

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

SUMMER DOXIE, *individually and on behalf
of all others similarly situated,*

Plaintiffs,

v.

UNITED AIRLINES, INC.,

Defendant.

Case No. 2022CH11426

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Summer Doxie (“Plaintiffs”) individually and on behalf of all other persons similarly situated, by her undersigned attorneys, as and for her Class Action Complaint for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.*, against Defendant United Airlines, Inc. (“United” or “Defendant”), alleges on personal knowledge, due investigation of her counsel, and, where indicated, on information and belief as follows:

NATURE OF THE ACTION

1. This is a class action suit brought against Defendant for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.* Defendant is a major airline that possesses, collects, stores, or otherwise obtains the biometric information and biometric identifiers of its passengers.

2. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant in possessing, collecting, storing, using, and otherwise obtaining her and other similarly situated passengers’ biometric identifiers¹ and

¹ A “biometric identifier” is any personal feature that is unique to an individual, including fingerprints, iris scans, DNA and “face geometry”, among others.

biometric information² (referred to collectively at times as “biometrics”). Defendant failed to provide the requisite data retention and destruction policies to the public, failed to inform Plaintiff and other passengers in writing that their biometrics were being collected and stored, failed to procure Plaintiff’s and other passengers’ consent before it collected, captured, or otherwise obtained Plaintiff’s and other passengers’ biometrics, and failed to provide Plaintiff and other passengers the specific purpose and length of term for which their biometrics were being collected, stored, and used.

3. The Illinois Legislature has found that “[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information.” 740 ILCS 14/5(c). “For example, social security numbers, when compromised, can be changed. Biometrics, however, 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.*

4. In recognition of these concerns, the Illinois Legislature enacted BIPA, which provides, *inter alia*, that a private entity like Defendant that collects, captures, purchases, receives, or otherwise obtains biometric data must first (i) inform individuals in writing that biometrics are being collected, (ii) inform individuals in writing of the specific purpose and length of term for which such biometrics are being collected, stored, and used, and (iii) procure a written release from individuals authorizing the collection of biometrics. 740 ILCS 14/15(c).

² “Biometric information” is any information captured, converted, stored, or shared based on a person’s biometric identifier used to identify an individual.

5. Moreover, entities like Defendant that possess biometrics must publish a publicly available retention schedule and guidelines for permanently destroying biometrics, as well as comply with those guidelines. See 740 ILCS 14/15(a).

6. In direct violation of §§ 15(a) and 15(b) of BIPA, Defendant possessed, collected, stored, used, and/or otherwise obtained biometrics without (i) establishing a publicly available retention schedule and guidelines for permanently destroying biometrics, (ii) first informing passengers in writing that biometrics are being collected, (iii) informing passengers in writing of the specific purpose and length of term for which such biometrics are being collected, stored, and used, and (iv) first procuring a written release from passengers for the collection of their biometrics.

7. Plaintiff is a passenger whose biometrics were possessed, collected, stored, used, and/or otherwise obtained by United when she boarded a flight.

8. When Plaintiff boarded her flight and United possessed, collected, stored, used, and/or otherwise obtained her biometrics, United did so without following the requirements of BIPA §§ 15(a) and 15(b), as noted above.

9. BIPA confers on Plaintiff and all other similarly situated Illinois residents a right to know of the risks that are inherently presented by the collection and storage of biometrics, and a right to know how long such risks will persist after boarding one of Defendant's flights.

10. Plaintiff brings this action to prevent Defendant from further violating the privacy rights of Illinois residents and to recover statutory damages for Defendant's improper and lackluster collection, storage, usage, and protection of its passengers' biometrics in violation of BIPA.

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over Defendant because Defendant is headquartered in this County, and the biometrics giving rise to this lawsuit (1) belonged to Illinois residents, and (2) were collected by Defendant in Illinois at an Illinois-based airport.

12. Venue is proper in this County pursuant to 735 ILCS 5/2-102(a) because Defendant resides in this County and a substantial part of the events giving rise to Plaintiff's claims took place within this County because Plaintiff's biometrics were collected in this County at an airport based in this County.

PARTIES

13. Plaintiff Summer Doxic is, and has been at all relevant times, a resident of Cook County, Illinois and has an intent to remain there, and is therefore a citizen of Illinois.

