

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

**LATOYA ROBERTS, individually and
on behalf of all others similarly situated,**

Plaintiff,

v.

**RESTAURANT BRANDS
INTERNATIONAL, INC. and
POPEYES LOUISIANA KITCHEN,
INC.,**

Defendants.

Case No. 21-cv-1230

Removed from the State of Illinois,
Circuit Court of Cook County,
Case No. 2021 CH 00353

NOTICE OF REMOVAL

Defendants Restaurant Brands International, Inc. (“RBI”) and Popeyes Louisiana Kitchen, Inc. (“PLKI”) (together, “Defendants”) hereby remove the above-captioned action, which is currently pending in the Illinois Circuit Court of Cook County, to the United States District Court for the Northern District of Illinois. This removal is based on jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), pursuant to 28 U.S.C. §§ 1332(d), 1441(b), and 1446. In support of their Notice of Removal, Defendants state the following:

The State Court Action

1. On January 25, 2021, Plaintiff Latoya Roberts (“Roberts” or “Plaintiff”) filed a putative class action complaint (“Complaint”) in the Cook County Circuit Court, captioned *Latoya Roberts, individually and on behalf of all others similarly situated v. Restaurant Brands International, Inc. and Popeyes Louisiana Kitchen, Inc.*, Case No. 2021 CH 00353 (the “Action”). The Complaint alleges that Defendants violated the Illinois Biometric Information Privacy Act

(740 ILCS 14/1, *et seq.*) (“BIPA”) in four different ways. (*See* Exhibit 1, Compl., ¶¶ 24-27, 46-7, 51-2, 55-6, 61-62.)

2. Defendants’ first formal notice of the Action was when they were served with a copy of the Summons and Complaint. RBI was served on February 4, 2021, and PLKI was served on February 8, 2021. In accordance with 28 U.S.C. § 1446(b), a true and correct copy of all process, pleadings, and orders served upon Defendants, including a copy of the Summons and Complaint, is attached as **Exhibit 1**. No other processes, pleadings, or orders have been served on Defendants in this matter.

3. This Notice of Removal is timely filed within 30 days of Defendants’ receipt of service of the Complaint as permitted by 28 U.S.C. § 1446(b).

4. Plaintiff alleges that she brings this Complaint on behalf of a proposed class of “[a]ll individuals who had their fingerprints collected, captured, received or otherwise obtained and/or stored by Defendant in the state of Illinois.” (the “Class”). (Ex. 1, Compl., ¶ 40.) Plaintiff asserts that “the Class is substantial, believed to amount to hundreds or thousands of persons.” (*Id.*, ¶ 41.)

5. Plaintiff alleges that Defendants violated her rights and the rights of the Class under BIPA by:

- Failing to publicly provide a retention schedule or guideline for permanently destroying its employees’ biometric identifiers and information, in violation of 740 ILCS 14/15(a);
- Failing to inform Plaintiff and the Class in writing that their biometric identifiers and information were being collected and stored, in violation of 740 ILCS 14/15(b)(1);
- Failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or information were being collected, stored, and used, in violation of 740 ILCS 14/15(b)(2); and
- Failing to obtain written releases from Plaintiff and the Class

before it collected, used and stored their biometric identifiers and information, in violation of 740 ILCS 14/15(b)(3).

(*See id.*, ¶¶ 24-27.)

6. Plaintiff seeks declaratory and injunctive relief, statutory damages on behalf of herself and the Class for each time Defendants violated BIPA, reasonable attorneys' fees and litigation expenses; and pre- and post-judgment interest. (*Id.*, Prayers for Relief.)

Venue

7. Because the Circuit Court of Cook County lies in the Northern District of Illinois, Eastern Division, this Court is the appropriate venue for removal. *See* 28 U.S.C. §§ 93(a)(1), 1441(a), and 1446(a).

8. As explained further below, this Court has original jurisdiction over this Action pursuant to 28 U.S.C. § 1332(d) because it is a civil action between citizens of different states and the amount in controversy for the Class members in the aggregate exceeds \$5,000,000.¹

CAFA Jurisdiction

9. Removal jurisdiction exists because this Court has original jurisdiction over this action under CAFA. *See* 28 U.S.C. § 1332(d). In relevant part, CAFA grants district courts original jurisdiction over civil actions filed under federal or state law in which any member of a class of plaintiffs, which numbers at least 100, is a citizen of a state different from any defendant and where the amount in controversy for the putative class members in the aggregate exceeds the sum or value of \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d).

¹ Defendants do not concede, and specifically reserve the right to contest, all of Plaintiff's alleged factual assertions, legal contentions, and alleged damages.

10. CAFA authorizes removal of such actions pursuant to 28 U.S.C. § 1446. As set forth below, this case meets all of CAFA's requirements for removal and is timely and properly removed by the filing of this Notice.

11. Plaintiff is a citizen of Illinois. (Ex. 1, Compl., ¶ 17.)

12. RBI is a Canadian corporation with its corporate headquarters in Toronto, Ontario. (*Id.* at ¶ 19.) Therefore, RBI is a citizen of Canada.

13. PLKI is a corporation formed under the laws of the State of Minnesota. Its principal place of business is in Miami, Florida. (*Id.* at ¶ 18.) Therefore, PLKI is a citizen of Minnesota and Florida.

14. Thus, diversity for purposes of CAFA is satisfied because Plaintiff is a citizen of Illinois, and Defendants are citizens of Canada, Florida, and Minnesota.

15. Defendants are not states, state officials, or other governmental entities, as required by 28 U.S.C. § 1332(d)(5)(A).

