

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

AARON MEDLEY, TRISTAN MEDLEY,
AND CARLOS OUSLEY-BROWN,
*individually and on behalf of all others
similarly situated,*

Plaintiffs

v.

SMITHFIELD PACKAGED MEATS
CORP., d/b/a SARATOGA FOOD
SPECIALTIES,

Defendant

NOTICE OF REMOVAL

Defendant Smithfield Packaged Meat Corp. (“Smithfield”), by counsel and pursuant to 28 U.S.C. §§ 1332, 1367, 1441, and 1446, hereby removes to the United States District Court for the Northern District of Illinois, the action commenced against Smithfield in the State of Illinois Circuit Court, Twelfth Judicial Circuit, Will County. Smithfield states the following grounds in support of removal.

Procedural History and Plaintiffs’ Allegations

1. On February 11, 2021, Plaintiffs instituted this action by filing a Complaint styled *Aaron Medley, Tristan Medley, and Carlos Ousley-Brown, individually and on behalf of all others similarly situated v. Smithfield Packaged Meats Corp. d/b/a/ Saratoga Food Specialties*, Case No. 2021CH000060, in the State of Illinois Circuit Court, Twelfth Judicial District, Will County, Illinois.

2. Plaintiffs, all former employees of Smithfield, allege that Smithfield violated the Illinois Biometric Information Act (“BIPA” or “the Act”). Specifically, Plaintiffs appear to allege violations of Sections 15(a) and 15(b) of the Act.¹ *See* Ex. 1 ¶¶ 60, 69.

3. Plaintiffs bring this action as a putative class action, on behalf of the following individuals (the “Putative Class”):

All individuals who had their fingerprints collected, captured, received or otherwise obtained and/or stored by Defendant in the state of Illinois for timekeeping and/or COVID-19 health screening. Ex. 1 ¶ 55.

Grounds for Removal

4. Smithfield removes this action pursuant to 28 U.S.C. §§ 1332(a), 1367(a), 1441(a), and 1446.

5. The United States District Court for the Northern District of Illinois embraces Will County, Illinois. Removal to this Court is therefore proper under 28 U.S.C. § 1441(a).

6. This Court has jurisdiction over this matter pursuant to its diversity jurisdiction under 28 U.S.C. § 1332(a) and its supplemental jurisdiction under 28 U.S.C. § 1367(a).

7. This Court has jurisdiction over the claims of Plaintiffs Aaron Medley and Carlos Ousley-Brown pursuant to 28 U.S.C. 1332(a) because the action is a suit between citizens of different states, and the amount in controversy for the claims of Plaintiffs Aaron Medley and Carlos Ousley-Brown each exceed \$75,000.00, exclusive of interest and costs.

8. Complete diversity exists in this action.

a. Upon information and belief, Plaintiff Aaron Medley is a resident and citizen of Illinois. *See* Ex. 1 ¶ 18.

¹ Although the heading for Plaintiffs’ Count II refers to Section 15(d), the quoted language in the count refers to Section 15(b).

- b. Upon information and belief, Plaintiff Tristan Medley is a resident and citizen of Illinois. *See* Ex. 1 ¶ 19.
 - c. Upon information and belief, Plaintiff Carlos Ousley-Brown is a resident and citizen of Illinois. *See* Ex. 1 ¶ 20.
 - d. The citizenship of any potential class members in a putative class action is disregarded when determining whether complete diversity exists. *See Snyder v. Harris*, 394 U.S. 332, 340 (1969).
 - e. Smithfield is, and was at the time of the commencement of this action, a corporation organized under the laws of Delaware with its principal place of business in Virginia. Thus, pursuant to 28 U.S.C. § 1332(c), Smithfield is a citizen of Delaware and Virginia.
 - f. Accordingly, complete diversity exists in this action.
9. The claims of Plaintiffs Aaron Medley and Carlos Ousley-Brown satisfy the amount in controversy requirement.
- a. In the Complaint, Plaintiffs Aaron Medley and Carlos Ousley-Brown seek damages against Smithfield of at least \$1,000 for each violation of the Illinois Biometric Information Privacy Act (“BIPA” or the “Act”). Ex. 1 § 78.
 - b. Plaintiff Aaron Medley alleges a violation of BIPA by Smithfield twice each day that he worked, whenever he clocked in and out of work. Ex. 1 ¶¶ 28–32. Thus, Plaintiff Aaron Medley seeks approximately \$2,000 in damages per day.
 - c. On information and belief, Plaintiff Aaron Medley worked for Smithfield from January 16, 2020 to August 28, 2020.

