

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STEVEN HORN, individually, and on behalf of)	
all others similarly situated,)	
)	
Plaintiff,)	Case No. 21-cv-5621
)	
v.)	
)	
METHOD PRODUCTS, PBC,)	
)	
Defendant.)	
)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332(a), 1332(d)(2), 1441, 1446(b), and 1453(b), Defendant Method Products, PBC, by its counsel, hereby provides notice of removal of this action from the Circuit Court of Cook County, Illinois, First Judicial Circuit, to the United States District Court for the Northern District of Illinois, Eastern Division. In support of removal, Method Products, PBC respectfully states as follows:

I. PROCEDURAL HISTORY AND PLAINTIFF’S ALLEGATIONS.

1. On September 13, 2021, Plaintiff Steven Horn (“Plaintiff”) commenced this action by filing a putative Class Action Complaint (“Complaint”) against Defendant Method Products, PBC (“Defendant”) in the Circuit Court of Cook County, Illinois, First Judicial Circuit. Plaintiff’s lawsuit is captioned as *Steven Horn v. Method Products, PBC*, Case No. 2021 CH 04629 (Ill. Cir. Ct.) (the “State Court Action”). A true and correct copy of the Summons and Complaint is attached hereto as **Exhibit A**.¹

¹ Included in Exhibit A is the proof of service form, the Summons and Complaint, and Plaintiff’s Rule 222(b) Affidavit.

2. Defendant was served with the Summons and Complaint on September 21, 2021. *See Exhibit A.* Removal is therefore timely because Defendant files this notice on October 21, 2021—within 30 days of service of the Complaint and Summons. *See* 28 U.S.C. § 1446(b)(1).

3. The Complaint alleges three counts claiming Defendant violated the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* Count I alleges Defendant violated Section 15(a) of BIPA by failing to provide a publicly available retention schedule or guidelines for permanently destroying biometric identifiers or information (fingerprints), and by not developing such retention schedules or guidelines. (Cplt. ¶¶ 76–84.) Count II alleges Defendant violated Section 15(b) of BIPA by collecting, storing and using Plaintiff’s biometric fingerprints and associated biometric information without first obtaining Plaintiff’s written consent. (Cplt. ¶¶ 85–94.) And Count III alleges Defendant violated Section 15(d) of BIPA by disclosing, redisclosing or otherwise disseminating Plaintiff’s biometric identifiers and biometric information without first obtaining Plaintiff’s written consent. (Cplt. ¶¶ 95–103.)

4. Plaintiff was employed by Defendant at its manufacturing facility in Chicago, Illinois from August 13, 2018 to May 6, 2021. *See* Declaration of Lauren Mlot (“Mlot Decl.”), attached hereto as **Exhibit B**, at ¶ 5. During the course of his employment at Defendant’s Chicago facility, Plaintiff alleges he was required to place at least one fingerprint on a fingerprint scanner multiple times to clock in and clock out of work on each day he worked. (Cplt. ¶¶ 33–34, 37.) And, in fact, from the beginning of Plaintiff’s employment (on August 13, 2018) until approximately March 17, 2020, Defendant used Plaintiff’s biometric fingerprint information for timekeeping purposes in the regular course of business. *See* Mlot Decl. ¶¶ 5–7. Plaintiff further alleges Defendant collected and stored his biometric data in its databases. (Cplt. ¶¶ 34, 36.) Plaintiff claims Defendant’s collection and storage of his unique biometric data, allegedly without

his consent, invaded his statutorily protected right to receive notice and an opportunity to withhold consent prior to Defendant securing his biometric data. (Cplt. ¶ 44–46.)

5. Additionally, Plaintiff alleges Defendant does not have written, publicly available policies identifying Defendant’s retention schedules, or guidelines for permanently destroying any of Plaintiff’s biometric identifiers or biometric information. (Cplt. ¶¶ 61–62.) He also alleges Defendant never provided him with a retention policy or guidelines for permanently destroying his biometric identifiers or biometric information. (Cplt. ¶ 39.)

6. Plaintiff seeks to represent a class defined as follows: “All persons who were enrolled in the biometric timekeeping system and subsequently used a biometric timeclock while employed/working for Defendant in Illinois during the applicable statutory period.” (Cplt. ¶ 71.)

7. Plaintiff’s cause of action alleges violations of Sections 15(a), 15(b)(1), 15(b)(2), 15(b)(3), and 15(d) of BIPA. (Cplt. ¶¶ 76–101.) On behalf of himself and each member of the putative class, Plaintiff seeks the following relief: (1) finding his action satisfies the prerequisites for maintenance as a class action and class certification; (2) appointment of himself as representative of the Class and his undersigned counsel as Class Counsel; (3) declaratory relief finding that Defendant’s actions violate BIPA; (4) statutory damages of \$5,000 for each intentional and/or reckless violation of BIPA and statutory damages of \$1,000 per each negligent violation of BIPA; (5) declaratory relief finding that Defendant’s actions were intentional or reckless; (6) declaratory relief finding that Defendant’s actions were negligent; (7) injunctive relief in the form of an order requiring Defendant to collect, store, use, and disseminate biometric identifiers or biometric information in compliance with BIPA; (8) reasonable litigation costs and attorneys’ fees; (9) pre-judgment and post-judgment interest; and (10) other and further relief as the Court deems just and appropriate. (Cplt., Prayer for Relief.)

8. Two related, but independent, bases for removal exist here. First, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), because complete diversity exists and the amount in controversy for the named Plaintiff's claim exceeds \$75,000. Second, this Court has original jurisdiction pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2), because minimal diversity exists, there are more than 100 alleged class members, and the amount in controversy exceeds \$5,000,000.

II. REMOVAL IS PROPER UNDER 28 U.S.C. § 1332(a) BECAUSE COMPLETE DIVERSITY EXISTS AND THE AMOUNT IN CONTROVERSY FOR PLAINTIFF'S INDIVIDUAL BIPA CLAIMS EXCEEDS \$75,000.

9. Under 28 U.S.C. § 1332(a)(1), "district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States."

10. Here, complete diversity exists between the two named parties. In the Complaint, Plaintiff alleges that he is a citizen of Illinois. (Cplt. ¶ 4.) The Complaint further alleges that Defendant is incorporated in Delaware and does business in Illinois. (Cplt. ¶ 4.) Defendant is a Delaware corporation with its principal place of business located in San Francisco, California. *See* Mlot Decl. ¶ 4. For purposes of 28 U.S.C. § 1441, a corporation "shall be deemed to be a citizen of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business." 28 U.S.C. § 1332(c)(1). Accordingly, Defendant is a citizen of Delaware and California for purposes of diversity jurisdiction. Because the lone Defendant is not a citizen of the same State as the lone Plaintiff, complete diversity exists under 28 U.S.C. § 1332(a)(1). *See, e.g., Krueger v. Cartwright*, 996 F.2d 928, 931 (7th Cir. 1993) (explaining "the rule of complete diversity").

11. Based on the Complaint's allegations, the amount in controversy also exceeds \$75,000. In determining whether the amount in controversy requirement is met pursuant to 28 U.S.C. § 1332(a), "at least one named plaintiff must satisfy the jurisdictional amount." *Clement v. Lau*, No. 03 C 6179, 2003 WL 22948671, at *2 (N.D. Ill. Dec. 10, 2003). On the face of the Complaint, Plaintiff satisfies the \$75,000 minimum threshold for his individual BIPA claims.

12. Section 15(b) of BIPA makes it a violation to acquire biometric data without first providing employees with notice and obtaining their written consent. Plaintiff alleges he scanned his fingerprint each time he clocked in and out of work, including for lunch breaks. (Cplt. ¶ 33–34, 37.) The attached Declaration confirms that Plaintiff provided his biometric data for timekeeping purposes from August 13, 2018 until approximately March 17, 2020. *See* Mlot Decl. ¶¶ 5–7. Plaintiff alleges that he was required "to scan his fingerprint using the biometric timeclock device," when clocking in and out. (Cplt. ¶ 37.) Plaintiff also alleges Defendant required Plaintiff's fingerprint scanning so Defendant could "create, collect, capture, construct, store, use, and/or obtain a biometric template for Plaintiff." (Cplt. ¶ 34.) Plaintiff seeks a statutory penalty of up to \$5,000, pursuant to 740 ILCS 14/20(2), for *each* violation of BIPA that was committed intentionally or recklessly. (Cplt. ¶ 84.) Plaintiff's Rule 222(b) Affidavit further states that he seeks more than \$50,000 in damages—evidencing that Plaintiff will seek statutory damages for each fingerprint scan he performed during the 19-month period when he used his biometric data to clock in and clock out. *See Exhibit A.*

13. By treating each scan of his fingerprint as a separate violation of Section 15(b) as Plaintiff appears to propose, Plaintiff clearly satisfies the \$75,000 amount-in-controversy requirement for his individual claims. If Plaintiff scanned his fingerprint a minimum of twice each workday, and that action was deemed an intentional or reckless violation of BIPA (though, it was

not) at \$5,000 *per scan*, Plaintiff would have allegedly exceeded the \$75,000 threshold before the end of his second full week of employment: *i.e.*, 2 scans/day x \$5,000/scan x 8 workdays = \$80,000. Furthermore, if Plaintiff's fingerprint scans from clocking in and out for lunch were also counted and deemed an intentional or reckless violation of BIPA (though, they were not), Plaintiff would have allegedly exceeded the \$75,000 threshold before the end of a single week of employment: *i.e.*, 4 scans/day x \$5,000/scan x 4 workdays = \$80,000. And even if Defendant's alleged BIPA violations were only negligent, at \$1,000 per scan, Plaintiff would have allegedly exceeded the \$75,000 threshold after 38 workdays: *i.e.*, the minimum 2 scans per day x \$1,000 per scan x 38 workdays = \$76,000. Considering that (i) Plaintiff worked for Defendant from August 13, 2018 through May 6, 2021, and (ii) Defendant used his biometric data for timekeeping purposes until March 17, 2020, Plaintiff would have allegedly satisfied the \$75,000 threshold for his individual BIPA claims within the first 2–3 months of his employment. Based on Plaintiff's allegations and these calculations, Plaintiff plausibly scanned his fingerprint enough times—over the course of the 19 months when fingerprint scanners were used—to meet the \$75,000 threshold for his individual BIPA claims under 28 U.S.C. § 1332(a).

14. Indeed, courts in this District have found it plausible—for removal purposes—“that a new violation occurs each time an employer *acquires* an employee's biometric information, which presumably happens with each scan.” *Fox v. Dakkota Integrated Sys., LLC*, No. 19 C 2872, 2020 WL 8409683, at *3 (N.D. Ill. Jan. 24, 2020) (finding removal proper in BIPA case seeking \$5,000 in statutory damages for each alleged violation of BIPA because “[s]uch a plausible interpretation would entitle [plaintiff] to statutory damages on a per-scan basis”); *see also Peatry v. Bimbo Bakeries USA, Inc.*, 393 F. Supp. 3d 766, 769–70 (N.D. Ill. 2019) (same). As it is not legally impossible for Plaintiff to recover \$5,000 per scan, Defendant has plausibly shown the

amount in controversy exceeds the \$75,000 threshold under 28 U.S.C. § 1332(a)(1).² *See Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (“[A]s specified in § 1446(a), a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”).