16. The putative class consists of 100 or more individuals, as required by 28 U.S.C. § 1332(d)(5)(B). Here, Plaintiff alleges that when she worked for Defendants at a Popeyes restaurant, she was required to "place her finger on a fingerprint scanner, which scanned, collected and store her fingerprints each time she 'clocked' in and out as part of the timekeeping system." (*See* Ex. 1, Compl., ¶¶ 28, 30.) Plaintiff furthers alleges that the Class is "believed to amount to hundreds or thousands of persons." (*Id.*, ¶ 41.) While Defendants deny that they, as franchisors of Popeyes restaurants, have any liability under BIPA even if and to the extent that franchisors' timekeeping systems captured biometrics of Plaintiff or the Class alleged in the Complaint, within the state of Illinois there are 100 Popeyes restaurants, each of which has employed multiple

individuals since January 25, 2016. Accordingly, the putative class consists of more than 100 individuals.

17. Though Plaintiff's Complaint is silent as to the total amount of damages claimed, her pleadings and putative class plausibly place more than \$5,000,000 in controversy. *See Oshana v. Coca-Cola Co.*, 472 F.3d 506, 511 (7th Cir. 2006); *Blomberg v. Service Corp. Int'l*, 639 F.3d 761, 763 (7th Cir. 2011).

18. Plaintiff alleges Defendants owe statutory damages for each violation of BIPA which, for intentional and/or reckless violations, could amount to \$5,000 per violation. (*See* Ex. 1, Compl., Prayer for Relief, § C; 740 ILCS 14/20(2).) Plaintiff's Complaint alleges four BIPA violations per class member. (Ex. 1, Compl., ¶¶ 24-27.) Even assuming the 100 Popeyes locations in Illinois each enrolled a mere three employees in a timeclock system that captured biometrics in the five years preceding Plaintiff's Complaint being filed, if Defendants are found to have willfully committed all four alleged violations of BIPA with respect to 300 putative class members, the amount in controversy is \$ 6,000,000, exclusive of attorneys' fees.

19. While Defendants deny the validity and merit of all of Plaintiff's claims and deny her request for relief thereon, the factual allegations in Plaintiff's Complaint put the total amount of damages at issue in this action in excess of \$5,000,000, which exceeds this Court's jurisdictional minimum under CAFA.

20. As a result of the diversity of citizenship and amount in controversy, removal of this Action under CAFA is appropriate.

Compliance With Procedural Requirements

21. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), as it is being filed within 30 days of Defendants being served with the Complaint on February 4 and 8, 2021.

22. Attached as **Exhibit 2** is a true and correct copy of the Notice to Adverse Party of Filing of Notice of Removal, the original of which is being served upon Plaintiff Latoya Roberts, as required by 28 U.S.C. § 1446(d), through her attorneys, Carl Malmstrom, Wolf Haldenstein Adler Freeman & Herz LLC, 111 W. Jackson Boulevard, Suite 1700, Chicago, Illinois 60604, and Joseph Marchese and Philip Fraietta, Bursor & Fisher, P.A., 888 Seventh Avenue, New York, New York 10019.

23. A true and correct copy of this Notice of Removal has been forwarded for filing in the Circuit Court of Cook County. Attached as **Exhibit 3** is a copy of the Notice to State Court of Filing Notice of Removal, the original of which is being filed with the Clerk of the Circuit Court of Cook County, as required by 28 U.S.C. § 1446(d).

24. Defendants file this Notice of Removal solely for the purpose of removing the instant Action and does not waive, and specifically reserves, any and all defenses.

WHEREFORE, having fulfilled all statutory requirements, Defendants Restaurant Brands International, Inc. and Popeyes Louisiana Kitchen, Inc. hereby remove this Action from the Circuit Court of Cook County, to this Court, and requests this Court assume full jurisdiction over the matter as provided by law and permit this Action to proceed before it as a matter properly removed thereto.

Signature page follows

Dated: March 4, 2021

Respectfully Submitted,

/s/ Orly Henry

Kwabena Appenteng, ARDC #6294834
kappenteng@littler.com
Orly Henry, ARDC #6306153
ohenry@littler.com
LITTLER MENDELSON, P.C.
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LITTLER MENDELSON, P.C.
600 Washington Avenue, Suite 900
St. Louis, Missouri 63101
314-659-2000

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Orly Henry, an attorney, certify that I caused a copy of the foregoing document to be served upon the below attorneys of record via email on March 4, 2021:

Carl Malmstrom
malmstrom@whafh.com
Wolf Haldenstein Adler Freeman & Herz LLC
111 W. Jackson Boulevard, Suite 1700
Chicago, Illinois 60604

Joseph Marchese
jmarchese@bursor.com
Philip Fraietta
pfraietta@bursor.com
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, New York 10019

/s/ Orly Henry

One of Defendants' Attorneys

EXHIBIT 1

Return Date: No return date scheduled
Hearing Date: 5/25/2021 10:00 AM - 10:00 AM
Courtroom Number: 2403
Location: District 1 Court
Cook County, IL

*2508
2/4/2021
[Signature]*

FILED
2/1/2021 2:50 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH00353

12051716

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		(12/01/20) CCG 0001 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Name all Parties

Latoya Roberts

Plaintiff(s)

v.

Restaurant Brands International, Inc.

Case No. 2021-CH-00353

Defendant(s)

Registered Agent: CT CORPORATION
SYSTEM
1200 SOUTH PINE ISLAND ROAD
~~PLANTATION, FL 33324~~

Address of Defendant(s)

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

SUMMONS

To each Defendant:

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 WILL BE A FEE TO FILE YOUR APPEARANCE.

To file your written appearance/answer **YOU DO NOT NEED TO COME TO THE COURTHOUSE.** You will need: a computer with internet access; an email address; a completed Appearance form that can be found at <http://www.illinoiscourts.gov/Forms/approved/procedures/appearance.asp>; and a credit card to pay any required fees.

