

**NO  
EXHIBITS**

CASE NO. 2019 CH 5679

DATE: 5/6/19

CASE TYPE: CLASS ACTION

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**CASE NOTE**

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Courtroom Number: 2410  
Location: District 1 Court  
Cook County, IL

**12-Person Jury**

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

FILED  
5/6/2019 4:50 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2019CH05679

DONAL LYDON, individually and on )  
behalf of similarly situated individuals, )  
 )  
 *Plaintiff,* )  
 )  
 v. )  
 )  
 FILLMORE HOSPITALITY, LLC, a )  
 Delaware limited liability corporation, )  
 and FH CHI, LLC, a Delaware limited )  
 liability corporation. )  
 )  
 *Defendants.* )

No 2019CH05679 4949809  
Hon.

**CLASS ACTION COMPLAINT WITH JURY DEMAND**

Plaintiff Donal Lydon (“Plaintiff”), individually and on behalf of other similarly situated individuals, brings his Class Action Complaint against Defendant Fillmore Hospitality, LLC and Defendant FH CHI, LLC (collectively, “Defendants”) for their violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), and to obtain redress for persons injured by their conduct. Plaintiff alleges the following based on personal knowledge as to his own experiences, and as to all other matters, upon information and belief, including an investigation conducted by his attorneys.

**INTRODUCTION**

1. BIPA defines a “biometric identifier” as any personal feature that is unique to an individual, including handprints, fingerprints and palm scans. “Biometric information” is any information based on a biometric identifier, regardless of how it is converted or stored. 740 ILCS § 14/10. Collectively, biometric identifiers and biometric information are known as “biometrics.”

2. This case concerns the misuse of individuals’ biometrics by Defendants, a leading hotel chain with locations across the United States. Using biometrically-enabled technology,

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Defendants are capturing, collecting, disseminating, or otherwise using the biometrics of Plaintiff and other Class members, without their informed written consent as required by law, in order to track their time when they “clock-in” and “clock-out” of their work shifts.

3. BIPA provides, *inter alia*, that private entities, such as Defendants, may not obtain and/or possess an individual’s biometrics unless they first:

- (1) inform the person whose biometrics are to be collected *in writing* that biometric identifiers or biometric information will be collected or stored;
- (2) inform the person whose biometrics are to be collected *in writing* of the specific purpose and the length of term for which such biometric identifiers or biometric information is being collected, stored and used;
- (3) receive a *written release* from the person whose biometrics are to be collected, allowing the capture and collection of their biometric identifiers or biometric information; and
- (4) publish publicly available retention guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a).

4. Compliance with BIPA is straightforward and may be accomplished through a single, signed sheet of paper. BIPA’s requirements bestow a right to privacy in biometrics and a right to make an *informed* decision when electing whether to provide or withhold biometrics.

5. Defendants’ biometric timekeeping system works by extracting biometric information from individuals, such as handprints or portions thereof, and subsequently using the same for authentication and timekeeping purposes. The system includes the dissemination of biometrics to third parties, such as data storage vendors and payroll services. The biometrics are stored and repeatedly used each time a worker “clocks in” or “out” on the job.

6. The Illinois Legislature has found that “biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, even sensitive information like Social Security numbers can be changed. Biometrics, however, are biologically unique to each individual and, once compromised, such individual has no recourse, is at a heightened risk for identity theft, and is likely to withdraw from biometric facilitated transactions.” 740 ILCS 14/5. The risk is compounded when a person’s biometrics are also associated with their other personally identifiable information.

7. The deprivation of the statutory rights conferred by BIPA constitutes the actual injuries the Illinois Legislature sought to prevent.

8. Plaintiff brings this action for statutory damages and other remedies as a result of Defendants’ conduct in violating his state biometric privacy rights.

9. On behalf of himself and the proposed Class defined below, Plaintiff seeks an injunction requiring Defendants to comply with BIPA, as well as an award of statutory damages to the Class members, together with costs and reasonable attorneys’ fees.

#### **PARTIES**

10. Defendant Fillmore Hospitality, LLC is a Delaware limited liability corporation that conducts substantial business and markets its hotel offerings throughout Illinois, including in Cook County.