14. Defendant United Airlines, Inc. is a Delaware corporation with its principal place of business at 233 South Wacker Drive, 14th Floor WHQCT, Chicago, Illinois 60606.

FACTUAL BACKGROUND

I. Illinois' Biometric Information Privacy Act

15. The use of a biometric scanning system entails serious risks. Unlike other methods of identification, facial geometry is a permanent, unique biometric identifier associated with an individual. This exposes individuals to serious and irreversible privacy risks. For example, if a device or database containing individuals' facial geometry data is hacked, breached, or otherwise exposed, individuals have no means by which to prevent identity theft and unauthorized tracking.

16. Recognizing the need to protect citizens from these risks, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA") in 2008, to regulate companies that collect and store biometric information, such as facial geometry. See Illinois House

Transcript, 2008 Reg. Sess. No. 276.

17. BIPA requires that a private entity in possession of biometrics:

must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric 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 occurs first.

740 ILCS 14/15(a).

18. Moreover, BIPA makes it unlawful for a company to, inter alia, "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers and/or biometric information, unless it 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 or the subject's legally authorized representative."

740 ILCS 14/15(b).

19. As alleged below, Defendant violated these BIPA required when it possessed, collected, captured, stored, used, or otherwise obtained its passengers' biometrics.

II. Defendant Violates Illinois' Biometric Information Privacy Act

20. Defendant operates one of the largest airlines in the world. Defendant is headquartered in Illinois, O'Hare International Airport ("O'Hare") serves as a major hub for Defendant, and O'Hare is Defendant's largest hub in terms of passengers carried and number of departures.

21. Traditionally, to board a flight, a passenger was required to present his or her ticket and a form of identification (such as a driver's license or passport) to the airline gate agent (which is an employee of the airline). This check is used to verify that the person boarding the flight is in fact the ticketholder. United previously used this method to verify passenger identities and to some degree still does.

22. Within the last few years, United has implemented a program where United scans a passenger's face at the gate prior to the passenger boarding the plane in order to verify the passenger's identity.

23. To verify the passenger's identity, a picture of passenger's face is taken by United employees using special kiosks. These kiosks then extract, and United thus possesses, collects, stores, uses, and/or otherwise obtains the passenger's facial geometry from the photograph. Finally, the passenger's extracted facial geometry is compared to a photograph that United or the federal government has on file—such as a passenger's passport photograph—in order to verify the passenger's identity.

24. Although passengers can ostensibly opt-out of having their faces scanned and use the traditional method of verifying their identity (*i.e.*, presenting their boarding pass and passport or driver's license) to board a flight, United does not inform passengers of this right.

25. Although United operates predominately out of Illinois and O'Hare in particular, United fails to adhere to BIPA's requirements when it possesses, collects, stores, uses, and/or otherwise obtains the passenger's facial geometry (*i.e.*, the passengers' biometrics). Specifically, since the implementation of the aforementioned face-scanning verification, and at the time a passenger boards a United flight at O'Hare and provides their biometrics, United:

- (a) failed to develop a retention schedule and deletion guidelines for permanently destroying biometrics in violation of BIPA § 15(a);

- (b) failed to inform passengers in writing that their biometrics were being collected and stored, prior to such collection and storage, in violation of BIPA § 15(b);
- (c) failed to inform passengers in writing of the specific purpose and length of time for which their biometrics are being collected, stored, and used in violation of BIPA § 15(b); and
- (d) failed to receive a written release executed by the passengers whose biometrics are being collected, stored, used, and otherwise obtained, prior to such collection, storage, use, and obtention, in violation of BIPA § 15(b).

26. United is not required to possess, collect, store, use, and/or otherwise obtain its passengers' biometrics to verify their identity. Indeed, United has (and still does) use traditional methods of verifying passenger identities, and such methods have not been onerous on Defendant; it simply fails to tell passengers that this is an option. Thus, United has taken obligations on itself by possessing, collecting, storing, using, and/or otherwise obtaining its passengers' biometrics in Illinois at an Illinois-based airport.