- d. Thus, pursuant to 28 U.S.C. § 1332(a), Plaintiff Aaron Medley's amount in controversy likely exceeds \$75,000, exclusive of interests and costs.
 - e. Plaintiff Carlos Ousley-Brown alleges a violation of BIPA by Smithfield twice each day that he worked, whenever he clocked in and out of work. Ex. 1 ¶¶ 48–50. Thus, Plaintiff Carlos Ousley Brown seeks approximately \$2,000 in damages per day.
 - f. On information and belief, Plaintiff Carlos Ousley-Brown worked for Smithfield from September 2015 to January 2016.
 - g. Thus, pursuant to 28 U.S.C. § 1332(a), Plaintiff Carlos Ousley-Brown's amount in controversy likely exceeds \$75,000, exclusive of interests and costs.
10. This Court has jurisdiction over the claims of Plaintiff Tristan Medley and the Putative Class² pursuant to its supplemental jurisdiction under 28 U.S.C. § 1367(a) because the Court has original jurisdiction over the claims of Plaintiffs Aaron Medley and Carlos Ousley-Brown, and the claims of Plaintiff Tristan Medley and the Putative Class are part of the same case or controversy.
- a. This Court has original jurisdiction over the claims of Plaintiffs Aaron Medley and Carlos Ousley-Brown pursuant to 28 U.S.C. § 1332(a). *See* ¶¶ 7–9.
 - b. The claims of Plaintiffs Tristan Medley and the Putative Class arise out of the same common nucleus of operative fact as those of Plaintiffs Aaron Medley and Carlos-Ousley-Brown and thus amount to the same case or controversy.

² Federal courts can exercise their supplemental jurisdiction authority over the claims of putative class members who do not meet the amount in controversy requirement of 28 U.S.C. 1332(a). *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005).

- c. Plaintiff Tristan Medley makes the same allegations as Plaintiffs Aaron Medley and Carlos Ousley-Brown: that while an employee of Smithfield at its Illinois facility, Smithfield collected their fingerprints in violation of BIPA. *See* Ex. 1 ¶¶ 37–45.
 - d. The same allegations are made on behalf of the Putative Class, which is alleged to include all individuals from whom Smithfield allegedly collected fingerprints. *See* Ex. 1 ¶ 55.
 - e. The Complaint includes two counts, which each Plaintiff and the Putative Class joins in full. Ex. 1 ¶¶ 60, 69.
 - f. The claims of Tristan Medley and the Putative Class thus arise out of the same common nucleus of operative fact as the claims of Aaron Medley and Carlos Ousley-Brown.
 - g. This action does not involve “claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules.” 28 U.S.C. § 1367(b).
 - h. This Court should not decline jurisdiction under 28 U.S.C. 1367(c).
11. No return of service has been filed in state court for any defendant. Therefore, on information and belief, no co-defendants have been served or will be served. Smithfield is thus the only defendant, and it consents to removal.
12. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed within 30 days of service of the Complaint to Smithfield, as Smithfield was served on March 10, 2021.

13. Defendant will promptly file a removal notice, together with a copy of the instant Notice of Removal, with the Clerk of the State of Illinois Circuit Court, Twelfth Judicial District, Will County, Illinois, in accordance with 28 U.S.C. § 1446(d), and will serve written notice of the same on Plaintiffs' counsel of record.

14. True and correct copies of all process, pleadings, and orders served on Smithfield in the action pending in Illinois Circuit Court, Twelfth Judicial District, Will County, Illinois are attached hereto as follows.

- a. A copy of the Complaint, filed on February 11, 2021 (Exhibit 1);
- b. A copy of the Summons for Smithfield (Exhibit 2)

WHEREFORE, Smithfield requests that this Court assume jurisdiction over this action from the Illinois Circuit Court, Twelfth Judicial District, Will County, Illinois, and that this action proceed as removed to this Court's jurisdiction pursuant to 28 U.S.C. §§ 1332, 1367, 1441, and 1446.

