

YES NO

EXHIBITS

CASE NO. 2021 CH 3249

DATE: 7/1/2021

CASE TYPE: Class Action

PAGE COUNT: 15

CASE NOTE

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

MANTRISE HERRON, individually)
and as the representative of a class)
of similarly situated persons,)
)
Plaintiff,)
)
v.)
)
FAMILY DOLLAR, INC. and)
DOLLAR TREE, INC.,)
)
Defendants.)

13903917

No. 2021CH03249

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

NOW COMES Mantrise Herron, individually and on behalf of all others similarly situated (“Plaintiff”), by and through undersigned counsel, alleging as follows against Family Dollar, Inc. (“Family Dollar”) and Dollar Tree, Inc. (“Dollar Tree”) (together, “Defendants”), upon personal knowledge as to facts known to her and otherwise upon information and belief following investigation of counsel:

INTRODUCTION

1. Defendants are private entities and American discount retail store chains.
2. This case seeks statutory liquidated damages and other relief for persons employed at any time during the statutory period in a Family Dollar or Dollar Tree store in Illinois and subjected to Defendants’ practice of collecting, capturing, or otherwise obtaining (“collecting”) or using “biometric identifiers” or “biometric information” (“biometrics”) in violation of the Biometric Information Privacy Act, 740

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ILCS 14/1, *et seq.* (“BIPA”), an Illinois statute regulating and protecting the privacy of biometrics.

3. Defendants collected biometrics (including fingerscans) from Plaintiff and others working in Illinois.

4. Defendants collected biometrics in Illinois without first disclosing in writing that they were collecting biometrics, the specific purpose and length of term for which those biometrics were being collected, or obtaining informed written consent or an executed release.

5. Defendants had no publicly available retention schedule or guidelines for permanently destroying biometrics when the initial purpose for collecting or obtaining such biometrics has been satisfied or within 3 years of the individual’s last interaction with Defendants, whichever occurs first.

6. Plaintiff seeks relief for herself and a class of others similarly situated.

PARTIES

7. Plaintiff MANTRISE HERRON is an individual living in Sauk Village Village, Illinois. She has been an Illinois resident at all relevant times.

8. Defendant FAMILY DOLLAR, INC. is a foreign corporation registered and licensed to do business in Illinois, and conducting significant business in Cook County, Illinois, with its corporate headquarters in Chesapeake, Virginia.

9. Defendant DOLLAR TREE, INC. is a foreign corporation registered and licensed to do business in Illinois, and conducting significant business in Cook County, Illinois, with its corporate headquarters in Chesapeake, Virginia.

10. Family Dollar is a wholly owned subsidiary of Dollar Tree.

11. Upon information and belief, at all relevant times, Dollar Tree authorized, orchestrated, and controlled Family Dollar's day-to-day business, including but not limited to its payroll procedures and employee management technologies, including collection and use of biometrics.

12. At all relevant times, Defendants operated more than 100 stores in Illinois, and were employers and private entities as defined under BIPA.¹

JURISDICTION AND VENUE

13. Jurisdiction is proper in Illinois pursuant to 735 ILCS 5/2-209, because Defendants conduct business in Illinois, because Defendants own, use, or possess real estate in this State, and because Defendants have committed tortious acts in this State as alleged herein.

14. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 because at all relevant times Defendants conducted business in Cook County, Illinois.

BACKGROUND AND ENFORCEMENT OF BIPA

15. The Illinois Legislature enacted BIPA to address the "very serious need [for] protections for the citizens of Illinois when it [comes to their] biometric information." *See* Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS 14/5.

¹ *See* <https://www.familydollar.com/locations/IL/> (last visited on June 17, 2021); <https://www.dollartree.com/store-locator> (last visited June 17, 2021).

16. In pertinent part, BIPA provides:

No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier 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).

FACTS

17. From January 2017 to June 2017, Plaintiff worked as an hourly employee at Defendants' Family Dollar #4645 location in Chicago Heights, IL location on West Joe Orr Road, Chicago Heights, IL 60411.