III. REMOVAL IS ALSO PROPER UNDER THE CLASS ACTION FAIRNESS ACT.

15. This case is also removable because this Court has original jurisdiction under the Class Action Fairness Act (“CAFA”). *See* 28 U.S.C. § 1332(d). CAFA provides federal district courts with original jurisdiction over class actions where: (1) any member of the proposed class is a citizen of a state different from any defendant; (2) the proposed class consists of more than 100 members; and (3) the amount in controversy exceeds the sum or value of \$5,000,000, aggregating all claims and exclusive of interests and costs. *See Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013) (citing 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B)).³ As a class action that satisfies these requirements, the State Court Action is removable under § 1446. *See* 28 U.S.C. § 1453(b). There is no presumption against removal in CAFA cases. *See Dart Cherokee Basin Operating Co.*, 574 U.S. at 89 (declining to decide whether a presumption against removal applies in “mine-run diversity cases” but “point[ing] out that no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court”).

² Defendant denies violating BIPA and further denies that a Section 15(b) violation occurs each and every time a person scans his fingerprint to clock in and out of work. Nonetheless, because Plaintiff is clearly seeking to recover damages on a “per scan” basis based on the allegations contained in the Complaint, Plaintiff’s allegations and requested relief must be accepted as true for purposes of determining whether Defendant satisfies the prerequisites for removal here.

³ This action was brought pursuant to 735 ILCS 5/2-801 and thus satisfies the definition of “class action” under CAFA, which includes “any civil action filed under Federal Rule of Civil Procedure 23, or similar State statute or rule of judicial procedure.” *See* 28 U.S.C. § 1332(d)(1)(B); (Cplt. ¶¶ 71–75.)

A. Minimal Diversity Exists Under CAFA.

16. As discussed in Paragraph 10, *supra*, Plaintiff is a citizen of Illinois, and Defendant is a citizen of Delaware and California for removal purposes. The Complaint defines the proposed class as comprising “[a]ll persons who were enrolled in the biometric timekeeping system and subsequently used a biometric timeclock while employed/working for Defendant *in Illinois* during the applicable statutory period” (Cplt. ¶ 71 (emphasis added).) Therefore, minimal diversity exists under CAFA because one or more members of the proposed class are citizens of a State different from Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

B. Plaintiff’s Putative Class Comprises More Than 100 Persons.

17. CAFA’s 100-class member threshold is also satisfied by the Complaint. Plaintiff alleges that “the exact number of class members is unknown and is not available to Plaintiff at this time, but upon information and belief, there are *in excess* of forty potential class members.” (Cplt. ¶ 72 (emphasis added).) During the putative class period⁴ for Section 15(b) claims, Defendant obtained and used the biometric data of more than 100 employees for timekeeping purposes at Defendant’s Chicago facility. *See* Mlot Decl. ¶ 9. And Plaintiff’s proposed class definition includes *all persons* enrolled in Defendant’s biometric timekeeping system during the statutory period.

18. In short, the proposed class comprises more than 100 members and thereby satisfies CAFA’s numerosity requirement. *See* 28 U.S.C. § 1332(d)(5)(B).

⁴ The Illinois Appellate Court for the First District recently held that alleged violations of sections 15(a) and 15(b) of BIPA are subject to a five-year statute of limitations. *See Tims v. Black Horse Carriers, Inc.*, 2021 IL App (1st) 200563, ¶ 33. Based on the filing date of Plaintiff’s Complaint (September 13, 2021), any alleged BIPA violation that may have occurred prior to September 13, 2016 would be time-barred under *Tims*.

C. The Amount In Controversy For the Putative Class’s Claims Exceeds Five Million Dollars.

19. Finally, the amount in controversy for the alleged class’s claims exceeds \$5,000,000. The amount in controversy under CAFA is satisfied if “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). In determining the amount in controversy, CAFA requires that “the claims of the individual class members shall be aggregated.” 28 U.S.C. § 1332(d)(6).

20. BIPA allows for recovery of statutory damages of \$1,000 for each negligent violation, or \$5,000 for each intentional or reckless violation. *See* 740 ILCS 14/20. In the Complaint, Plaintiff alleges Defendant violated five distinct subsections of BIPA with respect to Plaintiff and members of the proposed class—Sections 15(a), 15(b)(1), 15(b)(2), 15(b)(3), and 15(d). (*See* Cplt. ¶¶ 84, 94, 103.) Plaintiff’s proposed class includes all individuals who were enrolled in Defendant’s biometric timekeeping system. (Cplt. ¶ 71.) Finally, the complaint seeks \$1,000 in statutory damages for all negligent BIPA violations; or, in the alternative, \$5,000 in statutory damages for all reckless or intentional BIPA violations. (Cplt., Prayer For Relief).

21. Based on these allegations, the Complaint plausibly exceeds the \$5,000,000 amount-in-controversy threshold under CAFA. Given that Plaintiff’s *individual* claims exceed the \$75,000 threshold, the aggregated claims of more than one hundred class members is likely much greater than \$5,000,000. As discussed in the preceding section, the Northern District of Illinois has held that a defendant may be subject to BIPA liability on a “per-scan” basis, which means a violation would occur every time a plaintiff scans his fingerprint without consent. *See, e.g., Peatry*, 393 F. Supp. 3d at 769–70 (denying plaintiff’s motion to remand BIPA action and finding employer “plausibly alleged the requisite amount in controversy for [former employee] both individually under § 1332(a) and on a class-wide basis under CAFA”); *Cothron v. White Castle*

Sys., Inc., 477 F. Supp. 3d 723, 733 (N.D. Ill. 2020) (“[A]s for the intervening years, the only possible conclusion is that [defendant] violated Section 15(b) repeatedly when it collected her biometric data without first having obtained her informed consent.”).⁵ Based on the per-scan theory of liability (if it is upheld), the amount in controversy would plausibly exceed the \$5,000,000 threshold if Plaintiff and over one hundred class members could each recover \$1,000 for every alleged BIPA violation. As required by 28 U.S.C. § 1332(d)(2), the amount in controversy for the aggregated class members’ claims in this class action plausibly exceeds \$5,000,000. *See also Bloomberg v. Service Corp. Int’l*, 639 F.3d 761, 764 (7th Cir. 2011) (“Once the proponent of federal jurisdiction has explained plausibly how the stakes exceed \$5,000,000 . . . the case belongs in federal court *unless it is legally impossible for the plaintiff to recover that much.*”) (emphasis added).

IV. VENUE IS PROPER IN THE NORTHERN DISTRICT OF ILLINOIS

22. The United States District Court for the Northern District of Illinois, Eastern Division is the appropriate venue for removal of the State Court Action. Under 28 U.S.C. § 1441, a civil action brought in any state court in which the district courts of the United States have original jurisdiction are to be removed to the district court for the district and division embracing the place where the state court action is pending. The State Court Action was filed in Cook County, Illinois, which is located within this judicial district and division. *See* 28 U.S.C. § 93(a)(1).

23. As required by 28 U.S.C. § 1446(a), the Complaint, Summons and all other “process, pleadings, and orders” served to date on Defendant are attached hereto. *See Exhibit A.*

⁵ While *Cothron*, as a district court decision, is not controlling on the question of whether a BIPA plaintiff may recover statutory damages on a “per scan” basis, *Cothron* nevertheless shows the per-scan theory remains a plausible theory of relief in BIPA actions. Currently, the district court’s ruling in *Cothron* is pending on appeal before the Seventh Circuit Court of Appeals and awaiting decision from that Court.

24. As required by 28 U.S.C. §1446(d), written notice of this Notice of Removal will be sent promptly to Plaintiff's counsel by email and U.S. Mail, and promptly filed with the Clerk of the Circuit Court of Cook County, First Judicial Circuit.

25. By filing this Notice of Removal, Defendant does not waive any defenses to the claim Plaintiff asserts on behalf of himself and the putative class, including that Defendant did not violate BIPA and that class certification is inappropriate.

WHEREFORE, Method Products, PBC hereby removes Case Number 2021 CH 04629 pending in the Circuit Court of Cook County, Illinois, First Judicial Circuit, to the United States District Court for the Northern District of Illinois, Eastern Division.

Dated: October 21, 2021

Respectfully submitted,

METHOD PRODUCTS, PCB

By: /s/ David M. Poell

One of Its Attorneys

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Attorneys for Method Products, PCB



Notice of Service of Process

KSB / ALL
Transmittal Number: 23817031
Date Processed: 09/23/2021

Primary Contact: Kim Mahoney
S.C. Johnson & Son, Inc.
1525 Howe St
Racine, WI 53403-2237

Electronic copy provided to: Greg Cunningham
Karie Kirchenberg

Entity: Method Products, PBC
Entity ID Number 4082600

Entity Served: Method Products, PBC

Title of Action: Steven Horn vs. Method Products, PBC

Document(s) Type: Summons/Complaint

Nature of Action: Class Action

Court/Agency: Cook County Circuit Court, IL

Case/Reference No: 2021CH04629

Jurisdiction Served: Illinois

Date Served on CSC: 09/21/2021

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Brandon M. Wise
314-833-4825

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

Hearing Date: 1/11/2022 9:45 AM - 9:45 AM
Courtroom Number: 2508
Location: District 1 Court
Cook County, IL

FILED
9/13/2021 1:01 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH04629

14791498

2120 - Served	2121 - Served	2620 - Sec. of State
2220 - Not Served	2221 - Not Served	2621 - Alias Sec of State
2320 - Served By Mail	2321 - Served By Mail	
2420 - Served By Publication	2421 - Served By Publication	
Summons - Alias Summons		(03/15/21) CCG 0001 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Name all Parties

Steven Horn, individually and on behalf of all
others similarly situated

Plaintiff(s)

Method Products, PBC

Defendant(s)

Illinois Corporation Service C, 801 Adlai
Stevenson Drive, Springfield, IL 62703

Address of Defendant(s)

Case No. 2021CH04629

Please serve as follows (check one): Certified Mail Sheriff Service Alias

SUMMONS

To each Defendant: Method Products, PBC

You have been named a defendant in the complaint in this case, a copy of which is hereto attached. You are summoned and required to file your appearance, in the office of the clerk of this court, within 30 days after service of this summons, not counting the day of service. If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.

THERE IS A FEE TO FILE YOUR APPEARANCE.

FILING AN APPEARANCE: Your appearance date is NOT a court date. It is the deadline for filing your appearance/answer. To file your appearance/answer **YOU DO NOT NEED TO COME TO THE COURTHOUSE, unless you are unable to eFile your appearance/answer.** You can download an Appearance form at <http://www.illinoiscourts.gov/Forms/approved/procedures/appearance.asp>. After completing and saving your Appearance form, you can electronically file (e-File) it with the circuit clerk's office.

Iris Y. Martinez, Clerk of the Circuit Court of Cook County, Illinois

cookcountyclerkofcourt.org

SEP 2 1 2021

FILED DATE: 9/13/2021 1:01 PM 2021CH04629

Summons - Alias Summons

(03/15/21) CCG 0001 B

E-FILING: E-filing is now mandatory with limited exemptions. To e-File, you must first create an account with an e-Filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider.

If you need additional help or have trouble e-Filing, visit <http://www.illinoiscourts.gov/faq/gethelp.asp> or talk with your local circuit clerk's office. If you cannot e-file, you may be able to get an exemption that allows you to file in-person or by mail. Ask your circuit clerk for more information or visit www.illinoislegalaid.org.

FEE WAIVER: If you are unable to pay your court fees, you can apply for a fee waiver. For information about defending yourself in a court case (including filing an appearance or fee waiver), or to apply for free legal help, go to www.illinoislegalaid.org. You can also ask your local circuit clerk's office for a fee waiver application.

COURT DATE: Your court date will be sent to your e-File email account or the email address you provided to the clerk's office. You can also call or email the clerk's office to request your next court date. You will need to provide your case number OR, if unknown, the name of the Plaintiff or Defendant. For criminal case types, you will also need to provide the Defendant's birthdate.