27. Compliance with BIPA would also not be significantly difficult for United. *Rosenbach v. Six Flags Entertainment Corp.*, 129 N.E.3d 1197, 1207 (Ill. 2019) ("Compliance [with BIPA] should not be difficult"). For instance, United could procure its passengers' consent to collect their biometrics by having passengers agree to a privacy policy when the passenger purchases the ticket online through a clickwrap agreement, and including language in the privacy policy that complies with BIPA. Consent in such a manner "is not hard to accomplish, as the enormous volume of commerce on the Internet attests." *Sgouros v. TransUnion Corp.*, 817 F.3d 1029, 1036 (7th Cir. 2016). United has chosen not to take these simple, insignificant measures to comply with BIPA or avoid having to deal with BIPA entirely.

28. In sum, from the first implementation of its kiosks through present, United has (i) chosen voluntarily to possess, collect, store, use, and/or otherwise obtain its passengers'

biometrics, (ii) has chosen not to implement simple, insignificant measures to protect its passengers' biometrics, and (iii) has violated BIPA §§ 15(a) and 15(b) by failing to implement the statute's safeguards when it possessed, collected, stored, used, and/or otherwise obtained its passengers' biometrics.

III. Experience Of Plaintiff

29. Plaintiff Summer Doxie is an Illinois citizen. In or about September 2022, Plaintiff boarded a flight operated by United that departed from O'Hare and traveled to Amsterdam.

30. When Plaintiff boarded her United flight at O'Hare, a photograph of her face was taken by a United employee using a kiosk. Plaintiff's facial geometry was extracted from that photograph and matched to another photograph that United or the federal government had on file in order to verify Plaintiff's identity. United thus possessed, collected, stored, used, and/or otherwise obtained Plaintiff's facial geometry.

31. Plaintiff's facial geometry constitutes a "biometric identifier." 740 ILCS 14/30. Further, because Plaintiff's facial geometry was used to identify her, her facial geometry also constitutes "biometric information." *Id.*

32. Plaintiff was not told she could opt out of having her facial geometry collected by United. Nor was Plaintiff informed that (i) her biometrics would be collected and stored prior to such collection and storage, (ii) the specific purpose and length of time for which her biometrics were being collected, stored, used, and/or otherwise obtained, and (iii) was not provided a written release for the collection and storage of her biometrics prior to such collection and storage.

33. United also did not publish a publicly available retention schedule and deletion guidelines for Plaintiff's biometrics at the time that United possessed Plaintiff's biometrics.

34. Thus, when Plaintiff provided her biometrics to Defendant, Defendant possessed, collected, stored, used, and/or otherwise obtained Plaintiff's biometrics in violation of BIPA §§ 15(a) and 15(b).

CLASS ALLEGATIONS

35. **Class Definition:** Plaintiff seeks to represent a class of similarly situated individuals defined as all Illinois citizens who boarded a flight operated by United Airlines at O'Hare and who had their facial geometry or other biometric information possessed, collected, captured, received, or otherwise obtained and/or stored by Defendant in order to board the flight (the "Class"). Subject to additional information obtained through further investigation and discovery, the above-described Class may be modified or narrowed as appropriate.

36. **Numerosity:** Pursuant to 735 ILCS 5/2-801(1), the number of persons within the Class is substantial, believed to amount to thousands of persons. At this time, Plaintiff does not know the exact number of Class Members. However, given the size of Defendant's business, the number of Class Members is believed to be so numerous that joinder of all members is impractical. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation. Moreover, the Class is ascertainable and identifiable from Defendant's records.

37. **Commonality and Predominance:** Pursuant to 735 ILCS 5/2-801(2), there is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to Class Members that predominate over questions that may affect individual Class Members include:

- (a) whether Defendant collected or otherwise obtained Plaintiff's and the Class's biometric identifiers and/or biometric information;

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- (b) whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of their last interaction, whichever occurs first;
- (c) whether Defendant destroyed Plaintiff's and the Class's biometric identifiers and/or biometric information once that information was no longer needed for the purpose for which it was originally collected;
- (d) whether Defendant properly informed Plaintiff and the Class that it collected, used, stored, and/or otherwise obtained their biometric identifiers and/or biometric information; and
- (e) whether Defendant's violations of BIPA were committed intentionally, recklessly, or negligently.

38. **Adequate Representation:** Pursuant to 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 the 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 or 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 representatives to represent the Class, additional claims as may be appropriate, or to amend the definition of the Class to address any steps that Defendant took.

39. **Superiority:** Pursuant to 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 members of the Class is impracticable. Even if every Class Member 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 Class Member. 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 – FOR DAMAGES AGAINST DEFENDANT
VIOLATION OF 740 ILCS 14/15(A)**

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

41. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant.