11. Defendant FH CHI, LLC, is a Delaware limited liability corporation that is registered with and authorized by the Illinois Secretary of State to transact business in Cook County, Illinois. Defendant FH CHI, LLC, transacts business throughout Cook County.

12. At all relevant times, Plaintiff Donal Lydon has been a resident and citizen of the State of Illinois and worked for Defendants in Cook County.

**JURISDICTION AND VENUE**

13. This Court may assert personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States, because Defendants are doing business within this State and because Plaintiff's claims arise out of Defendants' unlawful in-state actions, as Defendants captured, collected, stored, and used Plaintiff's biometric identifiers and/or biometric information in this State.

14. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, because Defendants are doing business in Cook County and thus reside there under § 2-102, and because the transaction out of which this cause of action arises occurred in Cook County.

**FACTS SPECIFIC TO PLAINTIFF**

15. Defendants operate a national chain of hotels that rely on new technologies, including biometrically-enabled technologies, to track their employees while at work.

16. During the relevant time, Plaintiff worked at one of the Defendants' Cambria-branded hotels (the "Cambria Hotel") located in Chicago, Illinois.

17. Defendants implemented biometric scanning and time-tracking devices and technology at the Cambria Hotel to monitor and track their employees', including Plaintiff's, time.

18. Plaintiff was required to scan his fingerprint into biometric timekeeping devices in order to "clock-in" and "clock-out" of each respective work shift. Plaintiff could only verify his attendance and timeliness using biometrically-enabled technology.

19. Plaintiff relied on Defendants to not only provide a lawful and legally compliant system, but to also disclose all material information regarding the technology and system, including all relevant retention, destruction, and dissemination policies.

20. Defendants' biometric timekeeping regime allows for and resulted in the dissemination of Plaintiff and other Class member's biometrics to third parties, including vendors for timekeeping, data storage, and payroll purposes.

21. Prior to taking Plaintiff's biometrics, Defendants did not inform Plaintiff in writing that his biometrics were being collected, stored, used, or disseminated, or publish any policy specifically about the collection, retention, use, deletion, or dissemination of biometrics.

22. Defendants did not seek, and Plaintiff never provided, any written consent relating to the collection, use, storage, or dissemination of his biometrics.

23. Prior to taking Plaintiff's biometrics, Defendants did not make publicly available any written policy as to their biometric retention schedule, nor did they disclose any guidelines for permanently destroying the collected biometrics.

24. Additionally, Defendants did not obtain consent from Plaintiff for any dissemination of his biometrics to third parties.

25. To this day, Plaintiff is unaware of the status of his biometrics obtained by Defendants. Defendants have not informed Plaintiff whether they still retain his biometrics, and if they do, for how long they intend to retain such information without his consent.

26. BIPA vests an individual state right to biometric privacy. Defendants' deprivation of Plaintiff's biometric privacy right constitutes the actual harm the Legislature sought to prevent.

#### **CLASS ALLEGATIONS**

27. Plaintiff brings this action on behalf of himself and similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent a Class defined as follows:

Class: All individuals whose biometrics were captured, collected, stored, used, transmitted, or disseminated by or on behalf of Defendants within the State of Illinois at any time within the applicable limitations period.

28. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendants; and any immediate family member of such officers or directors.

29. Upon information and belief, there are at least hundreds of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of members of the Class is currently unknown to Plaintiff, the members can be easily identified through Defendants' personnel records.

30. Plaintiff's claims are typical of the claims of the members of the Class he seeks to represent, because the factual and legal bases of Defendants' liability to Plaintiff and the other members are the same, and because Defendants' conduct has resulted in similar injuries to Plaintiff and to the Class. As alleged herein, Plaintiff and the Class have all suffered damages as a result of Defendants' BIPA violations and common law transgressions.

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

- a. Whether Defendants' conduct is subject to BIPA;
- b. Whether Defendants made available to the public a written policy that establishes a retention schedule and guidelines for destroying biometrics;
- c. Whether Defendants obtained a written release from the Class before capturing, collecting, or otherwise obtaining their biometrics;
- d. Whether Defendants provided a written disclosure that explains the specific purposes, and the length of time, for which biometrics were being collected, stored and used before taking such biometrics;

- e. Whether Defendants' conduct violates BIPA;
- f. Whether Defendants' conduct is negligent;
- g. Whether Defendants' violations of the BIPA are willful or reckless; and
- h. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

32. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions in that it conserves the resources of the courts and the litigants and promotes consistency of adjudication.