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

FILED DATE: 2/1/2021 2:50 PM 2021CH00353

Summons - Alias Summons

(12/01/20) CCG 0001 B

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.

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.

Please call or email the appropriate clerk's office location (on Page 3 of this summons) to get your court hearing date AND for information whether your hearing will be held by video conference or by telephone. The Clerk's office is open Mon - Fri, 8:30 am - 4:30 pm, except for court holidays.

NOTE: Your appearance date is NOT a court date. It is the date that you have to file your completed appearance by. You may file your appearance form by e-filing unless you are exempted.

A court date will be set in the future and you will be notified by email (either to the email address that you used to register for e-filing, or that you provided to the clerk's office).

CONTACT THE CLERK'S OFFICE for information regarding COURT DATES by visiting our website: cookcountyclerkofcourt.org; download our mobile app from the AppStore or Google play, or contact the appropriate clerk's office location listed on Page 3.

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.

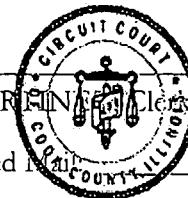
2/1/2021 2:50 PM IRIS Y. MARTINEZ

Atty. No.: 38819
 Pro Se 99500

Witness date _____

Name: Carl V. Malmstrom
Atty. for (if applicable):
Plaintiff

IRIS Y. MARTINEZ, Clerk of Court



Address: 111 W. Jackson Blvd., Suite 1700

Service by Certified Mail _____

City: Chicago

Date of Service: _____
(To be inserted by officer on copy left with employer or other person)

State: IL Zip: 60604

Telephone: (312) 984-0000

Primary Email: malmstrom@whafh.com

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

FILED DATE: 2/1/2021 2:50 PM 2021CH00353

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: 2/11/2021 2:50 PM 2021CH00353

Return Date: No return date scheduled
Hearing Date: 5/25/2021 10:00 AM - 10:00 AM
Courtroom Number: 2403
Location: District 1 Court
Cook County, IL

FILED
1/25/2021 3:17 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH00353

11959703

Chancery Division Civil Cover Sheet
General Chancery Section

(12/01/20) CCCH 0623

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

Latoya Roberts

Plaintiff

v.

Restaurant Brands International, Inc. et al.

Defendant

Case No: 2021CH00353

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.

Only one (1) case type may be checked with this cover sheet.

- 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
- 0050 Internet Take Down Action (Compromising Images)
- Other (specify) _____

Atty. No.: 38819 Pro Se 99500

Atty Name: Carl V. Malmstrom

Atty. for: Plaintiff

Address: 111 W. Jackson Blvd., Suite 1700

City: Chicago State: IL

Zip: 60604

Telephone: 3129840000

Primary Email: malmstrom@whafh.com

Pro Se Only: I have read and agree to the terms of the Clerk's Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice from the Clerk's office for this case at this email address:

Email: _____

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

FILED DATE: 1/25/2021 3:17 PM 2021CH00353

Return Date: No return date scheduled
Hearing Date: 5/25/2021 10:00 AM - 10:00 AM
Courtroom Number: 2403
Location: District 1 Court
Cook County, IL

FILED
2/1/2021 2:50 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH00353

12051716

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		(12/01/20) CCG 0001 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Name all Parties

Latoya Roberts

Plaintiff(s)

v.

Popeyes Louisiana Kitchen, Inc.

Case No. 2021-CH-00353

Defendant(s)

Registered Agent: CT CORPORATION
SYSTEM
208 S. LASALLE ST., SUITE 814
CHICAGO, IL 60604

Address of Defendant(s)

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

SUMMONS

To each Defendant:

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.

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

Summons - Alias Summons

(12/01/20) CCG 0001 B

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To the officer: (Sheriff Service)

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2/1/2021 2:50 PM IRIS Y. MARTINEZ

Atty. No.: 38819
 Pro Se 99500

Witness date _____

Name: Carl V. Malmstrom
Atty. for (if applicable):
Plaintiff

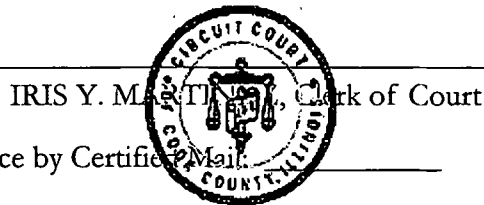
Address: 111 W. Jackson Blvd., Suite 1700

City: Chicago

State: IL Zip: 60604

Telephone: (312) 984-0000

Primary Email: malmstrom@whafh.com



IRIS Y. MARTINEZ, Clerk of Court

Service by Certified Mail _____

Date of Service: _____
(To be inserted by officer on copy left with employer or other person)

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



DIE DATE
03/01/2021

DOC TYPE: LAW
CASE NUMBER: 2021CH00353
DEFENDANT
POPEYES LOUISIANA KITCHEN INC
208 S LASALLE ST
CHICAGO, IL 60604
814

SERVICE INF
R/A CT CORI

ATTACHED

Hearing Date: 5/25/2021 10:00 AM - 10:00 AM

Courtroom Number: 2403

Location: District 1 Court
Cook County, IL

FILED
1/25/2021 3:17 PM
RISY MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH00353

ATTORNEY NO. 36819

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

11959703

LATOYA ROBERTS, *individually and on behalf of all others similarly situated,*

Plaintiff,

v.

RESTAURANT BRANDS
INTERNATIONAL, INC. and POPEYES
LOUISIANA KITCHEN, INC.,

Defendants.