REMOTE APPEARANCE: You may be able to attend this court date by phone or video conference. This is called a "Remote Appearance". Call the Circuit Clerk at (312) 603-5030 or visit their website at www.cookcountyclerkofcourt.org to find out how to do this.

Contact information for each of the Clerk's Office locations is included with this summons. The Clerk's office is open Mon - Fri, 8:30 am - 4:30 pm, except for court holidays.

To the officer: (Sheriff Service)

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so endorsed. This summons may not be served later than thirty (30) days after its date.

Atty. No.: 62258

Pro Se 99500

Name: Brandon M. Wise

Atty. for (if applicable):

Steven Horn

Address: 818 Lafayette Ave., Floor 2

City: St. Louis

State: MO Zip: 63104

Telephone: (314) 833-4827

Primary Email: bwise@peifferwolf.com

9/13/2021 1:01 PM IRIS Y. MARTINEZ
Witness date _____

Iris Y. Martinez, Clerk of Court



Service by Certified Mail
 Date of Service: SEP 21 2021
(To be inserted by officer on copy left with employer or other person)

Iris Y. Martinez, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

FILED DATE: 9/13/2021 1:01 PM 2021CH04629

GET YOUR COURT DATE BY CALLING IN OR BY EMAIL

CALL OR SEND AN EMAIL MESSAGE to the telephone number or court date email address below for the appropriate division, district or department to request your next court date. Email your case number, or, if you do not have your case number, email the Plaintiff or Defendant's name for civil case types, or the Defendant's name and birthdate for a criminal case.

CHANCERY DIVISION

Court date EMAIL: ChanCourtDate@cookcountycourt.com
Gen. Info: (312) 603-5133

CIVIL DIVISION

Court date EMAIL: CivCourtDate@cookcountycourt.com
Gen. Info: (312) 603-5116

COUNTY DIVISION

Court date EMAIL: CntyCourtDate@cookcountycourt.com
Gen. Info: (312) 603-5710

**DOMESTIC RELATIONS/CHILD SUPPORT
DIVISION**

Court date EMAIL: DRCourtDate@cookcountycourt.com
OR
ChildSupCourtDate@cookcountycourt.com
Gen. Info: (312) 603-6300

DOMESTIC VIOLENCE

Court date EMAIL: DVCourtDate@cookcountycourt.com
Gen. Info: (312) 325-9500

LAW DIVISION

Court date EMAIL: LawCourtDate@cookcountycourt.com
Gen. Info: (312) 603-5426

PROBATE DIVISION

Court date EMAIL: ProbCourtDate@cookcountycourt.com
Gen. Info: (312) 603-6441

ALL SUBURBAN CASE TYPES

DISTRICT 2 - SKOKIE

Court date EMAIL: D2CourtDate@cookcountycourt.com
Gen. Info: (847) 470-7250

DISTRICT 3 - ROLLING MEADOWS

Court date EMAIL: D3CourtDate@cookcountycourt.com
Gen. Info: (847) 818-3000

DISTRICT 4 - MAYWOOD

Court date EMAIL: D4CourtDate@cookcountycourt.com
Gen. Info: (708) 865-6040

DISTRICT 5 - BRIDGEVIEW

Court date EMAIL: D5CourtDate@cookcountycourt.com
Gen. Info: (708) 974-6500

DISTRICT 6 - MARKHAM

Court date EMAIL: D6CourtDate@cookcountycourt.com
Gen. Info: (708) 232-4551

FILED DATE: 9/13/2021 1:01 PM 2021CH04629

Chancery Division Civil Cover Sheet
General Chancery Section

(5/26/16) CCCH 0623

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

FILED
9/13/2021 12:03 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH04629

14789851

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

Steven Horn, Individually and On Behalf of All Others Similarly Situated
Plaintiff

v.

Method Products, PBC
Defendant

No. 2021CH04629

Hearing Date: 1/11/2022 9:45 AM - 9:45 AM
Courtroom Number: 2508
Location: District 1 Court
Cook County, IL

CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

- 0005 Administrative Review
- 0001 Class Action
- 0002 Declaratory Judgment
- 0004 Injunction

- 0007 General Chancery
- 0010 Accounting
- 0011 Arbitration
- 0012 Certiorari
- 0013 Dissolution of Corporation
- 0014 Dissolution of Partnership
- 0015 Equitable Lien
- 0016 Interpleader
- 0017 Mandamus
- 0018 Ne Exeat

- 0019 Partition
- 0020 Quiet Title
- 0021 Quo Warranto
- 0022 Redemption Rights
- 0023 Reformation of a Contract
- 0024 Rescission of a Contract
- 0025 Specific Performance
- 0026 Trust Construction
- Other (specify) _____

By: Brandon M. Wise
 Atty. No.: 62258 Pro se 99500
 Name: Brandon M. Wise
 Atty. for: Steven Horn
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Hearing Date: 1/11/2022 9:45 AM - 9:45 AM
Courtroom Number: 2508
Location: District 1 Court
Cook County, IL

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9/13/2021 12:03 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH04629

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

STEVEN HORN,)
INDIVIDUALLY AND ON BEHALF OF)
ALL OTHERS SIMILARLY SITUATED,)

 Plaintiff,)

v.)

METHOD PRODUCTS, PBC,)

 Defendant.)

Case No.: 2021CH04629

Judge:

CLASS ACTION COMPLAINT

Plaintiff Steven Horn (hereinafter "Plaintiff" or "Horn"), brings this Class Action Complaint individually and on behalf of all others similarly situated against Defendant Method Products, PBC (hereinafter "Defendant") to stop Defendant's unlawful collection, use, storage, and disclosure of Plaintiff's and the proposed Class's sensitive, private, and personal biometric data. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief including investigation conducted by his attorneys. Further, Plaintiff alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff worked for Defendant at its location in Illinois. While doing so, Plaintiff was a citizen of Illinois.
2. Defendant Method Products, PBC is a Delaware corporation with places of business in Illinois.
3. Defendant Method Products, PBC may be served through its registered agent, Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, IL 62703.
4. Jurisdiction is proper in this Court as Plaintiff is a citizen of Illinois and Defendant is a Delaware corporation that does business in Illinois.

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

5. Venue is proper in this court pursuant to 735 ILCS 5/2-101 as, upon information, Defendant does business in this County.

INTRODUCTION

6. While most establishments and employers use conventional methods for tracking time worked (such as ID badge swipes or punch clocks), Defendant, upon information and belief, mandated and required that employees have finger(s) scanned by a biometric timekeeping device.

7. Unlike ID badges or time cards – which can be changed or replaced if stolen or compromised – biometrics are unique, permanent biometric identifiers associated with each employee.

8. This exposes Defendant's employees, including Plaintiff, to serious and irreversible privacy risks.

9. For example, if a biometric database is hacked, breached, or otherwise exposed – such as in the recent Equifax, Uber, Facebook/Cambridge Analytica, and Marriott data breaches or misuses – employees have no means by which to prevent identity theft, unauthorized tracking, and other improper or unlawful use of this highly personal and private information.

10. In 2015, a data breach at the United States Office of Personnel Management exposed the personal identification information, including biometric data, of over 21.5 million federal employees, contractors, and job applicants. U.S. Off. of Personnel Mgmt., *Cybersecurity Incidents* (2018), available at www.opm.gov/cybersecurity/cybersecurity-incidents.

11. An illegal market already exists for biometric data. Hackers and identity thieves have targeted Aadhaar, the largest biometric database in the world, which contains the personal and biometric data – including fingerprints, iris scans, and a facial photograph – of over a billion Indian citizens. See Vidhi Doshi, *A Security Breach in India Has Left a Billion People at Risk of Identity Theft*, The Washington Post (Jan. 4, 2018), available at

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

https://www.washingtonpost.com/news/worldviews/wp/2018/01/04/a-security-breach-inindiahas-left-a-billion-people-at-risk-of-identity-theft/?utm_term=.b3c70259f138.

12. In January 2018, an Indian newspaper reported that the information housed in Aadhaar was available for purchase for less than \$8 and in as little as 10 minutes. Rachna Khaira, *Rs. 500, 10 Minutes, and You Have Access to Billion Aadhaar Details*, *The Tribune* (Jan. 4, 2018), available at <http://www.tribuneindia.com/news/nation/rs-500-10-minutes-and-you-haveaccess-to-billion-aadhaar-details/523361.html>.

13. Recognizing the need to protect its citizens from situations like these, Illinois enacted the Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, specifically to regulate companies that collect and store Illinois citizens’ biometrics.

14. As an employee/worker of Defendant, Plaintiff was required to “clock in” and “clock out” of work shifts by having his fingerprint scanned by a biometric timeclock which identified each employee, including Plaintiff.

15. Notwithstanding the clear and unequivocal requirements of the law, Defendant disregards employees’ statutorily protected privacy rights and unlawfully collects, stores, and uses employees’ biometric data in violation of BIPA. Specifically, Defendant has violated and continues to violate BIPA because it did not and, upon information and belief, continues not to:

- a. Properly inform Plaintiff and others similarly situated in writing of the specific purpose and length of time for which their fingerprint(s) were being collected, stored, disseminated and used, as required by BIPA;
- b. Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff’s and other similarly-situated individuals’ fingerprint(s), as required by BIPA;
- c. Receive a written release from Plaintiff and others similarly situated to collect, store, disseminate or otherwise use their fingerprint(s), as required by BIPA; and
- d. Obtain consent from Plaintiff and others similarly situated to disclose, redisclose, or otherwise disseminate their biometric identifiers and/or biometric information to a third party as required by BIPA.

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

16. The State of Illinois takes the privacy of biometric data seriously.

17. There is no realistic way, absent surgery, to reassign someone's biometric data. A person can obtain a new social security number, but not a new hand, which makes the protection of, and control over, biometric identifiers and biometric information particularly important.

18. Upon information and belief, Plaintiff and the Class members may be aggrieved because Defendant may have improperly disclosed employees' biometrics to third-party vendors in violation of BIPA.

19. Plaintiff and the putative Class are aggrieved by Defendant's failure to destroy their biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of employees' last interactions with the company.

ILLINOIS'S STRONG STANCE ON PROTECTION OF BIOMETRIC INFORMATION

20. BIPA provides valuable privacy rights, protections, and benefits to employees in Illinois.

21. Major national corporations started using Chicago and other locations in Illinois in the early 2000s to test "new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias" 740 ILCS 14/5(c). Given its relative infancy, an overwhelming portion of the public became weary of this then-growing yet unregulated technology. See 740 ILCS 14/5.

22. In late 2007, a biometrics company called Pay by Touch, which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions, filed for bankruptcy. The bankruptcy was alarming to the Illinois legislature because there was suddenly a serious risk that millions of fingerprint records – which, similar to other unique biometric identifiers, can be linked to people's sensitive financial and personal data – could now be sold, distributed, or otherwise shared through the bankruptcy proceedings without adequate protections

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who used the company's fingerprint scanners were completely unaware the scanners were not transmitting fingerprint data to the retailer who deployed the scanner, but rather to the now- bankrupt company, and that their unique biometric identifiers could now be sold to unknown third parties.

23. Recognizing the "very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information," Illinois enacted BIPA in 2008. See Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS 14/5.

24. Additionally, to ensure compliance, BIPA provides that, for each violation, the prevailing party may recover \$1,000 or actual damages, whichever is greater, for negligent violations and \$5,000, or actual damages, whichever is greater, for intentional or reckless violations. 740 ILCS 14/20.

25. BIPA is an informed consent statute which achieves its goal by making it unlawful for a company to, among other things, "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers or biometric information, unless it first:

- a. Informs the subject in writing that a biometric identifier or biometric information is being collected or stored;
- b. 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
- c. Receives a written release executed by the subject of the biometric identifier or biometric information."