18. Throughout her employment, Defendants required Plaintiff to submit her biometrics, including fingerscans, to participate in the payroll/timekeeping/employment system, and she was thereafter scanned approximately four times per workday: clock in, clock out for lunch or break, clock in after lunch or break, and clock out.

19. Defendants likewise collected biometrics from other persons employed in the various facilities Defendants own, operate, or manage in Illinois.

20. Defendants did not inform Plaintiff in writing of the specific purpose and length of term for which they were collecting, storing, and using her biometrics.

21. Defendants did not provide a publicly-available retention schedule and guidelines for permanently destroying collected biometrics, such as Plaintiff's, after the termination of employment.

22. Plaintiff did not consent in writing to the collection, storage, use, sale, lease, dissemination, disclosure, redisclosure, or trade of her biometrics, or for Defendants to otherwise obtain her biometrics.

23. Plaintiff did not sign any written release permitting Defendants to collect, capture, or otherwise obtain her biometrics.

24. Plaintiff does not know what Defendants have done with her biometrics.

25. By this action, Plaintiff seeks liquidated damages and injunctive relief for herself and a class of others.

26. Plaintiff does not assert or include within this lawsuit any person's potential claim for any violation of BIPA that may have occurred at any time when that person was included within, covered by, or subject to a collective bargaining agreement, if any. Any and all such claims are excluded and disclaimed from this lawsuit.

CLASS ALLEGATIONS

27. Pursuant to 735 ILCS 5/2-801, Plaintiff brings this action on behalf of herself and the following proposed class:

Each person whose biometrics was scanned in the course of their employment at a Family Dollar or Dollar Tree store in the State of Illinois.

Plaintiff anticipates modifying this proposed class definition, including proposing subclasses where appropriate, after discovery about Defendants' collection or use of biometrics, and about whether Defendants shared biometrics with any other person, and Plaintiff will do so through either an amended complaint, a motion for class certification, or both pursuant to 735 ILCS 5/2-802(b).

28. This action is brought and may properly be maintained as a class action. Each element of Section 5/2-801 is satisfied: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the representative party will fairly and adequately protect the interests of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.

Numerosity/impracticality of joinder

29. Plaintiff does not know the precise number of class members or their identities, but will obtain those in discovery from Defendants' records or the records of third parties. On information and belief, the class consists of more than 40 persons and is thus so numerous that individual joinder of each member is impracticable. In any event, individual joinder of absent class members is impracticable, and a class action is the superior method of resolving this case, for a variety of reasons: (1) class treatment of these claims promotes judicial economy, as the class members' claims are governed by Illinois law and involve only common issues about Defendants' collection or use of biometrics; (2) class members lack sufficient motivation to litigate as joined plaintiffs (or file and prosecute individual actions); (3) class members lack financial resources to litigate as joined plaintiffs and will benefit by pooling efforts

and resources toward a common cause; (4) class members are geographically dispersed in Illinois; (5) Defendants' records are expected to be sufficient to identify and notify the class members; and (6) Plaintiff seeks both liquidated damages and injunctive relief for all class members.

Commonality

30. There is a well-defined community of interest among the members of the class and there are common questions of law and fact that predominate over any questions affecting only individual members of the class. These common legal and factual questions, which do not vary from one class member to another, and which may be determined without reference to the individual circumstances of any class member, include but are not limited to:

- a. Whether Defendants collected, captured, or otherwise obtained biometric information or biometric identifiers;
- b. Whether Defendants used biometrics to identify persons in Illinois;
- c. Whether Defendants developed and made available to the public a written policy establishing a retention schedule and guidelines for permanently destroying biometric identifiers and information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of the individual's last interaction with defendant, whichever occurs first;
- d. Whether Defendants disclosed in writing that it was collecting and storing biometrics;