Case No. 2021CH00353

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Latoya Roberts ("Plaintiff"), individually and on behalf of all other persons similarly situated, by her undersigned attorneys, as and for her Class Action Complaint for violations of the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1 *et seq.*, against Defendants Restaurant Brands International, Inc. ("RBI") and Popeyes Louisiana Kitchen, Inc., ("Popeyes") (collectively "Defendants"), alleges on personal knowledge, due investigation of her counsel, and, where indicated, on information and belief as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendants in collecting, storing and using her 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.

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 Defendants, may not obtain and/or possess an individual’s biometrics unless it informs that person in writing that biometric identifiers or information will be collected or stored. *See* 740 ILCS 14/15(b).

4. The 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, Defendants 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 or thousands 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 at least September 2019.

10. Plaintiff left Defendants' employ in approximately January 2020 and was “clocking in” using her fingerprints during her tenure of employment with Defendants.

11. If Defendants' 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.

12. BIPA confers on Plaintiff 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.

13. Yet, Defendants never adequately informed Plaintiff or the Class of its biometrics collection practices, never obtained the requisite written consent from Plaintiff or the Class regarding its biometric practices, and never provided any data retention or destruction policies to Plaintiff or the Class.

14. Plaintiff brings this action to prevent Defendants from further violating the privacy rights of Illinois residents and to recover statutory damages for Defendants' unauthorized

collection, storage and use of these individuals' biometrics in violation of BIPA.

JURISDICTION AND VENUE

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

16. Venue is proper in this County pursuant to because Defendants both conduct its usual and customary business in this County. 735 ILCS 5/2-102(a).

PARTIES

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

18. Defendant Popeyes Louisiana Kitchen, Inc. is a Minnesota corporation with its principal place of business in Miami, Florida. Popeyes operates restaurants throughout Illinois.

19. Defendant Restaurant Brands International, Inc. is a Canadian and American corporation with its principal places of business in Miami Florida, and Toronto, Ontario. RBI operates the brands Popeyes Louisiana Kitchen, Burger King, and Tim Hortons. RBI operates these brands throughout Illinois.

FACTUAL BACKGROUND

I. Illinois' Biometric Information Privacy Act.

20. The use of a biometric scanning system in the workplace entails serious risks. Unlike key fobs or identification cards—which can be changed or replaced if stolen or compromised—facial geometry is a permanent, unique biometric identifier associated with the employee. This exposes employees to serious and irreversible privacy risks. For example, if a device or database containing employees' facial geometry data is hacked, breached, or otherwise exposed, employees have no means by which to prevent identity theft and unauthorized tracking.

21. Recognizing the need to protect citizens from these risks, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”) in 2008, to regulate companies that collect and store biometric information, such as facial geometry. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276.

22. 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).

24. As alleged below, Defendants’ 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. Defendants’ 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. Defendants Violate Illinois' Biometric Information Privacy Act.

25. Unbeknown to the average person, and in direct violation of § 15(b)(1) of BIPA, Defendants scanned and collected, and then indefinitely stored in an electronic database, digital copies of each employee's fingerprints during the employee onboarding process from at least September 2019 to at least approximately January 2020, and on each occasion an employee clocks in or out of one of Defendants' Illinois-based restaurants – all without ever informing anyone of this practice in writing.

26. In direct violation of §§ 15(b)(2) and 15(b)(3) of BIPA, from at least approximately September 2019 to at least approximately January 2020, Defendants 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 Defendants obtain a written release from these individuals.

27. In direct violation of § 15(a) of BIPA, from at least September 2019, Defendants did not have written, publicly available policies identifying its retention schedules or guidelines for permanently destroying any of these biometric identifiers and/or biometric information.

III. Experience of Plaintiff Latoya Roberts.

28. Plaintiff began working for Defendants at one of its Popeyes restaurants in or around September 2019.

29. During the course of Plaintiff's employment, and at least since September 2019, Defendants required Plaintiff to place her fingers on a fingerprint scanner, at which point

Defendants scanned and collected, and stored in an electronic database, digital copies of Plaintiff's fingerprints.

30. Plaintiff worked for Defendants until approximately January 2020. During her employment tenure, Plaintiff was required to place her fingers on a fingerprint scanner, which scanned, collected and stored her fingerprints each time she "clocked" in and out as part of the timekeeping system.

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

32. On each occasion of "clocking in," Plaintiff was granted access to Defendants' restaurant in order to begin work.

33. Plaintiff never consented, agreed or gave permission—written or otherwise—to Defendants for the collection or storage of her unique biometric identifiers and/or biometric information.

34. Further, Defendants never provided Plaintiff with nor did she ever sign a written release allowing Defendants to collect or store her unique biometric identifiers and/or biometric information.

35. Likewise, Defendants never provided Plaintiff with the requisite statutory disclosures nor an opportunity to prohibit or prevent the collection, storage or use of her unique biometric identifiers and/or biometric information.

36. By collecting Plaintiff's unique biometric identifiers and/or biometric information without her consent, written or otherwise, Defendants invaded Plaintiff's statutorily protected right to privacy in her biometrics.

37. Finally, Defendants never provided Plaintiff with a retention schedule and/or guideline for permanently destroying her biometric identifiers and biometric information.

38. Thus, Plaintiff has no reason to believe Defendants actually destroyed her biometric information, despite that the sole reason Plaintiff provided her biometric information (*i.e.* clocking in and out of work) is now moot.

39. Further, to the extent Defendants use an outside vendor to process its payroll, there is a significant risk Plaintiff's biometric identifiers have already been disseminated without her knowledge or consent.

CLASS ALLEGATIONS

40. **Class Definition:** Plaintiff brings 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.

41. **Numerosity:** Pursuant to 735 ILCS 5/2-801 (1), the number of persons within the Class is substantial, believed to amount to hundreds or thousands 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 Defendants' records.