See 740 ILCS 14/15(b).

26. BIPA specifically applies to employees who work in the State of Illinois. BIPA defines a "written release" specifically "in the context of employment [as] a release executed by an employee as a condition of employment." 740 ILCS 14/10.

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

27. Biometric identifiers include fingerprints, retina and iris scans, voiceprints, and scans of hand and face geometry. See 740 ILCS 14/10. Biometric information is separately defined to include any information based on an individual's biometric identifier that is used to identify an individual. *Id.*

28. BIPA also establishes standards for how companies must handle Illinois citizens' biometric identifiers and biometric information. See, e.g., 740 ILCS 14/15(c)-(d). For example, BIPA prohibits private entities from disclosing a person's or customer's biometric identifier or biometric information without first obtaining consent for that disclosure. *See*, 740 ILCS 14/15(d)(1).

29. BIPA also prohibits selling, leasing, trading, or otherwise profiting from a person's biometric identifiers or biometric information (740 ILCS 14/15(c)) and requires companies to develop and comply with 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 such identifiers or information has been satisfied or within three years of the individual's last interaction with the company, whichever occurs first. 740 ILCS 14/15(a).

30. The Illinois legislature enacted BIPA due to the increasing use of biometric data in financial and security settings, the general public's hesitation to use biometric information, and – most significantly – the unknown ramifications of biometric technology. Biometrics are biologically unique to the individual and, once compromised, an individual is at heightened risk for identity theft and left without any recourse.

31. BIPA provides individuals with a private right of action, protecting their right to privacy regarding their biometrics as well as protecting their rights to know the precise nature for which their biometrics are used and how they are being stored and ultimately destroyed. Unlike other statutes that only create a right of action if there is a qualifying data breach, BIPA strictly regulates the

manner in which entities may collect, store, use, and disseminate biometrics and creates a private right of action for lack of statutory compliance.

32. Plaintiff, like the Illinois legislature, recognizes how imperative it is to keep biometric information secure. Biometric information, unlike other personal identifiers such as a social security number, cannot be changed or replaced if hacked or stolen.

PLAINTIFF SPECIFIC ALLEGATIONS

33. Plaintiff was required to “clock-in” and “clock-out” using a timeclock that operated, at least in part, by scanning Plaintiff’s fingerprint.

34. As an employee, Plaintiff was required to scan at least one finger, multiple times, so Defendant could create, collect, capture, construct, store, use, and/or obtain a biometric template for Plaintiff.

35. Defendant then used Plaintiff’s biometrics as an identification and authentication method to track his time, potentially with the help of a third-party vendor.

36. Defendant subsequently stored Plaintiff’s biometric data in its database(s).

37. Each time Plaintiff began and ended his workday, in addition to clocking in and out for lunches, he was required to scan his fingerprint using the biometric timeclock device.

38. Plaintiff has never been informed of the specific limited purposes or length of time for which Defendant collected, stored, or used his biometrics.

39. Plaintiff has never been informed of any biometric data retention policy developed by Defendant, nor has he ever been informed of whether Defendant will ever permanently delete his biometrics.

40. Plaintiff has never been provided with nor ever signed a written release allowing Defendant to collect, capture, store, or otherwise obtain his fingerprint(s), handprint, hand geometry, or other biometrics.

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

41. Plaintiff has continuously and repeatedly been exposed to the risks and harmful conditions created by Defendant's violations of BIPA alleged herein.

42. BIPA protects employees like Plaintiff and the putative Class from this precise conduct, and Defendant had no right to secure this data.

43. Through BIPA, the Illinois legislature has created a right – a right to receive certain information prior to an employer securing their highly personal, private and proprietary biometric data – and an injury – not receiving this extremely critical information.

44. Pursuant to 740 ILCS 14/15(b), Plaintiff and the putative Class were entitled to receive certain information prior to Defendant securing their biometric data; namely, information advising them of the specific limited purpose(s) and length of time for which it/they collect(s), store(s), and use(s) their fingerprint(s) and any biometrics derived therefrom; information regarding Defendant's biometric retention policy; and, a written release allowing Defendant to collect and store their private biometric data.

45. No amount of time or money can compensate Plaintiff if his biometric data is compromised by the lax procedures through which Defendant captured, stored, used, and disseminated Plaintiff's and other similarly-situated individuals' biometrics, and Plaintiff would not have provided his biometric data to any Defendant if he had known that they would retain such information for an indefinite period of time without his consent.

46. A showing of actual damages beyond a violation of the BIPA statute is not necessary in order to state a claim under BIPA. *See Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186, ¶ 40 (“[A]n individual need not allege some actual injury or adverse effect, beyond violation of his or her rights under the Act, in order to qualify as “aggrieved” person and be entitled to seek liquidated damages and injunctive relief pursuant to the Act”).

47. As Plaintiff is not required to allege or prove actual damages beyond a violation of Plaintiff's statutory rights in order to state a claim under BIPA, he seeks statutory damages under BIPA as compensation for the injuries caused by Defendant. *Rosenbach*, 2019 IL 123186, ¶ 40.

DEFENDANT'S BIOMETRIC FINGER-SCANNING OF EMPLOYEES

48. By the time BIPA passed through the Illinois legislature in mid-2008, most companies who had experimented using employees' biometric data as an authentication method stopped doing so.

49. However, Defendant failed to take note of the shift in Illinois law governing the collection and use of biometric data. As a result, Defendant continues to collect, store, use, and disseminate employees' biometric data in violation of BIPA.

50. At relevant times, Defendant has taken the rather invasive and coercive step of requiring employees to be fingerprint scanned, and then using biometric information captured from those fingerprint scans, and data derived therefrom, to identify the employee and track employee work time.

51. After an employee's finger scans are captured, collected, and/or recorded by Defendant, employees are subsequently required to scan their finger into one of Defendant's biometric time clocks when they clock in or out at work.

52. Defendant captured, collected, stored, and/or otherwise obtained the employee's biometrics in order to identify and verify the authenticity of the employee who is clocking in or out.

53. Moreover, Defendant caused these biometrics to be associated with employees, along with other employee personal and work information.

54. Defendant has a practice of using biometric time clocks to track its employees, albeit without regard to Illinois' requirements under BIPA.

55. As part of the employee time-clocking process, Defendant caused biometrics from

employee finger scans to be recorded, collected, captured, and stored at relevant times.

56. Defendant has not, on information and belief, properly informed employees in writing that a biometric identifier or biometric information is being captured, obtained, collected or stored; informed 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; obtained employees' proper written consent to the capture, collection, obtainment or storage of their biometric identifier and biometric information derived from it; or obtained employees' executed written release as a condition of employment.

57. When Plaintiff arrived for work, and when Plaintiff left or clocked in or out of work, at relevant times during his employment, Defendant required Plaintiff to submit Plaintiff's finger scan to the biometric timekeeping system.

58. The system captured, collected, stored, and/or otherwise obtained Plaintiff's biometrics.

59. Defendant further required Plaintiff to scan Plaintiff's finger(s) in order to use the biometric system, so that the timekeeping system captured, collected, stored, and/or otherwise obtained Plaintiff's finger scan, matched Plaintiff's finger scan biometrics, and associated Plaintiff's biometrics with Plaintiff's identity.

60. Defendant did not at any time, on information and belief, inform Plaintiff in writing (or otherwise) that a biometric identifier and biometric information was being obtained, captured, collected, and/or stored, or of the specific purposes and length of term for which a biometric identifier or biometric information was being collected, captured, stored, and/or used; obtain, or attempt to obtain, Plaintiff's executed written release to have Plaintiff's biometrics captured, collected, stored, or recorded as a condition of employment – Plaintiff did not provide consent required by BIPA to the capture, collection, storage, obtainment, and/or use of Plaintiff's fingerprint, finger scan, finger

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

geometry, or associated biometrics. Nor did Plaintiff know or fully understand that Defendant was collecting, capturing, and/or storing biometrics when Plaintiff was scanning Plaintiff's finger; nor did Plaintiff know or could Plaintiff know all of the uses or purposes for which Plaintiff's biometrics were taken.

61. Upon information and belief, Defendant has not publicly disclosed its retention schedule and guidelines for permanently destroying employee biometrics, if they exist.

62. Defendant, on information and belief, has no written policy, made available to the public, that discloses its retention schedule and/or guidelines for retaining and then permanently destroying biometric identifiers and information.

63. The Pay by Touch bankruptcy that catalyzed the passage of BIPA highlights why conduct such as Defendant's – where individuals are aware that they are providing a biometric but not aware of to whom or for what purposes they are doing so – is dangerous.

64. That bankruptcy spurred Illinois citizens and legislators into realizing that it is crucial for individuals to understand when providing biometric identifiers or information such as a finger scan, and/or data derived therefrom, who exactly is collecting their biometric data, where it will be transmitted and for what purposes, and for how long.

65. Thus, BIPA is the Illinois Legislature's expression that Illinois citizens have biometric privacy rights, as created by BIPA.

66. Defendant disregarded these obligations and instead unlawfully collected, stored, and used employees' biometric identifiers and information, without ever receiving the individual's informed written consent as required by BIPA.

67. Because Defendant neither published a BIPA-mandated data retention policy nor disclosed the purposes for their collection of biometric data, Defendant's employees have no idea whether Defendant sells, discloses, re-discloses, or otherwise disseminates his or her biometric data.

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

68. Nor are Plaintiff and the putative Class told whom Defendant currently discloses his or her biometric data, or what might happen to his or her biometric data in the event of a buyout, merger, or a bankruptcy.

69. By and through the actions detailed above, Defendant has not only disregard the Class' privacy rights, but it has also violated BIPA.

70. Defendant's above-described use of biometrics benefits only Defendant. There is no corresponding benefit to employees: Defendant has required or coerced employees to comply in order to receive a paycheck, after they have been committed to the job.

CLASS ALLEGATIONS

71. Plaintiff brings this action on behalf of himself and pursuant to 735 ILCS 5/2-801 on behalf of a class (hereinafter the "Class") defined as follows:

All persons who were enrolled in the biometric timekeeping system and subsequently used a biometric timeclock while employed/working for Defendant in Illinois during the applicable statutory period.

Excluded from the class are Defendant's officers and directors, Plaintiff's counsel, and any member of the judiciary presiding over this action.

72. **Numerosity:** The exact number of class members is unknown and is not available to Plaintiff at this time, but upon information and belief, there are in excess of forty potential class members, and individual joinder in this case is impracticable. Class members can easily be identified through Defendant's records and allowing this matter to proceed on a class basis will prevent any retaliation by Defendant against current employees who are currently having their BIPA rights violated.

73. **Common Questions:** There are several questions of law and fact common to the claims of Plaintiff and the Class members, and those questions predominate over any questions that may affect individual Class members. Common questions include, but are not limited to, the following:

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

- a. whether Defendant has a practice of capturing or collecting employees' biometrics;
- b. whether Defendant developed a written policy, made available to the public, 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;
- c. whether Defendant obtained an executed written release from finger scanned employees before capturing, collecting, or otherwise obtaining employee biometrics;
- d. whether Defendant obtained an executed written release from finger scanned employees, as a condition of employment, before capturing, collecting, converting, sharing, storing or using employee biometrics;
- e. whether Defendant provided a writing disclosing to employees the specific purposes for which the biometrics are being collected, stored, and used;
- f. whether Defendant provided a writing disclosing to finger scanned employees the length of time for which the biometrics are being collected, stored, and used;
- g. whether Defendant's conduct violates BIPA;
- h. whether Defendant's conduct was negligent, reckless, or willful;
- i. whether Plaintiff and Class members are entitled to damages, and what is the proper measure of damages;

74. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interest of the class and has retained competent counsel experienced in complex litigation and class action litigation. Plaintiff has no interests antagonistic to those of the class, and Defendant has no defenses unique to Plaintiff.