- e. Whether Defendants disclosed in writing the specific purpose and length of term for which it collected, stored, and used biometrics;
- f. Whether Defendants obtained a written release before collecting or capturing biometrics;
- g. Whether one Defendant disclosed Plaintiff and the other class members' biometrics to the other Defendant;
- h. Whether Defendants disclosed Plaintiff's or the class's biometrics to any third party;
- i. Whether Defendants sold, leased, traded, or otherwise profited from Plaintiff and the class's biometrics;
- j. Whether Defendants negligently violated BIPA, 740 ILCS 14/15(a);
- k. Whether Defendants intentionally or recklessly violated BIPA, 740 ILCS 14/15(a);
- l. Whether Defendants negligently violated BIPA, 740 ILCS 14/15(b)(1);
- m. Whether Defendants intentionally or recklessly violated BIPA, 740 ILCS 14/15(b)(1);
- n. Whether Defendants negligently violated BIPA, 740 ILCS 14/15(b)(2);
- o. Whether Defendants intentionally or recklessly violated BIPA, 740 ILCS 14/15(b)(2);

- p. Whether Defendants negligently violated BIPA, 740 ILCS 14/15(b)(3);
- q. Whether Defendants intentionally or recklessly violated BIPA, 740 ILCS 14/15(b)(3);
- r. Whether the Court should award injunctive relief; and
- s. Whether the Court should award attorney's fees and costs to Plaintiff's counsel.

Adequacy of representation

31. Plaintiff is an adequate representative of the class. Her interests do not conflict with the interests of the class she seeks to represent. Defendants collected Plaintiff's biometrics without her informed written consent or release. Plaintiff is committed to the vigorous prosecution of this action and has retained attorneys competent and experienced in complex class action litigation. Plaintiff and her attorneys will fairly and adequately protect the interest of members of the class.

**A class action is the appropriate method for
the fair and efficient adjudication of the controversy**

32. A class action is the appropriate method for the fair and efficient adjudication of this lawsuit. The likelihood of individual class members prosecuting separate claims is remote. Individual litigation would burden the court system. Relief concerning the rights of the entire class, including Plaintiff, under the Illinois laws herein alleged would be proper. Plaintiff envisions no difficulty in the management of this action as a class action.

COUNT I
VIOLATIONS OF THE BIOMETRIC
INFORMATION PRIVACY ACT, 740 ILCS 14/1, ET SEQ.
(Damages)

33. Plaintiff incorporates the preceding paragraphs as though fully set forth herein, and brings Count I on behalf of herself and the class.

34. BIPA is a remedial statute designed to protect a person's privacy by requiring disclosures and written consent in connection with the collection of biometrics, including fingerprints, fingerscans, and face, retina, or iris scans. 740 ILCS 14/5 (g), 14/10.

35. The Illinois Legislature's recognition of the importance of the public policy underpinning its enactment is written in BIPA. *See, e.g.*, 740 ILCS 14/5 (a), (c), (g).

36. Defendants' acts and omissions, at all relevant times, occurred in the course of trade or commerce in the State of Illinois. Defendants are corporations that collected and possessed biometrics of Plaintiff and the other class members within the meaning of BIPA as set forth more fully herein.

37. Defendants collected, captured, or otherwise obtained biometric identifiers or biometric information from Plaintiff and the other class members, as defined by BIPA. 740 ILCS 14/10.

38. Section 14/15(a) of BIPA provides:

A private entity in possession of biometric identifiers or biometric information 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. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines.

39. In violation of Section 14/15(a), Defendants failed to make such a written policy publicly available to Plaintiff and the other class members.

40. Section 14/15(b) of BIPA provides:

No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first: (1) informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored; (2) informs 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; and (3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.

41. In violation of Section 14/15(b), Defendants collected, captured, or otherwise obtained Plaintiff's and the other class members' biometrics without first:

(i) informing them, in writing, that their biometrics were being collected or stored;

(ii) informing them, in writing, of the specific purpose and length of term for which the biometrics were being collected, stored, and used; or

(iii) obtaining a written release executed by them.

42. Defendants collected, captured, or otherwise obtained Plaintiff and other class members' fingerprints or fingerscans, knowingly caused their biometrics to be collected, captured, or otherwise obtained, without their informed written

consent or release, and without making publicly available a retention schedule providing guidelines for permanently destroying biometric identifiers and information.