42. **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 Defendants collected or otherwise obtained Plaintiff's and the Class' biometric identifiers and/or biometric information;
- (b) whether Defendants properly informed Plaintiff and the Class that it collected, used, and stored their biometric identifiers and/or biometric information;
- (c) whether Defendants obtained a written release (as defined in 740 ILCS 1410) to collect, use, and store Plaintiff's and the Class' biometric identifiers and/or biometric information;
- (d) whether Defendants 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 Defendants used Plaintiff's and the Class' biometric identifiers and/or biometric information to identify them;
- (f) whether Defendants destroyed Plaintiff's and the Class' biometric identifiers and/or biometric information once that information was no longer needed for the purpose for which it was originally collected; and
- (g) whether Defendants' violations of BIPA were committed intentionally, recklessly, or negligently.

43. **Adequate Representation:** Pursuant to 735 ILCS 5/2-801 (3), Plaintiff has retained and is represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiff and her counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiff is able to fairly and adequately represent and protect the interests of such a Class. Neither Plaintiff nor her counsel has any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiff has raised viable statutory claims or the type reasonably expected to be raised by members of the Class, and will

vigorously pursue those claims. If necessary, Plaintiff may seek leave of this Court to amend this Class Action Complaint to include additional Class representatives to represent the Class, additional claims as may be appropriate, or to amend the Class definition to address any steps that Defendants took.

44. **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. Plaintiff anticipates no difficulty in the management of this action as a class action. Class-wide relief is essential to compliance with BIPA.

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

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

46. 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).

47. Defendants failed to comply with these BIPA mandates.

48. Defendants are companies registered to do business in Illinois and thus each qualifies as a "private entity" under BIPA. *See* 740 ILCS 14/10.

49. Plaintiff is an individual who had her "biometric identifiers" captured and/or collected by Defendants, as explained in detail in above. *See* 740 ILCS 14/10.

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

51. Defendants 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).

52. Defendants lacked retention schedules and guidelines for permanently destroying Plaintiff's and the Class's biometric data. As such, the only reasonable conclusion is that Defendants 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.

53. On behalf of herself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants 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).

PRAYER FOR RELIEF

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

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as representative of the Class, and appointing her counsel as Class Counsel;
- B. Declaring that Defendants' actions, as set out above, violate BIPA, 740 ILCS 14/15(a), *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 Defendants' violations were negligent;
- D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an Order requiring Defendants to collect, store, and use biometric identifiers and/or biometric information in compliance with BIPA;
- E. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- F. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- G. Awarding such other and further relief as equity and justice may require.

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

- 54. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
- 55. 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).

56. Defendants failed to comply with these BIPA mandates.

57. Defendants are companies registered to do business in Illinois and thus each qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

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

59. 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.

60. Defendants systematically and automatically collected, captured, used, and stored 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).

61. Defendants never informed Plaintiff, and never informed any member of the Class at least prior to January 2020, in writing that their biometric identifiers and/or biometric information were being collected, captured, stored, and/or used, nor did Defendants 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).

62. By collecting, capturing, storing, and/or using Plaintiff’s and the Class’s biometric identifiers and biometric information as described herein, Defendants 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.*

63. On behalf of herself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants 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, Plaintiff Latoya Roberts, on behalf of herself and the proposed Class, respectfully requests that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as representative of the Class, and appointing her counsel as Class Counsel;
- B. Declaring that Defendants' 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 Defendants' violations were negligent;
- D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an Order requiring Defendants to collect, store, and use biometric identifiers and/or biometric information in compliance with BIPA;
- E. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- F. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and

G. Awarding such other and further relief as equity and justice may require.

JURY DEMAND

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

Dated: January 25, 2021

Respectfully submitted,

/s/ Carl V. Malmstrom .
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**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiff and the Putative Class

Hearing Date: 5/25/2021 10:00 AM - 10:00 AM
Courtroom Number: 2403
Location: District 1 Court
Cook County, IL

FILED
2/1/2021 2:50 PM
RISY MARTINEZ
ATTORNEY NO. 38819
CIRCUIT CLERK
COOK COUNTY, IL
2021CH00353
12051716

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

LATOYA ROBERTS, *individually and on
behalf of all others similarly situated,*

Plaintiff,

v.

RESTAURANT BRANDS
INTERNATIONAL, INC. and POPEYES
LOUISIANA KITCHEN, INC.,

Defendants.

Case No. 2021-CH-00353

PLAINTIFF’S MOTION FOR CLASS CERTIFICATION

Plaintiff Latoya Roberts (“Plaintiff”), by and through undersigned counsel and pursuant to 735 ILCS 5/2-801, moves for entry of an order certifying the Class proposed below, appointing Plaintiff as Class Representative, and appointing Plaintiff’s attorneys as Class Counsel. Alternatively, Plaintiff requests, to the extent the Court determines further evidence is necessary to prove any element of 735 ILCS 5/2-801, that the Court defer consideration of this Motion pending a reasonable period to complete discovery. *See, e.g., Ballard RN Center, Inc. v. Kohl’s Pharmacy & Homecare, Inc.*, 2015 IL 118644, at ¶¶ 42–43 (citing *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896–97 (7th Cir. 2011)). In support of this Motion, Plaintiff submits the following Memorandum of Law.