75. **Appropriateness:** Class proceedings are also superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. Further, it would be virtually impossible for the individual members of the Class to obtain effective relief because of the fear and likelihood of retaliation by Defendant against current employees bringing a civil action as an individual. Even if Class members were able or willing to pursue such individual litigation, a class action would still be preferable due to the fact that a multiplicity of individual actions

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

would likely increase the expense and time of litigation given the complex legal and factual controversies presented in this Class Action Complaint. A class action, on the other hand, provides the benefits of fewer management difficulties, single adjudication, economy of scale, and comprehensive supervision before a single Court, and would result in reduced time, effort and expense for all parties and the Court, and ultimately, the uniformity of decisions.

**COUNT I – FOR DAMAGES AGAINST DEFENDANT
VIOLATION OF 740 ILCS 14/15(a) – FAILURE TO INSTITUTE, MAINTAIN, AND ADHERE TO
PUBLICLY AVAILABLE RETENTION SCHEDULE**

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

77. BIPA mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention – and, importantly, 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).

78. Defendant fails to comply with these BIPA mandates.

79. Defendant is an Illinois corporation registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. See 740 ILCS 14/10.

80. Plaintiff is an individual who had his “biometric identifiers” collected by each Defendant, as explained in detail in above. See 740 ILCS 14/10.

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

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

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

83. Upon information and belief, Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and the Class's biometric data and have not and will not destroy Plaintiff's and the Class's biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the individual's last interaction with the company.

84. On behalf of himself 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 each Defendant to comply with BIPA's requirements for the collection, storage, and use 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).

**COUNT II – FOR DAMAGES AGAINST DEFENDANT
VIOLATION OF 740 ILCS 14/15(b) – FAILURE TO OBTAIN INFORMED WRITTEN CONSENT AND
RELEASE BEFORE OBTAINING BIOMETRIC IDENTIFIERS OR INFORMATION**

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

86. BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, BIPA 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).

87. Defendant fails to comply with these BIPA mandates.

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

88. Defendant is an Illinois corporation registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. See 740 ILCS 14/10.

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

90. 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.

91. Defendant systematically and automatically collected, used, stored and disseminated 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).

92. Defendant never informed Plaintiff and the Class in writing that their biometric identifiers and/or biometric information were being collected, stored, used and disseminated, 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 disseminated as required by 740 ILCS 14/15(b)(1), (2).

93. By collecting, storing, using and disseminating 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. See 740 ILCS 14/1, *et seq.*

94. On behalf of himself 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’s requirements for the collection, storage, use and dissemination 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).

**COUNT III – FOR DAMAGES AGAINST DEFENDANT
VIOLATION OF 740 ILCS 14/15(d) – DISCLOSURE OF BIOMETRIC IDENTIFIERS AND
INFORMATION BEFORE OBTAINING CONSENT**

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

96. BIPA prohibits private entities from disclosing a person's or customer's biometric identifier or biometric information without first obtaining consent for that disclosure. *See* 740 ILCS 14/15(d)(1).

97. Defendant fails to comply with this BIPA mandate.

98. Defendant is an Illinois corporation registered to do business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS 14/10.

99. Plaintiff and the Class are individuals who have had their "biometric identifiers" collected by Defendants, as explained in detail above. *See* 740 ILCS § 14/10.

100. 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.

101. Defendant systematically and automatically disclosed, redisclosed, or otherwise disseminated Plaintiff's and the Class's biometric identifiers and/or biometric information without first obtaining the consent required by 740 ILCS 14/15(d)(1).

102. By disclosing, redisclosing, or otherwise disseminating 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. *See* 740 ILCS 14/1, *et seq.*

103. On behalf of himself 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

FILED DATE: 9/13/2021 12:03 PM 2021CH04629

Defendant to comply with BIPA's requirements for the collection, storage, use and dissemination 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, individually and on behalf of the Class of similarly situated individuals, prays for an Order as follows:

- A. Finding this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class as defined herein;
- B. Designating and appointing Plaintiff as representative of the Class and Plaintiff's undersigned counsel as Class Counsel;
- C. Declaring that Defendant's actions, as set forth above, violate BIPA;
- D. Awarding Plaintiff and the Class members statutory damages of \$5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2); statutory damages of \$1,000 per each negligent violation of BIPA pursuant to 740 ILCS 14/20(1);
- E. Declaring that Defendant's actions, as set forth above, were intentional or reckless;
- F. Declaring that Defendant's actions, as set forth above, were negligent;
- G. Awarding injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Class, including an Order requiring Defendants to collect, store, use and disseminate biometric identifiers and/or biometric information in compliance with BIPA;
- H. Awarding Plaintiff and the Class members reasonable attorneys' fees and costs incurred in this litigation pursuant to 740 ILCS 14/20(3);
- I. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- J. Granting all such other and further relief as the Court deems just and appropriate.

Dated: September 13, 2021

Respectfully Submitted:

By: /s/ Brandon M. Wise

Brandon M. Wise – IL Bar # 6319580

Paul A. Lesko – IL Bar # 6288806

Adam Florek – IL Bar # 6320615

PEIFFER WOLF CARR KANE & CONWAY, LLP

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COUNSEL FOR THE PLAINTIFF AND THE PUTATIVE CLASS

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EXHIBIT B

PEIFFER WOLF CARR & KANE, APLC

Peiffer Wolf Carr & Kane, APLC ("PWCK") was founded in 2013. Joseph Peiffer, PWCK's managing partner, previously was a litigation partner at Fishman Haygood, LLP in New Orleans. PWCK handles a wide variety of cases, including a variety of collective, class, and mass actions. Since its inception, PWCK has acquired talented attorneys from coast to coast, becoming a national litigation firm.

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ATTORNEY PROFILES

Brandon Wise joined the firm after managing his own solo practice that focus on class, collective, and employment matters. Brandon has successfully litigated collective and class action cases in St. Louis, Southern Illinois, and Central Illinois. Brandon has served as class or collective counsel in the following resolved collective and class matters:

Volz, et al. v. Provider Plus, Inc., et al., a Fair Labor Standards Act ("FLSA") collective action involving 45 collective action members. The confidential settlement agreement was approved by Judge Mummert within hours of its submission to the court.

Carver, et al. v. Foresight Energy LP, et al., WARN Act litigation brought on behalf of a class of former coal miners. Mr. Wise secured the first reported decision, a significant legal victory, regarding the WARN Act's "natural disaster" exception. 2016 WL 3812376 (Opinion entered July 12, 2016). After the defendants' motion to dismiss was denied, the parties reached a class-wide settlement of \$550,000 for a class of 75 employees.

Volz v. Tricorp management Company, et al., a FLSA collective in class action where Mr. Wise was appointed Class Counsel. The parties reached a \$350,000 settlement for bartenders, servers, hosts, and other tipped employees of the largest T.G.I. Friday's franchisee in the Midwest.

Morris v. Imperial Towers Condominium Assn., Biometric Information Privacy Act ("BIPA") class action settlement approved naming Brandon Wise as Class Counsel. The \$120,000 settlement for 60 class members is one of the highest BIPA class settlements per class member in the country.

Brandon currently serves as class or putative class counsel in other matters, as well.

Paul Lesko joined PWCK in August of 2016, co-founding the St. Louis office of the firm with Brandon Wise. His practice consists of representing individuals, startups, and small companies that have been harmed by larger corporations. With his biotech background, Paul focuses on prosecuting complex technological cases, including patent and class actions. Paul has specific experience litigating GMO crop cases as well as cases focusing on pesticide and herbicide technologies.

Joseph Peiffer is the managing member of PWCK. His practices consist of representing individuals and institutions that have been harmed by investment banks and brokerage firms, prosecuting ERISA class actions, and representing victims of labor trafficking and those who have suffered catastrophic injury. He has co-authored a

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

treatise *Litigating Business and Commercial Tort Cases*, which is published by Thompson West.

Joe has also taught and lectured extensively. He co-created and taught a class entitled *Storytelling and Advocacy* at Loyola Law School. Also, at Loyola Law School, he has taught a course entitled "The Basics of Arbitration" and he also serves as an adjunct professor teaching *Trial Advocacy*. He has guest lectured at Tulane Law School in its *Securities Regulations* class and Syracuse Law School on securities arbitration. He has spoken at many national conventions on a variety of topics including prosecuting large, multi-client claims, broker's deficient advice to retire and FINRA arbitration.

Joe has represented hundreds of individual retirees against their brokers in FINRA arbitration. The highlights of this practice include representing 32 Exxon retirees in a 90-day FINRA arbitration against Securities America that resulted in a \$22 million verdict – one of the largest ever awarded by a FINRA arbitration panel. He has also represented hundreds of Xerox and Kodak retirees against their broker resulting from the broker's fraudulent advice to retire and subsequent unsuitable investments. He has represented hundreds of families in cases involving private placements and Ponzi schemes.

His financial services fraud practice also includes representing hospitals and municipalities around the country in cases involving their issuance of auction rate securities. He also serves as co-lead counsel on several ERISA class actions against large financial services firms alleging that they did not prudently invest retirement money and had conflicts of interest. He also is on the plaintiffs' steering committee in a nationwide antitrust class action involving the illegal tying of cable set-top boxes to the provision of premium cable services. Joe also currently represents hundreds of clients in cases involving serious injuries sustained by pharmaceutical products.

Finally, he represents victims of human trafficking and labor exploitation. In one such case, the plaintiffs have alleged that the defendants have failed to pay overtime, improperly deducted for employee housing, and held the plaintiffs passports while in the United States. He has travelled extensively to the Philippines for this case and another one involving a rig explosion where two of his clients working on a rig owned by Black Elk exploded.

Joe was one of three Louisiana lawyers ranked by Chambers USA for securities litigation in 2011. He has been named a 2013 Rising Star by his peers in the Class Action Administration organization. He has been quoted by USA Today, Wall Street Journal, the Associated Press, New York Times, New York Daily News, The Los Angeles Times, Business Week, Investment News, and many other publications. Mr. Peiffer has also appeared on CNN. He was named as one of the fifty Leaders in Law by New Orleans City Business Magazine.

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

He has also successfully risen into the leadership of several national bar associations. He twice served as the chairman of the Business Torts Section of the American Association for Justice. He currently serves as President of PIABA – a nationwide bar association of lawyers that represent individuals and institutions in arbitrations to recover money lost by investment banks and brokerage firms.

Joe graduated from Tulane School of Law, cum laude, in 1999. While at Tulane, he served on the Tulane Law Review and was involved with the Tulane Legal Assistance Program. Prior to attending Tulane, he graduated from Bowling Green State University in 1996 with a degree in communications.

Adam Wolf has developed a national reputation as a leading appellate, complex litigation, and civil rights litigator. He successfully argued a case in the United States Supreme Court, *Safford Unified School District No. 1 v. Redding*, 557 U.S. 364 (2009), that defined the scope of the Fourth Amendment regarding strip searches in public schools. The Court's opinion in *Safford* marked the first time in forty years that the Supreme Court ruled in favor of a student who claimed that her school violated her constitutional rights. For his efforts in this case, Mr. Wolf was named Attorney of the Year in California by California Lawyer Magazine.

Mr. Wolf has argued in numerous federal and state courts of appeals, in addition to the United States Supreme Court. He has represented groups and individuals whose constitutional rights have been violated, organizations who seek to vindicate their rights, and governmental entities who were harmed by corporate misconduct.