Respectfully submitted this 9th day of April 2021.

/s/ Torsten M. Kracht
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CERTIFICATE OF SERVICE

On April 9, 2021, I electronically submitted the foregoing **NOTICE OF REMOVAL** document with the clerk of court for the United States District Court for the Northern District of Illinois, using the electronic case filing system of the court. I hereby certify that I have served all documents required to be served upon counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

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EXHIBIT 1

STATE OF ILLINOIS CIRCUIT COURT
TWELFTH JUDICIAL CIRCUIT
WILL COUNTY

AARON MEDLEY, TRISTAN MEDLEY,
and CARLOS OUSLEY-BROWN,
*individually and on behalf of all others
similarly situated,*

Plaintiffs,

v.

SMITHFIELD PACKAGED MEATS CORP.
d/b/a SARATOGA FOOD SPECIALTIES,

Defendant.

Case No. 2021CH000060

CLASS ACTION COMPLAINT

Plaintiffs Aaron Medley, Tristan Medley, and Carlos Ousley-Brown (“Plaintiffs”), individually and on behalf of all other persons similarly situated, by their undersigned attorneys, as and for their Class Action Complaint for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, against Smithfield Packaged Meats Corp. d/b/a Saratoga Food Specialties (“Defendant”), allege on personal knowledge, due investigation of their counsel, and, where indicated, on information and belief as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant in collecting, storing and using their and other similarly situated individuals’ biometric identifiers¹ and biometric information² (referred to

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

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

Initial case management set for
06/01/2021 at: 9:00 a.m.

collectively at times as “biometrics”) without obtaining informed written consent or providing the requisite data retention and destruction policies, in direct violation of BIPA.

2. The Illinois Legislature has found that “[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information.” 740 ILCS 14/15(c). “For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions.” *Id.*

3. In recognition of these concerns over the security of individuals’ biometrics the Illinois Legislature enacted BIPA, which provides, *inter alia*, that private entities like Defendant may not obtain and/or possess an individual’s biometrics unless they inform that person in writing that biometric identifiers or information will be collected or stored. *See* 740 ILCS 14/15(b).

4. BIPA further requires that entities collecting biometrics must inform those persons in writing of the specific purpose and length of term for which such biometric identifiers or biometric information are being collected, stored and used. *See id.*

5. Moreover, entities collecting biometrics must publish publicly available written retention schedules and guidelines for permanently destroying biometrics collected. *See* 740 ILCS 14/15(a).

6. Further, the entity must store, transmit and protect an individual’s biometric identifiers and biometric information using the same standard of care in the industry and in a manner at least as protective as the means used to protect other confidential and sensitive information. *See* 740 ILCS 14/15(c).

7. Finally, the entity is expressly prohibited from selling, leasing, trading or otherwise profiting from an individual's biometrics. *See* 740 ILCS 15/15(c).

8. In direct violation of each of the foregoing provisions of §§ 15(a) and 15(b) of BIPA, Defendant collected, stored and used—without first providing notice, obtaining informed written consent or publishing data retention policies—the fingerprints and associated personally identifying information of hundreds of its employees (and former employees), who are being required to “clock in” with their fingerprints.

9. This practice of requiring employees to “clock in” using their fingerprints was in place at least since approximately May 2016.

10. Plaintiff Carlos Ousley-Brown left Defendant's employ in approximately December 2017 and was “clocking in” using his fingerprints during his tenure of employment with Defendant.

11. Plaintiffs Aaron Medley and Tristan Medley were “clocking in” using their fingerprints during their tenure of employment with Defendant.

12. If Defendant's database of digitized fingerprints were to fall into the wrong hands, by data breach or otherwise, the employees to whom these sensitive and immutable biometric identifiers belong could have their identities stolen, among other serious issues.

13. BIPA confers on Plaintiffs and all other similarly situated Illinois residents a right to know of such risks, which are inherently presented by the collection and storage of biometrics, and a right to know how long such risks will persist after termination of their employment.