Dated: February 1, 2021

Respectfully submitted,

/s/ Carl V. Malmstrom
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**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiff and the Putative Class

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

This Court should certify a class of Illinois residents whose biometric identifiers and biometric information were captured, collected, stored, and used by Restaurant Brands International, Inc. ("RBI") and Popeyes Louisiana Kitchen, Inc. ("Popeyes") (collectively "Defendants"). RBI is a Canadian corporation with its principal place of business in Toronto, Ontario. Defendant RBI owns the brands Popeyes, Burger King, and Tim Hortons. Defendant RBI operates these brands nationwide and throughout Illinois. Defendant Popeyes is a Minnesota corporation with its principal place of business in Miami, Florida. Defendant Popeyes operates their stores nationwide and throughout Illinois. Defendants captured, collected, stored, and used its employees' biometric information and identifiers to track their time at work. And in so doing, the Defendants have violated Illinois Law by obtaining, storing, and using this data without the employees' informed and written consent, and by failing to provide the employees with the requisite data retention and destruction policies explaining how and when such biometric information will be used, stored, and destroyed. Defendants' conduct was in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA").

After Plaintiff learned of Defendants' wrongful conduct, they commenced suit on behalf of a class of similarly situated individuals in order to bring an end to the Defendants' capture, collection, storage and use of biometric identifiers and/or biometric information in violation of BIPA and to obtain redress for all persons injured by its conduct.

I. THE ILLINOIS BIOMETRIC INFORMATION PRIVACY ACT

BIPA is designed to protect individuals' personal biometric information. Under BIPA, biometric identifiers include fingerprints, handprints and vocal identifiers; while biometric information can be defined as any information based on a biometric identifier, regardless of how

it is converted or stored. Compl., ¶ 1 n.1; *id.* at n.2.

Recognizing the importance of the security of individuals' biometrics, the Illinois Legislature enacted BIPA, which provides, *inter alia*, that private entities, such as Defendants, may not obtain and/or possess an individual's biometrics unless they: (1) inform that person in writing that biometric identifiers or information will be captured, collected, stored, or used; (2) inform that person in writing of the specific purpose and the length of term for which such biometric identifiers or biometric information is being captured, collected, stored, and used; (3) receive a written release from the person for the collection of his or his biometric identifiers and/or information; and (4) publicly publish and make available a written retention schedule and guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15. Compl., ¶ 3.

II. FACTUAL BACKGROUND

A. **The Underlying Misconduct.**

Defendants have taken the biometrics of thousands of individuals within the state of Illinois. Compl., ¶¶ 25, 41. During the relevant time period in the State of Illinois, Defendants implemented biometric fingerprint scanning and recognition technology to collect biometric information from its employees, including Plaintiff, to track their exact "clock-in" and "clock-out" times. *Id.* at ¶ 25. Each fingerprint extracted by the Defendants is biologically unique to the particular individual. *Id.* at ¶ 2. Defendants used its biometrics technology to capture, collect, and store Plaintiff's and other Class member's biometrics. *Id.* at ¶ 60. However, Defendants failed to obtain informed written consent from its employees, including Plaintiff, before capturing and collecting their biometric information. *Id.* Defendants failed to provide its employees, including Plaintiff, with a retention schedule and deletion policies detailing how and

when Defendants would retain and destroy the individuals' biometric information and/or biometric identifiers. *Id.* at ¶¶ 51-52.

Defendants do not have a policy of informing individuals, including Plaintiff, of what happens to their biometric information after it is collected and obtained, whether they still retain their biometrics, and if they do, for how long they intend to retain such information without their consent, whether the information is transmitted to a third party and, if so, which third party. *Id.* at ¶ at 51. Despite its practice of taking the biometric information of every employee who uses its biometric technology, Defendants failed to comply with BIPA's statutory requirements regarding the collection of biometric identifiers and biometric information. *Id.* at ¶¶ 32-36.

B. The Proposed Class

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

All individuals who had their fingerprints collected, captured, received or otherwise obtained and/or stored by Defendant in the state of Illinois.

Compl., ¶ 40. As explained below, the proposed Class satisfies each of the four requirements for certification under Section 2-801 of the Illinois Code of Civil Procedure: numerosity, commonality, adequacy of representation, and fair and efficient adjudication. A class action is not only appropriate here, it is also the only way that the members of the putative Class can obtain appropriate redress for Defendants' unlawful conduct.

III. ARGUMENT

A. Legal Standard for Class Certification

To obtain class certification, a plaintiff does not need to establish that they will prevail on the merits of the action. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974) (“[T]he question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on

the merits, but rather whether the requirements of Rule 23 are met.” (internal quotation marks and citation omitted)). In determining whether to certify a proposed class, the Court should accept the allegations of the complaint as true. *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 53 (1st Dist. 2007).

To proceed with a class action, the movant must satisfy the “prerequisites for the maintenance of a class action” set forth in Section 2-801 of the Illinois Code of Civil Procedure, which provides:

An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:

- (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 common questions predominate over any questions affecting only individual members.
- (3) The representative parties will fairly and adequately protect the interest of the class.
- (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801. As demonstrated below, each prerequisite is established for the maintenance of a class action, and the Court should therefore certify the proposed Class.

Section 2-801 is modeled after Rule 23 of the Federal Rules of Civil Procedure and “federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois.” *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (Ill. 2005). Circuit courts have broad discretion in determining whether a proposed class meets the requirement for class certification and ought to err in favor of maintaining class certification. *Ramirez*, 378 Ill. App. 3d at 53. While a court may rule on class certification without requiring further discovery, *see* Manual for Complex Litigation (Fourth) § 21.14, at 255 (2004), courts

have found that discovery is helpful prior to addressing a motion for class certification. *See, e.g., Ballard RN Center, Inc. v. Kohll's Pharmacy & Homecare, Inc.*, 2015 IL 118644, at ¶ 42 (“If the parties have yet to fully develop the facts needed for certification, then they can also ask the district court to delay its ruling to provide time for additional discovery or investigation.”) (quoting *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011)).

All the prerequisites for class certification are satisfied here, even though Plaintiff has not yet had an opportunity to engage in and complete discovery. However, in the interests of establishing a more fully developed record before ruling on class certification issues, the Court should defer ruling on this Motion pending the completion of discovery and submission of supplemental briefing.