Mr. Wolf has lectured around the country regarding constitutional law and civil rights. He has been quoted in hundreds of domestic and international newspapers, including the New York Times, Washington Post, Los Angeles Times, USA Today, and Wall Street Journal. Additionally, Mr. Wolf has appeared on numerous television and radio programs, including Good Morning America, CBS Evening News, ABC World News, NBC Nightly News, CNN Headline News, National Public Radio, and the BBC.

Mr. Wolf has been appointed to leadership positions in numerous class actions and mass actions throughout the country.

Daniel Carr represents a diverse client base in a variety of commercial disputes, complex litigation, and arbitration. Daniel handles numerous state and federal lawsuits for individuals and businesses, and he currently represents investors, and municipalities in FINRA arbitration proceedings. Together with Joe Peiffer, Daniel also serves as co-counsel in several ERISA and antitrust class action lawsuits and represents individuals in litigation involving pharmaceutical products, labor exploitation, fraudulent investments, and wrongful death.

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

Daniel is a member of several nationwide bar associations, including PIABA (Public Investors Arbitration Bar Association), and he previously served on the board of directors of the Business Torts Section of the American Association for Justice.

Daniel received his law degree from Tulane School of Law, summa cum laude, in 2006. While at Tulane, he was elected Senior Articles Editor for the Tulane Law Review, and he worked as a fellow in the Legal Analysis Program. Following law school, Daniel was privileged to serve as a law clerk to Judge Jacques L. Wiener, Jr., on the United States Court of Appeals for the Fifth Circuit.

Jason Kane is a securities attorney practicing out of the firm's Upstate New York office. He has extensive experience representing investors in Financial Industry Regulatory Authority arbitrations and New York State Courts.

Jason graduated from the State University of New York at Geneseo in 2004 having earned his B.A. in Economics. Thereafter, Jason attended the Syracuse University College of Law, and received his Juris Doctorate, Cum Laude, in 2007.

While attending the Syracuse University College of Law, Jason served as a form and accuracy editor for the Syracuse Journal of International Law and Commerce. He also gained valuable experience as a student law clerk for Magistrate Judge George H. Lowe and served as a volunteer at the United States Attorney's Office in the Northern District of New York where he assisted the Assistant United States Attorneys prosecute their cases.

Jason has represented hundreds of investors in Upstate New York and around the country in some of the highest profile securities cases originating out of Upstate New York. He has recovered millions of dollars in FINRA arbitration and mediation while representing individuals against their former brokers and brokerage firms. He often assists his victimized clients through the regulatory investigations that result from the large scale scams perpetrated by their unscrupulous brokers.

REPRESENTATIVE CASES

PWCK attorneys were appointed class counsel or serve as counsel in numerous class and collective actions, including:

Whitley, et al. v. J.P. Morgan Chase & Co., et al., a class action lawsuit on behalf of retirement investors against J.P. Morgan Chase & Co. and various other J.P. Morgan entities over the sale and administration of the JP Morgan Stable Value Fund. Received preliminary approval for a class wide settlement of \$75 million.

Volz, et al. v. Provider Plus, Inc., et al., a Fair Labor Standards Act (“FLSA”) collective action involving 45 collective action members. The confidential settlement agreement was approved by Judge Mummert.

Nevarez v. Forty Niners Football Company, a certified class action, on behalf of nearly 5,000 class members with mobility disabilities who were denied equal access to Levi’s Stadium in violation of the Americans with Disabilities Act.

Baricuarto, et al. v. Industrial Personnell and Management Services, Inc. et al., a human trafficking case that required extensive travel and litigation in the Philippines, and resulted in a multi-million dollar settlement.

In re Pacific Fertility Center Litigation, a putative class action on behalf of nearly 1,000 people whose embryos were compromised in a freezer tank at a fertility center.

Amador v. California Culinary Academy, representing a certified class of former students of for-profit school California Culinary Academy regarding class members’ student loans.

Bilewicz v. FMR LLC, a case brought on behalf of current and former employees of Fidelity Investments, alleging that Fidelity violated ERISA by offering exclusively high-fee Fidelity mutual fund products in its retirement plan and by repeatedly adding funds to the plan with little or no track record. Plaintiffs further alleged that the Fidelity plan’s fees are very high for a multi-billion dollar plan, and Fidelity has failed to follow sound fiduciary practices for multi-billion dollar plans. This case was successfully settled, and PWCK was approved as co-class counsel in that action.

Carver, et al. v. Foresight Energy LP, et al., WARN Act litigation brought on behalf of a class of former coal miners. PWCK secured the first reported decision, a significant legal victory, regarding the WARN Act’s “natural disaster” exception. 2016 WL 3812376 (Opinion entered July 12, 2016). After the defendants’ motion to dismiss was denied, the parties reached a proposed class-wide settlement of \$550,000 for a class of 75 employees.

Volz v. Tricorp management Company, et al., a FLSA collective in class action where PRW Legal attorney was appointed class counsel. Settled for \$350,000, for bartenders, servers, hosts, and other tipped employees of the largest T.G.I. Friday’s franchisee in the Midwest.

Hanson v. Berthel Fisher & Company Financial Services, Inc., et al., a securities class action filed on behalf of investors in a real estate investment program that raised approximately \$26 million from the investing public. Claims were predicated upon the role played by Berthel Fisher, the managing broker-dealer of the program that allegedly organized and oversaw the securities offering by the Program while aware of misrepresentations and

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

omissions in the Program's offering documents.

Booth et al. v. Strategic Realty Trust, Inc., et al., a securities class action where plaintiffs contended that throughout the offering period, the Strategic Realty Trust offering materials contained materially inaccurate and incomplete statements about the company's investment strategy, internal controls, and governance mechanisms. Plaintiffs alleged that their investments lost value as a result of defendants' acts and omissions.

Thieriot v. Celtic Ins. Co., a certified class action where settlement was approved on behalf of a class of people who were overcharged by a health insurer in violation of state law.

PWCK currently serves as counsel for plaintiffs in numerous other class and mass actions, including:

In re: FedLoan Student Loan Servicing Litigation, 2:18-md-02883 (E.D. Penn.) consolidated multi-district litigation involving one of the nation's largest student loan servicers. Attorney Brandon Wise was appointed to the Plaintiffs' Executive Committee.

In re: Dicamba Herbicides Litigation, 1:18-md-02820-SNLJ (E.D. Mo), consolidated multi-district litigation involving the alleged unlawful release of a genetically modified seed and herbicide system.

Albers, et al. v. Deloitte & Touche LLP, et al., a mass securities action where PWCK represents over 100 investors with claims exceeding \$100 million in action alleging violations of state securities laws.

Yao-Yi Liu et al. v. Wilmington Trust Company, a class action lawsuit on behalf of investors of a fraudulent scheme against Wilmington Trust alleging that Wilmington Trust breached its duties as an escrow agent and aided the perpetrators of the scheme.

In re Platinum and Palladium Antitrust Litigation, a case involving claims against BASF Metals, Goldman Sachs, HSBC, and Standard Bank. Plaintiffs allege that Defendants were involved in an unlawful price-setting process of platinum and palladium in violation of the Sherman Act.

Fouts v. Bank of Nova Scotia, New York Agency et al., a class action filed on behalf of holders of debt with interest rates linked to the US Treasuries auction rates, alleging violations of the federal antitrust and commodities laws arising from manipulation of the prices of Treasury securities and related financial instruments through collusion by the primary dealers of U.S. Treasury Department securities.

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

In re Fidelity ERISA Float Litigation, a case involving claims brought by participants in various ERISA plans administered by Fidelity, on behalf of those plans, alleging that Fidelity violated ERISA by improperly using “float” income received as interest on plan assets to pay itself fees and failing to crediting the amount of that float income to the plans or their participants.

American Chemicals & Equipment Inc. 401(K) Retirement Plan v. Principal Management Corporation, et al., a case involving claims brought by ACE 401(k) Plan, on behalf of the shareholders of six mutual funds, against the investment advisors for those funds. Plaintiff alleges that the defendants breached their statutory fiduciary duty under Section 36(b) of the Investment Company Act of 1940 (“ICA”), 15 U.S.C. § 80a-35(b), by charging unfair and excessive fees for their advisory services and retaining excess profits derived from economies of scale.

Jennifer Roth v. Life Time Fitness, Inc., a class action lawsuit filed on behalf of fitness instructors seeking unpaid wages for work that was required by Defendants. Plaintiff alleges that fitness instructors were not compensated for the work they performed before and after fitness classes.

Carol Prock v. Thompson National Properties, LLC, et al., a securities class action filed on behalf of investors in the TNP 6700 Santa Monica Boulevard, a real estate investment program that raised approximately \$17 million from the investing public. Claims are predicated upon alleged material misrepresentations and omissions in the program’s offering documents by its sponsor and officers and directors of the sponsor.

In re Dental Supplies Antitrust Litigation, a class action lawsuit filed on behalf of dental practices, orthodontic practices, and dental laboratories alleging that the country’s three largest distributors of dental supplies and equipment agreed not to compete on price and caused injury to plaintiffs in the form of artificially inflated prices.

Matthew Fero et al. v. Excellus Health Plan Inc., a class action lawsuit filed on behalf of plaintiffs whose personal information was compromised as a result of a data breach that is alleged to have gone undetected for a 600-day period.

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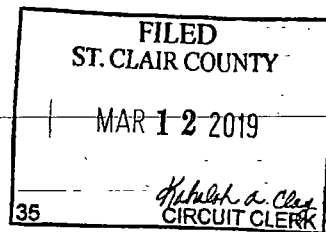
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EXHIBIT A

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

SAROYA ROBERSON, individually and on)
behalf of all others similarly situated,)
Plaintiff,)
v.)
SYMPHONY POST-ACUTE CARE)
NETWORK; SYMPHONY SYCAMORE)
LLC; SYMPHONY HEALTHCARE LLC;)
SYMPHONY M.L. LLC; SYMPHONY)
MONARCH HOLDINGS, LLC; and DOE.)
DEFENDANTS 1-100,)
Defendants.)

Case No. 17 -L- 733



MEMORANDUM AND ORDER
ON CLASS CERTIFICATION

The case comes before the Court on Plaintiff's Motion for Class Certification ("Motion").

The issues have been briefed and argued by the parties.¹ The Court hereby **ORDERS**:

I. NATURE OF THE CASE AND PLAINTIFF'S MOTION FOR CLASS CERTIFICATION.

Plaintiff Saroya Roberson worked at a nursing home in Swansea, Illinois. Plaintiff alleges that as part of timekeeping while she worked at this location, Defendants and others captured her biometric information or biometric identifiers (a palm scan) within the meaning of the Illinois Biometric Privacy Information Act, 740 ILCS 14/1 ("BIPA"). Defendants' opposition brief does not dispute Roberson's biometric information or biometric identifiers were so captured.

BIPA manifests the Illinois General Assembly's findings that:

¹ Arguments were heard on December 20, 2018 before Judge Julia R. Gomric. On February 8, 2019, after hearing, but before Judge Gomric ruled on the pending Motion for Class Certification, the court granted Symphony Sycamore LLC's Motion for Substitution as a Matter of Right, and this case was subsequently assigned to the undersigned. The court has reviewed the court file and report of proceedings held on December 20, 2018 and is ready to proceed without the need for additional hearing.

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

(1) Biometrics are uniquely sensitive identifiers. "Biometrics are unlike other unique identifiers . . . [and] 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." 740 ILCS § 14/5(c).

(2) Biometric technology is a new frontier subject to unpredictable developments. "The full ramifications of biometric technology are not fully known." *Id.* at § 14/5(f).