14. Yet, Defendant never adequately informed Plaintiffs or the Class of its biometrics collection practices, never obtained the requisite written consent from Plaintiffs or the Class

regarding its biometric practices, and never provided any data retention or destruction policies to Plaintiffs or the Class.

15. Plaintiffs bring this action to prevent Defendant from further violating the privacy rights of Illinois residents and to recover statutory damages for Defendant unauthorized collection, storage and use of these individuals' biometrics in violation of BIPA.

JURISDICTION AND VENUE

16. This Court has personal jurisdiction over Defendant because the biometrics that give rise to this lawsuit were (1) collected by Defendant at facilities in Illinois, (2) stored by Defendant at facilities in Illinois, and (3) used by Defendant at facilities in Illinois.

17. Venue is proper in this County pursuant to 735 ILCS 5/2-101 because Defendant conducts their usual and customary business in this County. 735 ILCS 5/2-102(a).

PARTIES

18. Plaintiff Aaron Medley is, and has been at all relevant times, a resident and citizen of Illinois.

19. Plaintiff Tristan Medley is, and has been at all relevant times, a resident and citizen of Illinois.

20. Plaintiff Carlos Ousley-Brown is, and has been at all relevant times, a resident and citizen of Illinois.

21. Defendant Smithfield Packaged Meats Corp. is a foreign corporation registered in Delaware and doing business in Will County, Illinois within a production facility located at 771

West Crossroads Parkway, Bolingbrook, Illinois, 60490. Defendant employs over 55,000 people and in 2019 reported sales of \$16 billion throughout its portfolio of companies.³

FACTUAL BACKGROUND

I. Illinois' Biometric Information Privacy Act.

22. In 2008, Illinois enacted BIPA due to the “very serious need [for] protections for the citizens of Illinois when it [comes to their] biometric information.” Illinois House Transcript, 2008 Reg. Sess. No. 276. BIPA makes it unlawful for a company to, *inter alia*, “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifiers and/or biometric information, unless it first:

(1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored;

(2) informs the subject . . . in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and

(3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject’s legally authorized representative.”

740 ILCS 14/15 (b).

23. Section 15(a) of BIPA also provides:

A private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual’s last interaction with the private entity, whichever occurs first.

740 ILCS 14/15(a).

³ About Smithfield, Smithfield Foods, <https://www.smithfieldfoods.com/about-smithfield> (last visited Feb. 3, 2021).

24. As alleged below, Defendant's practices of collecting, storing and using individuals' biometric identifiers (specifically, fingerprints) and associated biometric information without informed written consent violated all three prongs of § 15(b) of BIPA. Defendant's failure to provide a publicly available written policy regarding their schedule and guidelines for the retention and permanent destruction of individuals' biometric identifiers and biometric information also violated § 15(a) of BIPA.

II. Defendant Violates Illinois' Biometric Information Privacy Act.

25. Unbeknown to the average person, and in direct violation of § 15(b)(1) of BIPA, Defendant scanned and collected, and then indefinitely stored in an electronic database, digital copies of each employee's fingerprints during the employee onboarding process from, and on each occasion an employee clocks in or out of Defendant's Illinois-based facility—all without ever informing anyone of this practice in writing.

26. In direct violation of §§ 15(b)(2) and 15(b)(3) of BIPA, Defendant never informed Illinois employees who had their fingerprints collected of the specific purpose and length of time for which their biometric identifiers or information would be collected, stored and used, nor did Defendant obtain a written release from these individuals.

27. In direct violation of § 15(a) of BIPA, Defendant did not have written, publicly available policies identifying its retention schedules or guidelines for permanently destroying any of these biometric identifiers or biometric information.

III. Plaintiff Aaron Medley's Experience.

28. During the course of Plaintiff's employment, Defendant required Plaintiff to place his fingers on a fingerprint scanner, at which point Defendant scanned and collected, and stored in an electronic database, digital copies of Plaintiff's fingerprints.

29. During his employment tenure, Plaintiff was required to place his fingers on a fingerprint scanner, which scanned, collected and stored his fingerprints each time he “clocked” in and out as part of the timekeeping system.

30. Then, upon information and belief, Defendant’s fingerprint matching technology compared Plaintiff’s scanned fingerprint against the fingerprint previously stored in Defendant’s fingerprint database.