B. The Numerosity Requirement is Satisfied

The first step in certifying a class is a showing that “the class is so numerous that joinder of all members is impracticable.” 735 ILCS 5/2-801(1). This requirement is met when “join[ing] such a large number of plaintiffs in a single suit would render the suit unmanageable and, in contrast, multiple separate claims would be an imposition on the litigants and the courts.” *Gordon v. Boden*, 224 Ill. App. 3d 195, 200 (1st Dist. 1991) (citing *Steinberg v. Chicago Med. Sch.*, 69 Ill.2d 320, 337 (Ill. 1977)). To satisfy this requirement a plaintiff need not demonstrate the exact number of class members but, must offer a good faith estimate as to the size of the class. *Smith v. Nike Retail Servs., Inc.*, 234 F.R.D. 648, 659 (N.D. Ill. 2006).

Plaintiff alleges that there are at least several hundred to thousands of members of the Class. Compl., ¶ 41. Because definitive evidence of numerosity can only come from the records of Defendants and its agents, it is proper to rely upon the allegations of the Complaint in certifying the Class. *See* 2 A. Conte & H. Newberg, *Newberg on Class Actions* § 7.20, at 66

(stating that where numerosity information is in the sole possession of the party opposing the class, courts generally rely on the complaint as prima facie evidence or defer ruling). Additionally, the members of the putative Class can be easily and objectively determined from Defendants' records.

Furthermore, it would be completely impracticable to join the claims of the members of the Class, because they are disbursed throughout Illinois, and because absent a class action, few members could afford to bring an individual lawsuit over the amounts at issue in this case, since each individual member's claim is relatively small. *See Gordon*, 224 Ill. App. 3d at 200. Accordingly, the first prerequisite for class certification is met.

C. Common Questions of Law and Fact Predominate

The second requirement of Section 2-801(2) is met where there are "questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Such common questions of law or fact exist when the members of the proposed class have been aggrieved by the same or similar misconduct. *See Miner v. Gillette Co.*, 87 Ill.2d 7, 19 (Ill. 1981); *Steinberg*, 69 Ill.2d at 342. These common questions must also predominate over any issues affecting individual class members. *See O-Kay Shoes, Inc. v. Rosewell*, 129 Ill. App. 3d 405, 408 (1st Dist. 1984).

Here, the claims of the Class members arise out of the same activity by Defendants, are based on the same legal theory, and implicate, among others, the following common issues: whether Defendants collected or otherwise obtained Plaintiff's and the Class' biometric identifiers or biometric information; whether Defendants properly informed Plaintiff and the Class that it collected, used, and stored their biometric identifiers or biometric information; whether Defendants obtained a written release (as defined in 740 ILCS 1410) to collect, use, and

store Plaintiff's and the Class' biometric identifiers or biometric information; whether Defendants 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; whether Defendants used Plaintiff's and the Class' biometric identifiers or biometric information to identify them; and whether Defendants' violations of the BIPA were committed intentionally, recklessly, or negligently. Compl., ¶ 42.

As alleged, and as will be shown through obtainable evidence, Defendants engaged in a common course of conduct by collecting, capturing, storing and/or or using the biometrics of Class members without retaining a written release and without providing a retention schedule to them or to the public. Any potential individualized issues remaining after common issues are decided would be *de minimis*. Accordingly, common issues of fact and law predominate over any individual issues, and Plaintiff have satisfied this hurdle to certification.

D. The Adequate Representation Requirement is Satisfied.

The third prong of Section 2-801 requires that “[t]he representative parties will fairly and adequately protect the interest of the class.” 735 ILCS 5/2-801(3). The class representative's interests must be generally aligned with those of the class members, and class counsel must be “qualified, experienced and generally able to conduct the proposed litigation.” *See Miner*, 87 Ill.2d at 14; *see also Eshaghi v. Hanley Dawson Cadillac Co., Inc.*, 214 Ill. App. 3d 995, 1000 (1st Dist. 1991). The purpose of this adequacy of representation requirement is “to insure that all Class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim.” *Purcell & Wardrope Chtd. v. Hertz Corp.*, 175 Ill. App. 3d

1069, 1078 (1st Dist. 1988).

In this case, Plaintiff has the exact same interests as the members of the proposed Class. Like the other members of the Class, Plaintiff was subjected to Defendants' biometric timekeeping technology and Defendants captured, collected, and stored their biometrics. Compl., ¶ 1. Plaintiff has also alleged that Defendants did so without complying with BIPA's requirements. *Id.* Plaintiff's pursuit of this matter against Defendants demonstrates that they will be a zealous advocate for the Class.

Plaintiff has retained and is represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiff and their counsel are committed to vigorously prosecuting this class action. Compl., ¶ 43. Moreover, Plaintiff is able to fairly and adequately represent and protect the interests of such a Class. Neither Plaintiff nor their counsel has any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiff has asserted viable statutory claims of the type reasonably expected to be raised by members of the Class, and will vigorously pursue those claims. *Id.* Accordingly, the proposed class representative and proposed class counsel will adequately protect the interests of the members of the Classes, thus satisfying Section 2-801(3).

E. Class Certification Will Ensure Fair and Efficient Adjudication of the Controversy

The final requirement for class certification under 5/2-801 is met where "the class action is an appropriate method for the fair and efficient adjudication of the controversy." 735 ILCS 5/2-801(4). "In applying this prerequisite, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain." *Gordon*, 224 Ill. App. 3d at 203. In practice, a "holding that the first three prerequisites of section 2-801 are established

makes it evident that the fourth requirement is fulfilled.” *Gordon*, 224 Ill. App. 3d at 204; *Purcell & Wardrobe Chtd.*, 175 Ill. App. 3d at 1079 (“The predominance of common issues [may] make a class action . . . a fair and efficient method to resolve the dispute.”). Because numerosity, commonality and predominance, and adequacy of representation have been satisfied in the instant case, it is “evident” that the appropriateness requirement is met as well.

