions of law and fact, including: whether the Class scanned their fingerprints to clock in and out during shifts; whether Defendant collected the Class's "biometric identifiers" or "biometric information" under the Biometric Information Privacy Act; and whether Defendant complied with the procedures in 740 ILCS 14/15(a), (b), and (d) of the Biometric Information Privacy Act.

32. These common questions of law and fact predominate over variations that may exist between members of the Class, if any.

33. Plaintiff, the members of the Class, and Defendant have a commonality of interest in the subject matter of the lawsuit and the remedy sought.

34. 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 to the Class,

to the Court, and to Defendant.

35. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this lawsuit and distribution of the common fund to which the Class is entitled.

36. 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 their biometric identifiers and information.

37. Plaintiff and her counsel will fairly and adequately protect the interests of the Class.

38. Plaintiff retained counsel experienced in complex class action litigation.

COUNT I
Violation of the Biometric Information Privacy Act (740 ILCS 14/15(b))
(Class Action)

39. Plaintiff realleges and incorporates the previous allegations of this Complaint.

40. Defendant is a "private entity" under the Biometric Information Privacy Act. 740 ILCS 14/10.

41. Plaintiff's and the Class's fingerprints qualify as "biometric identifier[s]" as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

42. Defendant has "biometric information" from Plaintiff and the Class through its acquisition and retention of personal identifying information based on Plaintiff's and the Class's fingerprints.

43. Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiff's and the Class's fingerprints and personal identifying information based on their fingerprints without first informing them in writing that Defendant was doing so.

44. Defendant violated the Biometric Information Privacy Act by capturing or

collecting Plaintiff's and the Class's fingerprints and personal identifying information based on their fingerprints without first informing them in writing of the purpose of Defendant doing so and the length of time Defendant would store and use Plaintiff's and the Class's biometric identifiers and/or biometric information.

45. Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiff's and the Class's fingerprints and personal identifying information based on their fingerprints without first obtaining their written consent or other release authorizing Defendant to capture or collect Plaintiff's and the Class's biometric identifiers and/or biometric information.

46. Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

WHEREFORE, Plaintiff and the Class pray for a judgment against Defendant as follows:

- A. Awarding liquidated monetary damages to Plaintiff and the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);
- B. Enjoining Defendant from committing further violations of the Biometric Information Privacy Act 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 as provided by 740 ILCS 14/20(4).

COUNT II
Violation of the Biometric Information Privacy Act (740 ILCS 14/15(a))
(Class Action)

47. Plaintiff realleges and incorporates the previous allegations of this Complaint.

48. Defendant is a “private entity” under the Biometric Information Privacy Act. 740 ILCS 14/10.

49. Plaintiff’s and the Class’s fingerprints qualify as “biometric identifier[s]” as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

50. Defendant has “biometric information” from Plaintiff and the Class through its acquisition and retention of personal identifying information based on Plaintiff’s and the Class’s fingerprints.

51. Defendant violated the Biometric Information Privacy Act by possessing Plaintiff’s and the Class’s fingerprints and personal identifying information based on their fingerprints without creating and following a written policy, made available to the public, establishing and following a retention schedule and destruction guidelines for its possession of biometric information derived from Plaintiff’s and the Class’s fingerprints.

52. Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law’s requirements were published before Defendant committed the legal violations alleged in this Complaint.

53. As a result, Defendant’s violations of the Biometric Information Privacy Act were reckless or, in the alternative, negligent.

WHEREFORE, Plaintiff and the Class pray for a judgment against Defendant as follows:

- A. Awarding liquidated monetary damages to Plaintiff and the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);
- B. Enjoining Defendant from committing further violations of the Biometric Information Privacy Act 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 as provided by 740 ILCS 14/20(4).

COUNT III

**Violation of the Biometric Information Privacy Act (740 ILCS 14/15(d))
(Class Action)**

54. Plaintiff realleges and incorporates the previous allegations of this Complaint.

55. Defendant is a “private entity” under the Biometric Information Privacy Act. 740 ILCS 14/10.

56. Plaintiff’s and the Class’s fingerprints qualify as “biometric identifier[s]” as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

57. Defendant has “biometric information” from Plaintiff and the Class through its acquisition and retention of personal identifying information based on Plaintiff’s and the Class’s fingerprints.

58. Defendant violated the Biometric Information Privacy Act by disclosing or otherwise disseminating Plaintiff’s and the Class’s fingerprints and information based on their fingerprints to Defendant’s time-keeping vendor without first obtaining their consent for that disclosure or dissemination.

59. Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law’s requirements were published before Defendant committed the legal violations alleged in this Complaint.

60. As a result, Defendant’s violations of the Biometric Information Privacy Act were reckless or, in the alternative, negligent.

WHEREFORE, Plaintiff and the Class pray for a judgment against Defendant as follows:

- A. Awarding liquidated monetary damages to Plaintiff and the Class for each violation

of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);

- B. Enjoining Defendant from committing further violations of the Biometric Information Privacy Act 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 as provided by 740 ILCS 14/20(4).

Respectfully submitted,

Dated: May 24, 2021

/s/ Zachary C. Flowerree
One of Plaintiff's Attorneys

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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: [Oberweis Dairy Hit with Privacy Class Action Over Employee Fingerprint Scans](#)