31. On each occasion of “clocking in,” Plaintiff was granted access to Defendant’s facility in order to begin work.

32. Plaintiff never consented, agreed, or gave permission—written or otherwise—to Defendant for the collection or storage of his unique biometric identifiers or biometric information.

33. Further, Defendant never provided Plaintiff with nor did he ever sign a written release allowing Defendant to collect or store his unique biometric identifiers or biometric information.

34. Likewise, Defendant never provided Plaintiff with the requisite statutory disclosures nor an opportunity to prohibit or prevent the collection, storage or use of his unique biometric identifiers or biometric information.

35. By collecting Plaintiff’s unique biometric identifiers or biometric information without his consent, written or otherwise, Defendant invaded Plaintiff’s statutorily protected right to privacy in his biometrics.

36. Finally, Defendant never provided Plaintiff with a retention schedule and/or guideline for permanently destroying his biometric identifiers and biometric information.

IV. Plaintiff Tristan Medley's Experience.

37. During the course of Plaintiff's employment, Defendant required Plaintiff to place his fingers on a fingerprint scanner, at which point Defendant scanned and collected, and stored in an electronic database, digital copies of Plaintiff's fingerprints.

38. During his employment tenure, Plaintiff was required to place his fingers on a fingerprint scanner, which scanned, collected and stored his fingerprints each time he "clocked" in and out as part of the timekeeping system.

39. Then, upon information and belief, Defendant's fingerprint matching technology compared Plaintiff's scanned fingerprint against the fingerprint previously stored in Defendant's fingerprint database.

40. On each occasion of "clocking in," Plaintiff was granted access to Defendant's facility in order to begin work.

41. Plaintiff never consented, agreed, or gave permission—written or otherwise—to Defendant for the collection or storage of his unique biometric identifiers or biometric information.

42. Further, Defendant never provided Plaintiff with nor did he ever sign a written release allowing Defendant to collect or store his unique biometric identifiers or biometric information.

43. Likewise, Defendant never provided Plaintiff with the requisite statutory disclosures nor an opportunity to prohibit or prevent the collection, storage or use of his unique biometric identifiers or biometric information.

44. By collecting Plaintiff's unique biometric identifiers or biometric information without his consent, written or otherwise, Defendant invaded Plaintiff's statutorily protected right to privacy in his biometrics.

45. Finally, Defendant never provided Plaintiff with a retention schedule and/or guideline for permanently destroying his biometric identifiers and biometric information.

V. Plaintiff Carlos Ousley-Brown's Experience.

46. During the course of Plaintiff's employment, Defendant required Plaintiff to place his fingers on a fingerprint scanner, at which point Defendant scanned and collected, and stored in an electronic database, digital copies of Plaintiff's fingerprints.

47. Plaintiff worked for Defendant, as a sanitation operator, until approximately December 2017. During his employment tenure, Plaintiff was required to place his fingers on a fingerprint scanner, which scanned, collected and stored his fingerprints each time he "clocked" in and out as part of the timekeeping system.

48. Then, upon information and belief, Defendant's fingerprint matching technology compared Plaintiff's scanned fingerprint against the fingerprint previously stored in Defendant's fingerprint database.

49. On each occasion of "clocking in," Plaintiff was granted access to Defendant's facility in order to begin work.

50. Plaintiff never consented, agreed, or gave permission—written or otherwise—to Defendant for the collection or storage of his unique biometric identifiers or biometric information.

51. Further, Defendant never provided Plaintiff with nor did he ever sign a written release allowing Defendant to collect or store his unique biometric identifiers or biometric information.

52. Likewise, Defendant never provided Plaintiff with the requisite statutory disclosures nor an opportunity to prohibit or prevent the collection, storage or use of his unique biometric identifiers or biometric information.

53. By collecting Plaintiff's unique biometric identifiers or biometric information without his consent, written or otherwise, Defendant invaded Plaintiff's statutorily protected right to privacy in his biometrics.

54. Finally, Defendant never provided Plaintiff with a retention schedule and/or guideline for permanently destroying his biometric identifiers and biometric information.