(3) People are apprehensive of transactions involving their biometrics. The "overwhelming majority of members of the public are weary of the use of biometrics when such information is tied to finances and other personal information" and are "deterred from partaking in biometric identifier-facilitated transactions." *Id.* at § 14/5(d)-(e).

(4) Regulation of biometric collection, use, and storage serves the public interest. 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." *Id.* at § 14/5(g).

Accordingly, BIPA puts certain requirements on parties dealing with biometric identifiers or biometric information, including:

(b) 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.

740 ILCS 14/5(b) (2018).

Plaintiff alleges none of these requirements were met when capturing her biometric information. Defendants' opposition to the Motion does not dispute this.

BIPA further provides a right of action for violations of its requirements:

Sec. 20. Right of action. Any person aggrieved by a violation of this Act shall have a right of action in a State circuit court . . . against an offending party. A prevailing party may recover for each violation:

(1) against a private entity that negligently violates a provision of this Act, liquidated damages of \$1,000 or actual damages, whichever is greater;

(2) against a private entity that intentionally violates a provision of this Act, liquidated damages of \$5,000 or actual damages, whichever is greater; . . .

740 ILCS 14/20 (2018). Plaintiff brought this action pursuant to these and other provisions of BIPA.

Plaintiff alleges the Swansea, Illinois location where her biometric identifiers were captured is part of a network, the Symphony Post Acute Network ("SPAN" or the "Network"). She seeks to certify a class of Illinois citizens who had their biometric information or biometric identifiers captured, collected, etc. at any Illinois location in the Network (and associated subclasses discussed below):

All Illinois citizens whose biometric information was collected, captured, purchased, received through trade, or otherwise obtained in Illinois at any location associated with the Symphony Post Acute Care Network, a/k/a Symphony Post Acute Network, as set forth in the Illinois Biometric Information Privacy Act, 740 ILCS 14/5 *et seq.*

Excluded from the proposed Class are employees, officers, directors, subsidiaries and affiliates of any person or business associated with the Symphony Post Acute Care Network, a/k/a Symphony Post Acute Network, the judge or any officer of the court presiding over this action.

II. LAW REGARDING A DETERMINATION OF CLASS CERTIFICATION.

"In determining whether to certify a proposed class, the trial court . . . should avoid

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

deciding the underlying merits of the case or resolving unsettled legal questions.” *CE Design Ltd. v. C & T Pizza, Inc.*, 2015 IL App (1st) 131465 (2015), ¶ 9. “In making its decision as to whether to certify a class, the court may consider any matters of fact or law properly presented by the record, which includes the pleadings, depositions, affidavits, answers to interrogatories, and any evidence that may be adduced at the hearings.” *Bueker*, 2016 IL App (5th) 150282 at ¶ 22. “To determine whether the proposed class should be certified, the court accepts the allegations of the complaint as true.” *Clark*, 343 Ill. App. 3d at 544-45. *See also CD Design*, 2015 IL App (1st) 131465 at ¶ 9 (“In determining whether to certify a proposed class, the trial court accepts the allegations of the complaint as true . . .”); *S37 Mgmt.*, 2011 IL App (1st) 102496 at ¶ 15 (same).

The factors which the Court must consider on a motion for class certification are the familiar framework established by statute. For a suit to proceed as a class action in Illinois, the Court must find that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interests of the class; and (4) a class action is an appropriate method for the fair and efficient adjudication of the controversy. 735 ILCS 5/2-801 (2018). *See also e.g. Clark, et al. v. TAP Pharm. Prods., Inc., et al.*, 343 Ill. App. 3d 538, 544-45 (5th Dist. 2003).

III. FIRST FACTOR: NUMEROSITY (735 ILCS 5-2/801(1)).

Section 801(1) requires not only that the number of plaintiffs be numerous, but also that joinder of plaintiffs in one individual action be impractical. 735 ILCS 5/2-801(1). Where there are a number of potential claimants, and the individual amount claimed by each is small,

making redress on an individual level difficult, if not impossible, Illinois courts have been particularly receptive to proceeding on a class action basis. *Miner v. Gillette Co.*, 87 Ill.2d 7 (1981). Avoiding unnecessary burdens on the courts themselves is also a legitimate concern.

“Affirming the trial court’s class certification order will avoid the filing of numerous, repetitive cases placing a burden on the court.” *Fakhoury v. Pappas*, 395 Ill. App. 3d 302, 316 (1st Dist. 2009).

Plaintiff states that Defendants have identified, at a minimum, 552 workers who would be members of the class from the Swansea, Illinois location alone. Defendants’ opposition to the Motion does not dispute this; in fact, Defendants’ opposition does not mention numerosity at all. Accordingly, the Court finds that the numerosity factor is satisfied. *See Wood River Area Dev. Corp. v. Germania Fed. Sav. and Loan Ass’n*, 198 Ill. App. 3d 445 (5th Dist. 1990).

IV. SECOND FACTOR: COMMON AND PREDOMINANT ISSUES OF FACT OR LAW (735 ILCS 5-2/801(2)).

Section 801(2) requires “questions of fact or law common to the class.” 735 ILCS 5/2-801(2) (2018). As the statute is phrased in the alternative, certification requires “only that there be either a predominating common issue of law or fact, not both.” *Martin v. Heindl Commodities, Inc.*, 117 Ill.2d 67, 81 (1994).

Plaintiff suggests that a case presents common issues when defendants have engaged in the same or similar course of conduct, and that this is particularly true where – as here – the claims are based predominantly upon the application of a single statute or statutory scheme. “A common question may be shown when the claims of the individual class members are based upon the common application of a statute.” *Clark*, 343 Ill. App. 3d at 548. *See also Bueker*, 2016 IL App (5th) 150282, ¶ 27 (“With regard to the commonality requirement, a common issue

may be shown where the claims of the individual class members are based upon the common application of a statute or where the proposed class members are aggrieved by the same or similar conduct or pattern of conduct.”); *Hall*, 376 Ill. App. 3d at 831 (same).² Defendants’ opposition to the Motion did not dispute this general premise.

Thus, according to Plaintiff, “Examination quickly establishes that commonality is easily satisfied in this case. All class members are citizens of Illinois. All are proceeding principally under a single Illinois statute, BIPA. Each was subjected to an identical course of conduct by defendants: The capture of their biometric information.”

Plaintiff further goes on to enumerate specific questions of law or fact which she states will predominate:

- a. Whether the Defendants captured, collected, stored or used the biometric information of the Plaintiff and the Class?
- b. If the Defendants captured, collected, stored or used the biometric information of the Plaintiff and the Class, did the Defendants inform the Plaintiff and the Class in writing that a biometric identifier or biometric information was being collected or stored?
- c. If the Defendants captured, collected, stored or used the biometric information of the Plaintiff and the Class, did the Defendants inform the Plaintiff and the Class in writing of the specific purpose and length of term for which a biometric identifier or biometric information was being collected, stored, and used?
- d. If the Defendants captured, collected, stored or used the biometric information of the Plaintiff and the Class, did the Defendants receive a written release executed by the Plaintiff and the Class of the biometric identifier or biometric information or the Plaintiff’s or Class’ legally

² Bearing in mind that the court does not consider the merits at this stage, see *supra*, the Court also does not consider which class members will ultimately prevail. “That some members of the class are not entitled to relief because of some particular factor will not bar the class action.” *Clark*, 343 Ill. App. 3d at 549. See also *Hall*, 376 Ill. App. 3d at 831-32 (“That some members of the class are not entitled to relief will not bar the class action.”).

authorized representative?

- e. If the Defendants captured, collected, stored or used the biometric information of the Plaintiff and the Class, did the Defendants 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?
- f. Whether Defendants' violations of BIPA were negligent, or instead, intentional or reckless, within the meaning of 740 ILCS 14/20?

Thus, Plaintiff summarizes: "Defendants' compliance with the requirements of BIPA – a single statutory scheme – is the central question in this case. This same question will predominate for each and every class member."

Defendants argue that common questions do not predominate in this case. Defendants assert that "The purpose of the predominance requirement is to ensure that the proposed class is sufficiently cohesive to warrant adjudication by representation . . . ' *Smith v. Illinois-Cent. R.R. Co.*, 223 Ill. 2d 441, 448 (2006)." According to Defendants, to satisfy this predominance requirement, a plaintiff must show that "successful adjudication of the class representative's individual claim 'will establish a right of recovery in other class members' such that 'all that should remain is for other class members to file proof of their claim., *Id.* (quotation omitted); *see also Mashal v. City of Chicago*, 2012 IL 112341, ¶33 (same)."

Defendants then go on to provide a list of issues they claim defeat commonality and predominance in this case:

- a. whether a class member used the same type of "finger or hand print reader/scanner" that Roberson used,

- b. whether a class member has suffered a sufficient injury to invoke BIPA's private right of action,
- c. whether a class member has suffered actual injury such that actual damages could be recovered in excess of the BIPA's liquidated damages,
- d. whether that injury exceeds the liquidated damages provision in BIPA,
- e. whether that injury was suffered at the hands of any person or business that is in fact "associated with the Symphony Post-Acute Care Network, a/k/a Symphony Post-Acute Network,"
- f. whether that entity acted negligently or willfully with respect to that particular class member,
- g. whether that class member's claim is subject to any affirmative defenses, like consent or ratification.

First, since the hearing on Plaintiff's Motion on December 20, 2018, the Supreme Court of Illinois has ruled that "an individual need not allege some injury or adverse effect, beyond violation of this or her right under [BIPA], in order to qualify as an 'aggrieved' person and be entitled to seek liquidated damages and injunctive relief pursuant to the Act." *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, slip op. at p.13 (Ill. Jan. 25, 2019). As such, many of the arguments raised above are moot.

Moreover, it is well-established that by themselves, such issues do not defeat class certification. "Individual questions of injury and damages do not defeat class certification." *Clark*, 343 Ill. App. 3d at 549. *See also Hall*, 376 Ill. App. 3d at 832 (same). At most, if damage questions do present significant issues, they can be handled in ancillary proceedings. "It is appropriate to litigate the questions of law or fact common to all members of the class and, after the determination of the common questions, to determine in an ancillary proceeding or proceedings the questions that may be peculiar to individual class members." *Clark*, 343 Ill.

App. 3d at 548 (internal quotations omitted). In fact, Defendants' own cited authority establishes that these differences (if true) are generally not grounds to defeat class certification. *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 679 (2nd Dist. 2006). ("Moreover, we note that, generally, individual counterclaims or defenses do not render a case unsuitable for class action.")

More broadly, Defendants' characterization of the common issues in this case, and which of them will predominate, is questionable. *Smith* was a toxic tort case involving a train derailment, and then a resulting chemical spill, with all the attenuated questions as to proximate causation of bodily injury—resulting from a complicated series of events. *Smith*, 233 Ill.2d 442-58. This is not that case. This case involves a single statutory scheme – BIPA – and the issues presented can be summarized in a straightforward way: Did the Network capture biometric information from members of the class, and if so, did they comply with BIPA while doing so? These questions are what will consume "the bulk of the time at trial." *Smith*, 233 Ill.2d at 458.

That BIPA's straightforward, statutory requirements may have been met in some cases, but not others, does not preclude class certification, as Defendants suggest. First, this invites the Court to determine the merits of the case, which the Court does not do at this stage, as has already been established.

Second, the fact that some class members may recover, but not all, is no impediment to class certification. "That some members of the class are not entitled to relief because of some particular factor will not bar the class action." *Clark*, 343 Ill. App. 3d at 549. See also *Hall*, 376 Ill. App. 3d at 831-32 ("That some members of the class are not entitled to relief will not bar the

class action.”).