Other considerations further support certification in this case. A “controlling factor in many cases is that the class action is the only practical means for class members to receive redress.” *Gordon*, 586 N.E.2d at 467; *Eshaghi*, 574 N.E.2d at 766 (“In a large and impersonal society, class actions are often the last barricade of . . . protection.”). A class action is superior to multiple individual actions “where the costs of litigation are high, the likely recovery is limited” and individuals are unlikely to prosecute individual claims absent the cost-sharing efficiencies of a class action. *Maxwell*, 2004 WL 719278, at *6. This is especially true in cases involving data privacy violations and data breaches, which can involve significant injury to the those effected, but result in many small, individual claims. Here, absent a class action, most members of the Class would find the cost of litigating their statutorily-limited claims to be prohibitive, and multiple individual actions would be judicially inefficient. *Id.*

A class action is superior to other methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is inefficient and impracticable. Compl., ¶ 44. Even if every member of the Class could afford to pursue individual litigation, the Court system could not. *Id.* 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. *Id.* 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. *Id.* Plaintiff anticipates no difficulty in the management of this action as a class action. Class-wide relief is essential to compliance with BIPA. *Id.* Thus, proceeding as a class action here is an appropriate method to fairly and efficiently adjudicate the controversy.

Certification of the proposed Class is necessary to ensure that Defendants' conduct becomes compliant with BIPA, to ensure that the Class members' privacy rights in their biometrics are sufficiently protected, and to compensate those individuals who have had their statutorily-protected privacy rights violated and who have not been informed as to the status of their own biometric information. Were this case not to proceed on a class-wide basis, it is unlikely that any significant number of Class members would be able to obtain redress, or that Defendants would willingly implement the procedures necessary to comply with the statute. Thus, proceeding as a class action here is an appropriate method to fairly and efficiently adjudicate the controversy.

IV. CONCLUSION

For the foregoing reasons, the requirements of 735 ILCS 5/2-801 have been satisfied. Plaintiff respectfully requests that the Court enter an Order certifying the proposed Class, appointing Plaintiff as Class Representative, appointing Wolf Haldenstein Adler Freeman & Herz LLC and Bursor & Fisher, P.A. as Class Counsel, and awarding such additional relief as the Court deems reasonable. In the alternative, Plaintiff respectfully requests that this Court defer ruling on this Motion pending the completion of appropriate discovery and supplemental briefing.

Dated: February 1, 2021

Respectfully submitted,

/s/ Carl V. Malmstrom

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**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiff and the Putative Class

EXHIBIT 2

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

**LATOYA ROBERTS, individually and
on behalf of all others similarly situated,**

Plaintiff,

v.

**RESTAURANT BRANDS
INTERNATIONAL, INC. and
POPEYES LOUISIANA KITCHEN,
INC.,**

Defendants.

Case No. 21-cv-1230

Removed from the State of Illinois,
Circuit Court of Cook County,
Case No. 2021 CH 00353

NOTICE TO ADVERSE PARTY OF FILING OF NOTICE OF REMOVAL

To: Carl Malmstrom
Wolf Haldenstein Adler
Freeman & Herz LLC
111 W. Jackson Boulevard
Suite 1700
Chicago, Illinois 60604

Joseph Marchese
Philip Fraietta
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, New York 10019

PLEASE TAKE NOTICE that on March 4, 2021, Defendants Restaurant Brands International, Inc. and Popeyes Louisiana Kitchen, Inc., by and through their attorneys, Littler Mendelson, P.C., filed their Notice of Removal with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, of this action now pending in the Circuit Court of Cook County, Case No. 2021 CH 00353. A copy of that Complaint was filed with the Notice of Removal. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of the Notice of Removal is attached to this Notice and hereby served upon you.

Signature page follows

Dated: March 4, 2021

Respectfully Submitted,

/s/ Orly Henry

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314-659-2000

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Orly Henry, an attorney, certify that I caused a copy of the foregoing document to be served upon the below attorneys of record via email on March 4, 2021:

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/s/ Orly Henry _____
One of Defendants' Attorneys

EXHIBIT 3

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

**LATOYA ROBERTS, individually and
on behalf of all others similarly situated,**

Plaintiffs,

v.

**RESTAURANT BRANDS
INTERNATIONAL, INC. and
POPEYES LOUISIANA KITCHEN,
INC.,**

Defendants.

Case No. 2021 CH 00353

DEFENDANTS' NOTICE TO STATE COURT OF FILING OF NOTICE OF REMOVAL

PLEASE TAKE NOTICE that on March 4, 2021, Defendants Restaurant Brands International, Inc. and Popeyes Louisiana Kitchen, Inc., by and through their attorneys, Littler Mendelson, P.C., filed a Notice of Removal with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. A true and correct copy of the Notice of Removal is attached as Exhibit A.

PLEASE TAKE FURTHER NOTICE that the filing of said Notice of Removal in Federal Court, together with the filing of a copy of said Notice with this Court, effects the removal of this Action in accordance with 28 U.S.C. § 1446(d).

Signature page follows

Dated: March 4, 2021

Respectfully Submitted,

/s/ Orly Henry

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Orly Henry, an attorney, certify that I caused a copy of the foregoing document to be served upon the below attorneys of record via email on March 4, 2021:

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/s/ Orly Henry _____
One of Defendants' Attorneys

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Popeyes Violated Ill. Privacy Law by Scanning Workers' Fingerprints](#)