CLASS ALLEGATIONS

55. **Class Definition:** Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on behalf of a class of similarly situated individuals, defined as follows (the "Class"):

All individuals who had their fingerprints collected, captured, received or otherwise obtained and/or stored by Defendant in the state of Illinois for timekeeping and/or COVID-19 health screening.

56. **Numerosity:** Pursuant to 735 ILCS 5/2-801(1), the number of persons within the Class is substantial, believed to amount to hundreds of persons. It is, therefore, impractical to join each member of the Class as a named Plaintiff. Further, the size and relatively modest value of the claims of the individual members of the Class renders joinder impractical. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation. Moreover, the Class is ascertainable and identifiable from Defendant's records.

57. **Commonality and Predominance:** Pursuant to 735 ILCS 5/2-801(2), there are well-defined common questions of fact and law that exist as to all members of the Class and that predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from Class member to Class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

- (a) whether Defendant collected or otherwise obtained Plaintiffs' and the Class's biometric identifiers or biometric information;
- (b) whether Defendant properly informed Plaintiffs and the Class that it collected, used, and stored their biometric identifiers or biometric information;
- (c) whether Defendant obtained a written release (as defined in 740 ILCS 1410) to collect, use, and store Plaintiffs' and the Class's biometric identifiers or biometric information;
- (d) whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of their last interaction, whichever occurs first;
- (e) whether Defendant used Plaintiffs' and the Class's biometric identifiers or biometric information to identify them; and
- (f) whether Defendant's violations of BIPA were committed intentionally, recklessly, or negligently.

58. **Adequate Representation:** Pursuant to 735 ILCS 5/2-801(3), Plaintiffs have retained and are represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiffs are able to fairly and adequately represent and protect the interests of such a Class. Neither Plaintiffs nor their counsel have any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiffs have raised viable statutory claims, or the type reasonably expected to be raised by members of the Class, and will vigorously pursue those claims. If necessary, Plaintiffs may seek leave of this Court to amend this Class Action Complaint to include additional Class representatives to represent the Class, additional claims as may be appropriate, or to amend the Class definition to address any steps that Defendant took.

59. **Superiority:** Pursuant to 735 ILCS 5/2-801(4), a class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is impracticable. Even if every member of the Class could afford to pursue individual litigation, the Court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Class. Plaintiffs anticipate no difficulty in the management of this action as a class action. Class-wide relief is essential to compliance with BIPA.

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

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

61. 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).

62. Defendant failed to comply with these BIPA mandates.

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

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

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

66. 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).

67. Upon information and belief, Defendant lacked retention schedules and guidelines for permanently destroying Plaintiffs’ and the Class’s biometric data and have not and will not destroy Plaintiffs’ 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.

68. On behalf of themselves and the Class, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendant to comply with BIPA’s requirements for the collection, capture, 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(d) – FAILURE TO OBTAIN INFORMED WRITTEN CONSENT AND
RELEASE BEFORE OBTAINING BIOMETRIC IDENTIFIERS OR INFORMATION**

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

70. 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).

71. Defendant failed to comply with these BIPA mandates.

72. Defendant is a foreign company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

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

74. Plaintiffs’ 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.

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

76. Defendant never informed Plaintiffs, and never informed any member of the Class at least prior to late 2020, in writing that their biometric identifiers and/or biometric information were being collected, captured, stored, and/or used, nor did Defendant inform Plaintiffs 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).

77. By collecting, capturing, storing, and/or using Plaintiffs' and the Class's biometric identifiers and biometric information as described herein, Defendant violated Plaintiffs' 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.*

78. On behalf of themselves and the Class, Plaintiffs seek: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Defendant to comply with BIPA's requirements for the collection, captures, 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, Plaintiffs Aaron Medley, Tristan Medley, and Carlos Ousley-Brown on behalf of themselves and the proposed Class, respectfully request that this Court enter an Order:

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

Dated: February 11, 2021

Respectfully submitted,

**AARON MEDLEY, TRISTAN MEDLEY,
and CARLOS OUSLEY-BROWN**

/s/ Gary M. Klinger

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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: [Saratoga Food Specialties Hit with Privacy Class Action Over Illinois Employee Fingerprint Scans](#)