33. Plaintiff will adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Class.

34. Defendants have acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

**COUNT I**

**Violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*,  
(On behalf of Plaintiff and the Class)**

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

36. Defendants are private entities under BIPA.

37. BIPA requires private entities, such as Defendants, to obtain informed written consent from individuals before acquiring their biometric information. Specifically, BIPA makes



it unlawful to “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or 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 for which a biometric identifier or biometric information is being captured, 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).

38. BIPA also requires that private entities in possession of biometric identifiers and/or biometric information establish and maintain a publicly available retention policy. Entities which possess biometric identifiers or information must (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric information (entities may not retain biometric information longer than three years after the last interaction with the individual); and (ii) adhere to the publicly posted retention and deletion schedule.

39. Plaintiff and the other Class members have had their “biometric identifiers,” namely their fingerprints, collected, captured, or otherwise obtained by Defendants. Plaintiff and the other Class members’ biometric identifiers were also used to identify them, and therefore constitute “biometric information” as defined by BIPA. 740 ILCS 14/10.

40. Each instance Plaintiff and the other Class members were required to scan their fingerprints, Defendants captured, collected, stored, and/or used Plaintiff’s and the other Class members’ biometric identifiers or biometric information without valid consent and without complying with and, thus, in violation of BIPA.

41. Defendants’ practice with respect to capturing, collecting, storing, and using biometrics fails to comply with applicable BIPA requirements:

- a. Defendants failed to inform Plaintiff and the members of the Class in writing that their biometrics were being collected and stored, prior to such collection or storage, as required by 740 ILCS 14/15(b)(1);
- b. Defendants failed to inform Plaintiff and Class in writing of the specific purpose for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- c. Defendants failed to inform Plaintiff and the Class in writing the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- d. Defendants failed to obtain a written release, as required by 740 ILCS 14/15(b)(3);
- e. Defendants failed to provide a publicly available retention schedule detailing the length of time for which the biometrics are stored and/or guidelines for permanently destroying the biometrics they store, as required by 740 ILCS 14/15(a); and
- f. Defendants failed to obtain informed consent to disclose or disseminate the Class' biometrics, as required by 740 ILCS 14/15(d)(1).

42. By obtaining and operating an employee timekeeping system which uses biometrics that was devoid of the privacy protections required by BIPA, Defendants profited from Plaintiff's and the Class members' biometric identifiers and biometric information in violation of 740 ILCS 14/15(c). Defendants knew, or were reckless in not knowing, that the biometric systems they were using would be subject to the provisions of BIPA yet wholly failed to comply with the statute.

43. By capturing, collecting, storing, using, and disseminating Plaintiff's and the Class' biometrics as described herein, Defendants denied Plaintiff and the Class their right to statutorily-required information and violated their respective rights to biometric information privacy, as set forth in BIPA.

44. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1).

45. Defendants' violations of BIPA, as set forth herein, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendants negligently failed to comply with BIPA.

46. Accordingly, with respect to Count I, Plaintiff, on behalf of himself and the proposed Class, prays for the relief set forth below.

**PRAYER FOR RELIEF**

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

- a. Certifying the Class as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendants' actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with the BIPA requirements for the capture, collection, storage, use, and dissemination of biometric identifiers and biometric information;

- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of the BIPA, pursuant to 740 ILCS 14/20(1);
- e. Awarding statutory damages of \$1,000 for each negligent violation of the BIPA, pursuant to 740 ILCS 14/20(3);
- f. Awarding reasonable attorneys' fees, costs, and other litigation expenses pursuant to 740 ILCS 14/20(3);
- g. Awarding pre- and post-judgment interest, as allowable by law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

**JURY DEMAND**

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: May 6, 2019

Respectfully Submitted,

DONAL LYDON, individually and on behalf of a class of similarly situated individuals

By: /s/ William P.N. Kingston  
*One of Plaintiff's Attorneys*

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Cambria Hotel Violated Illinois Law by Collecting Workers' Fingerprint Data](#)

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