42. BIPA mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention and deletion policy. Specifically, those companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data (at most three years after the company's last interaction with the individual); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

43. Defendant failed to comply with these BIPA mandates.

44. Defendant is a corporation and does business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS 14/10.

45. Plaintiff is an individual who had her "biometric identifiers" possessed by Defendant, as explained in detail in above. 740 ILCS 14/10.

46. Plaintiff's biometric identifiers were used to identify Plaintiff, and therefore, constitute "biometric information" as defined by BIPA. 740 ILCS 14/10.

47. Defendant failed to provide a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified by BIPA. 740 ILCS 14/15(a).

48. Defendant lacked retention schedules and guidelines for permanently destroying Plaintiff's and the Class's biometrics.

49. On behalf of herself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA § 15(a)'s requirements for the possession of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

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

- (a) Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as the representative of the Class, and appointing Plaintiff's counsel as Class Counsel to represent the Class;
- (b) Declaring that Defendant's actions, as set out above, violate BIPA, 740 ILCS 14/15(a);
- (c) Awarding statutory damages of \$5,000.00 for each and every intentional and/or reckless violation of BIPA pursuant to 740 ILCS

14/20(2), or alternatively, statutory damages of \$1,000.00 for each and every violation pursuant to 740 ILCS 14/20(1) if the Court finds that Defendant's violations were negligent;

- (d) Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an Order requiring Defendants to possess biometrics in compliance with BIPA § 15(a);
- (e) Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- (f) Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- (g) Awarding such other and further relief as equity and justice may require.

**COUNT II – FOR DAMAGES AGAINST DEFENDANT
VIOLATION OF 740 ILCS 14/15(B)**

50. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

51. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against Defendant.

52. BIPA § 15(b) makes it unlawful for any private entity to “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifiers 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) (emphasis added).

53. Defendant failed to comply with these BIPA mandates.

54. Defendant is a corporation and does business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

55. Plaintiff and the Class are individuals who have had their “biometric identifiers” collected and/or captured by Defendant, as explained in detail above. *See* 740 ILCS 14/10.

56. Plaintiff’s and the Class’s biometric identifiers were used to identify them and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

57. Defendant collected, captured, stored, used, and/or otherwise obtained Plaintiff’s and the Class’s biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS 14/15(b)(3).

58. Defendant never informed Plaintiff, and never informed any member of the Class, in writing that their biometric identifiers and/or biometric information were being collected, captured, stored, used, and/or otherwise obtained, nor did Defendant inform Plaintiff and the Class in writing of the specific purpose(s) and length of term for which their biometric identifiers and/or biometric information were being collected, stored, used, and/or otherwise obtained as required by 740 ILCS 14/15(b)(1)-(2).

59. By collecting, capturing, storing, using, and/or otherwise obtaining Plaintiff’s and the Class’s biometric identifiers and biometric information as described herein, Defendant violated Plaintiff’s and the Class’s rights to privacy in their biometric identifiers and/or biometric information as set forth in BIPA § 15(b).

60. On behalf of herself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA § 15(b)’s requirements for the collection, capture, storage, use, and/or obtainment of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent

violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on behalf of themselves and the proposed Classes, respectfully requests that this Court enter an Order:

- (a) Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as the representative of the Class, and appointing Plaintiff's counsel as Class Counsel;
- (b) Declaring that Defendant's actions, as set out above, violate BIPA, 740 ILCS 14/15(b);
- (c) Awarding statutory damages of \$5,000.00 for each and every intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or alternatively, statutory damages of \$1,000.00 for each and every violation pursuant to 740 ILCS 14/20(1) if the Court finds that Defendant's violations were negligent;
- (d) Awarding injunctive and other equitable relief as is necessary to protect the interests of the Classes, including, *inter alia*, an Order requiring Defendant to collect, store, and use biometric identifiers and/or biometric information in compliance with BIPA;
- (e) Awarding Plaintiff and their Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- (f) Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- (g) Awarding such other and further relief as equity and justice may require.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: November 22, 2022

Respectfully submitted,

/s/ Carl V. Malmstrom

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**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiff and the Putative Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [United Airlines Faces Biometric Privacy Lawsuit in Illinois Over O'Hare Airport Facial Scans](#)