43. Defendants' above-described conduct was negligent.

44. Defendants' above-described conduct was reckless.

45. As a result of Defendants' conduct, Plaintiff and the class have been damaged in violation of BIPA, and each class member is entitled to the maximum applicable liquidated damages provided under BIPA for each time Defendants collected, captured, or otherwise obtained his or her biometric identifier or biometric information.

COUNT II
VIOLATIONS OF THE BIOMETRIC
INFORMATION PRIVACY ACT, 740 ILCS 14/1, ET SEQ.
(Injunctive Relief)

46. Plaintiff incorporates the preceding paragraphs as though fully set forth herein, and brings Count II on behalf of herself and all others similarly situated.

47. Injunctive relief is available under BIPA. 740 ILCS 14/20(4).

48. Plaintiff and the other class members are entitled to an order requiring Defendants to make disclosures consistent with BIPA and enjoining further unlawful conduct.

49. Plaintiff seeks an order requiring Defendants to publicly disclose a written policy 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, as required by 740 ILCS 14/15(a).

50. Plaintiff seeks an order requiring Defendants to disclose whether they have retained the biometrics of Plaintiff and other class members, whether any third party has had access to them or is in possession of them, or whether and when such biometrics were permanently destroyed, consistent with BIPA.

51. Due to the above-described facts, and Defendants' failure to make publicly available facts demonstrating BIPA compliance as BIPA requires, the Court should: (a) order Defendants to disclose if they have sold, leased, traded, or otherwise profited from biometrics, or disseminated any biometrics; (b) order Defendants to disclose the standard of care that they have employed to store, transmit, and protect the biometrics that it collected, scanned, or otherwise obtained and retained; and (iii) enjoin Defendants from further BIPA non-compliance. 740 ILCS 14/15(c), (d), (e).

52. Plaintiff and the other class members' legal interests are adverse to Defendants'. There is a substantial controversy between the class and Defendants warranting equitable relief so that the class members may obtain the protections that BIPA entitles them to receive.

53. Plaintiff and the other class members do not know what Defendants have done (or intend to do) with their biometrics. Absent injunctive relief, Defendants are likely to continue their BIPA non-compliance and Plaintiff and other class members will continue to be in the dark on the subject.

54. For the reasons set forth above, Plaintiff is likely to succeed on the merits of her claims.

55. BIPA establishes the importance, value, or sensitive nature of biometric identifiers and biometric information, along with the need to protect and control them. Plaintiff is entitled to know what Defendants have done with her biometrics as set forth above, and to an affirmation that all of her biometric identifiers and information have been permanently destroyed as required by 740 ILCS 14/15(a).

56. The gravity of the harm to Plaintiff and the class absent equitable relief outweighs any harm to Defendants if such relief is granted.

57. As a result, Plaintiff requests commensurate injunctive relief.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, individually and on behalf of all others similarly situated, prays that the Court grant the following relief:

- A. Certify the class, and designate Plaintiff as class representative and her counsel as class counsel;
- B. Find that Defendants violated BIPA, as alleged above, and are jointly and severally liable for the violations alleged herein;
- C. Award to Plaintiff and the other class members \$1,000 in liquidated damages for each time Defendants collected, captured, or otherwise obtained his or her biometric identifier or biometric information in violation of BIPA;

- D. If Defendants intentionally or recklessly violated BIPA, then award to Plaintiff and the other class members \$5,000 in liquidated damages for each time they collected, captured, or otherwise obtained his or her biometric identifiers or biometric information in violation of BIPA;
- E. Award to Plaintiff and each of the other class members \$1,000 in liquidated damages for Defendants' violations of 740 ILCS 14/15(a);
- F. Provide injunctive relief for Plaintiff and the entire class, as set forth above; and
- G. Award reasonable attorney's fees and costs to Plaintiff's counsel, including expert witness fees and other litigation expenses.

JURY DEMAND

Plaintiff demands a trial by jury as to all matters so triable.

Dated: July 1, 2021

Respectfully submitted,

MANTRISE HERRON, individually and as the representative of a class of similarly-situated persons,

By: /s/ Phillip A. Bock
One of their attorneys

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Family Dollar, Dollar Tree Hit with Class Action Over Worker Fingerprint Scanning Practices](#)