Third, the flexibility of the class action procedure ensures that even if the issues Defendants raise do become significant at some future point in time, the Court has the ability to address such matters then. “If individual damage determinations are necessary, the court can utilize various procedures to determine damages, including the creation of subclasses.” *Bueker*, 2016 IL App (5th), ¶ 31 (citing *Hall*, 376 Ill. App. 3d at 832). “Furthermore, if the class becomes unmanageable at some later time in the litigation, the court always has the option to set aside the class certification or a portion of it.” *Id.* (citing *Purcell & Wardrobe Chtd. v. Hertz Corp.*, 175 Ill.App.3d 1069, 1075 (1st Dist. 1988)).

Finally, while the Court finds that common questions of fact or law will predominate this case as a whole, it alternately finds that issue certification would be appropriate as well. Even in cases involving the most complex questions of injury or damages – and again, this is not that case, as it arises under a single simple statute – classes may be certified as to issues, such as legal issues, or the issue of liability. Even the cases Defendants themselves cite recognize this. *See e.g. Smith*, 223 Ill.2d at 457 (“the trial court in this case did not limit class certification to the issue of liability”); *Bueker*, 2016 IL App (5th) 150282, ¶ 34 (courts have the ability to limit certification for liability purposes only). Thus, in the alternative, the commonality and predominance of legal and liability issues in this case demonstrate it is also appropriately suited for certification as to common legal issues, and to issues concerning liability.

V. THIRD FACTOR: ADEQUATE REPRESENTATION OF THE INTERESTS OF THE CLASS (735 ILCS 5-2/801(3)).

Section 801(3) requires that the “representative parties will fairly and adequately protect the interests of the class.” 735 ILCS 5/2-801(2) (2018). Adequate representation has

two components: (1) adequacy of the named Plaintiff; and (2) adequacy of the named Plaintiff's attorneys. See *Miner v. Gillette Co.*, 87 Ill.2d 7 (1981). As Defendant posits, "[t]he purpose of the adequate representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim. *Walczak*, 365 Ill. App. 3d at 678.

Defendants do not argue that Plaintiff's attorneys are inadequate. Accordingly, the Court accepts that they will provide proper, efficient, and appropriate protection of the interests of the class in presenting the claims.

Defendants do, however, challenge the adequacy of Plaintiff Roberson. The principal argument made by Defendants is that the interests of Roberson are antagonistic to those of the class, as class members may want to seek a monetary award, and that (according to Defendants) during her deposition Roberson disclaimed any intention of seeking a monetary recovery.

This is wholly unpersuasive. Plaintiff, by way of her pleadings, discovery responses, statements of her attorneys, and otherwise, has made it abundantly clear on multiple occasions that she seeks a monetary recovery in this action, not only on her own behalf, but also on behalf of the other class members. Her deposition responses did not contradict that. In fact, Plaintiff stated she wants the law (BIPA) enforced, and BIPA expressly provides for monetary awards.

The rest of Defendants' adequacy arguments are much in the same vein. Quizzing Plaintiff on what she understands about Defendants' corporate structure, or how the law interprets "injury" or "damages," does nothing to demonstrate Plaintiff's inadequacy as a class

representative, as it does nothing to show that Plaintiff is either antagonistic to the class or will fail to properly pursue the interests of the class. It merely demonstrates that Plaintiff, a layperson, does not understand the intricacies of the law or lawsuits. But that is why a representative is – not only encouraged, but outright *required* – to hire effective legal counsel.

In short, the quantum of understanding necessary on the part of a representative is not nearly as complex as Defendants would have it. “The plaintiff class representative need only have a marginal familiarity with the facts of his case and does not need to understand the legal theories upon which his case is based to a greater extent.” *Clark*, 343 Ill. App. 3d at 550-51 (internal quotations omitted). The Court finds that the adequacy of representation requirement is fulfilled in this case.

VI. FOURTH FACTOR: THE CLASS ACTION PROCEDURE IS THE APPROPRIATE METHOD FOR THE FAIR AND EFFICIENT ADJUDICATION OF THE CONTROVERSY (735 ILCS 5-2/801(4)).

Finally, the fourth statutory factor requires the Court to consider whether “[t]he class action is an appropriate method for the fair and efficient adjudication of the controversy.” 735 ILCS 5/2-801(d) (2018). The balance of Defendants’ remaining arguments are entered on this factor.

One of these arguments centers around who was Plaintiff’s employer. Defendants seem to invest this with independent legal significance. But this was already addressed in the context of Defendants’ § 2-615 motion to dismiss. The terms “employer” and “employee” appear nowhere in BIPA, nor do any related terms. In fact, BIPA expressly contemplates many circumstances well outside the employment context, such as “finger-scan technologies at grocery stores, gas stations, and school cafeterias.” 740 ILCS 14-5(b) (2018).

Accordingly, dividing the world up into “Employer Defendants” and “Non-Employer

Defendants” is meaningless for purposes of BIPA liability, which applies to any “private entity” (740 ILCS 14/10-15 (2018)) who constitutes an “offending party” (740 ILCS 14-20 (2018)).

To the extent Defendants’ argument asks this Court to first construe those terms, and then to apply them to the facts of this case, the Court must decline. This involves disputed issues of fact, going to the merits of the case, and/or unsettled legal issues. As previously established, it is not the province of the Court to decide these issues on a motion to certify a class. Nor will the Court render an advisory opinion. Indeed, issues like this weigh affirmatively in favor of class certification, as they will be common questions to which any affected class member will seek an answer – no matter what that answer may be.

Much the same is true for Defendants’ other arguments, which may be broadly classified as “corporate liability.” Defendants claim each Network location is independently owned and operated, and argue that only some defendants will be liable as to some class members, mentioning in passing things such as the statutes regarding limited liabilities. Defendants make a further argument that they cannot be held liable for anything other than events occurring in Swansea. Defendants even go so far as to argue there are “constitutional concerns” as to the rights of any non-party entities. Defendants do not provide any explanation, however, as to how Defendants would have standing to raise any such concerns on behalf of entities with whom they also disavow any connection.

For her part, Plaintiff points out that she has pleaded from the outset of the case a variety of theories assessing mutual liability of the Network. Those theories include topics such as *respondeat superior*, alter ego, agency, joint enterprise, civil conspiracy, etc. Plaintiff points out any assertion by Defendants as to who did or did not operate any given Network location

simply begs the questions this lawsuit will answer. Plaintiff further contends that the fact Defendants raise these common questions shows all the more strongly why this case should proceed as a class action.

Both sides have presented discovery responses, discovery productions, public documents, Network documents, etc. in support of their positions. The Court has reviewed all of these materials. The Court finds that none of these materials conclusively resolves such issues either way.

Accordingly, the Court concludes that the parties have legitimate disputes of material facts over these issues, and those issues intersect in several instances with unresolved questions of law. The Court further finds that many of these arguments go to the merits of the case. As such, the Court will not resolve them on a motion for class certification. Nor will the Court issue an advisory opinion.

Once again, the presence of such sweeping issues – essentially, “who is liable for what, and to whom” – argues in favor of class certification, not against it. Seeking the answers to these questions – questions applicable across the class, and the common answers which will be generated – makes proceeding on a class basis an appropriate method for the fair and efficient adjudication of these controversies.

VII. ORDER AND FINDINGS.

Pursuant to the foregoing analysis, the Court finds the case is proper to proceed as a class action in accordance with 735 ILCS 5/2-801 (2018). The Court hereby certifies the following class:

All Illinois citizens whose biometric information was collected, captured, purchased, received through trade, or otherwise obtained in Illinois at any location associated with

the Symphony Post Acute Care Network, a/k/a Symphony Post Acute Network, as set forth in the Illinois Biometric Information Privacy Act, 740 ILCS 14/5 *et seq.*

Excluded from the proposed Class are employees, officers, directors, subsidiaries and affiliates of any person or business associated with the Symphony Post Acute Care Network, a/k/a Symphony Post Acute Network, the judge or any officer of the court presiding over this action.

The Court also finds it appropriate to certify the following subclass:

All Illinois citizens whose biometric information was collected, captured, purchased, received through trade, or otherwise obtained in Illinois at the Symphony Post Acute Care Network, a/k/a Symphony Post Acute Network location in Swansea, Illinois, as set forth in the Illinois Biometric Information Privacy Act, 740 ILCS 14/5 *et seq.*

Excluded from the proposed Class are employees, officers, directors, subsidiaries and affiliates of any person or business associated with the Symphony Post Acute Care Network, a/k/a Symphony Post Acute Network, the judge or any officer of the court presiding over this action.

The Court finds it appropriate to certify each of these classes as to all issues in this case. The Court further finds it appropriate to certify these classes as to legal and factual issues concerning the liability of the Network and those associated with it. The Court reserves jurisdiction to certify further subclasses or otherwise amend these certifications as circumstances warrant.

SO ORDERED:

DATE: March 12, 2019.



Hon. Kevin T. Hoerner

FILED DATE: 9/13/2021 1:06 PM 2021CH04629

Hearing Date: 1/11/2022 9:45 AM - 9:45 AM
Courtroom Number: 2508
Location: District 1 Court
Cook County, IL

FILED
9/13/2021 12:03 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH04629

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

STEVEN HORN,
INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

METHOD PRODUCTS, PBC,

Defendant.

14789851

Case No. 2021CH04629

Judge:

FILED DATE: 9/13/2021 12:03 PM - 2021CH04629

RULE 222(b) AFFIDAVIT

Pursuant to Illinois Supreme Court Rule 222(b), Plaintiff advises that this matter seeks more than \$50,000.00 in damages.

Dated: September 13, 2021

Respectfully Submitted:

By: /s/ Brandon M. Wise

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COUNSEL FOR THE PLAINTIFF AND THE PUTATIVE CLASS

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

STEVEN HORN, individually, and on behalf of)	
all others similarly situated,)	
)	
Plaintiff,)	Case No.
)	
v.)	
)	
METHOD PRODUCTS, PBC,)	
)	
Defendant.)	
)	

DECLARATION OF LAUREN MLOT

I, Lauren Mlot, under penalty of perjury, declare that I am of legal age and of sound mind, and based upon personal knowledge, that the following facts are true and correct:

1. I am currently the People + Environment Director at Method Products, PBC (“Method”). My official job duties include leading the people + environment (HR) team and people strategy at the Southside Soapbox manufacturing facility in Chicago, Illinois, and overseeing all people-related processes and policies.
2. I submit this Declaration in support of Method’s Notice of Removal.
3. I have personal knowledge of the facts contained in this Declaration, and if called as a witness at trial I could competently testify to these facts.
4. Method is a Delaware corporation with its principal place of business located in San Francisco, California.
5. The Plaintiff in this lawsuit, Steven Horn, was employed at the Southside Soapbox manufacturing facility in Chicago, Illinois from August 13, 2018 through May 6, 2021.

6. Method first started using Illinois employees' fingerprint scans for timekeeping purposes on or about November 10, 2014.

7. Method stopped using Illinois employees' fingerprint scans for timekeeping purposes on or about March 17, 2020.

8. Method does not possess any of the putative class members' biometric information or biometric identifiers. To the extent Method ever possessed any individuals' biometric information or biometric identifiers, all such biometric data was confirmed to be destroyed as of May 12, 2020.

9. Based upon my review of Method's employee payroll records, which are created and maintained in the regular course of business, between September 13, 2016 and March 17, 2020, more than 100 individuals were employed at the Southside Soapbox facility in Chicago, Illinois and used their fingerprint scans for timekeeping purposes to clock in or clock out of work.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 21, 2021 in Chicago, Illinois.

DocuSigned by:
Lauren Mlot
E61EDC01CDAB439...

LAUREN MLOT

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Biometric Privacy: Method Products Hit with Class Action Over Worker Fingerprint Scans](#)
