

YES NO

EXHIBITS

CASE NO. 2021 CH 273

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12-Person Jury

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Location: District 1 Court
Cook County, IL

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IRIS Y. MARTINEZ
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2021CH00273

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

JAMES ROBINSON,)
individually and on behalf of)
himself and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
PETCO ANIMAL SUPPLIES, INC.,)
)
Defendant.)

Case No. **2021CH00273**

11890315

JURY TRIAL DEMANDED

PLAINTIFF’S CLASS ACTION COMPLAINT

Plaintiff James Robinson (“Robinson” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Petco Animal Supplies, Inc. (“Petco” or the “Defendant”) to put a stop to its unlawful collection, use, and storage of Plaintiff’s and the putative Class members’ sensitive biometric data, to have Defendant return or destroy the biometric information, that it has retained for over three years and for which the initial use is no longer pertinent, and to issue a written retention policy, among other things. Plaintiff further seeks statutory damages. Plaintiff, for his Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, based upon counsel’s due diligent investigation, publicly available documents, and conduct and statements of Defendant

NATURE OF THE ACTION

1. Defendant Petco is a Delaware Corporation with its principal executive offices in San Diego, California and operates stores throughout the state of Illinois.
2. Petco uses biometric employee tracking systems as a means of supervising its employees. When employees first begin their jobs at Petco, they are photographed and their

FILED DATE: 1/19/2021 8:17 PM 2021CH00273

biometric identifiers are collected for its time tracking system as a means of authentication. An employee identification number is assigned to each person. When each person clocks in and out, his time is recorded based on his unique biometric identifiers and/or biometric information. Each time the employee clocks in and out, the biometric time tracking system snaps a photo of the employee allowing the system to verify the employee's identity by comparing the biometric identifiers and/or biometric information to those in the identifying photograph stored on the system's database to ensure that the employee's assigned number matches with his photograph.

3. Defendant's collection and storage of biometric identifiers and/or biometric information exposes employees to serious and irreversible privacy risks. For example, if an employee database is hacked, breached, or otherwise exposed, employees have no means by which to prevent identity theft and unauthorized tracking.

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

5. Despite this law, Defendant disregards its employees' statutorily protected privacy rights and unlawfully collects, stores, and uses their biometric data in violation of the BIPA. Specifically, Defendant has violated (and continues to violate) the BIPA because it did not:

- Properly inform Plaintiff and the Class members in writing of the specific purpose and length of time for which their biometric identifiers and/or biometric information were being collected, stored, and used, as required by the BIPA;
- Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the Class's photographs, as required by the BIPA; nor
- Receive a written release from Plaintiff or the members of the Class to collect, capture, or otherwise obtain their biometric identifiers and/or biometric

information, as required by the BIPA.

6. Accordingly, this Complaint seeks an order: (i) declaring that Defendant's conduct violates the BIPA; (ii) requiring Defendant to cease the unlawful activities discussed herein; (iii) awarding liquidated damages to Plaintiff and the proposed Class; and (iv) awarding Plaintiff statutory damages for such violations.

PARTIES

7. Plaintiff James Robinson is a natural person and citizen of the State of Illinois, who worked at Petco in Illinois.

8. Defendant Petco Animal Supplies, Inc., ("Petco"), is an American pet retailer in the United States, with its executive corporate offices in San Diego, California. Petco sells pet products and services, as well as certain types of live animals. Defendant operates its businesses throughout Illinois.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business in Illinois and has committed the complained of acts in Illinois.

10. Venue is proper in Cook County because Defendant conducts business transactions in Cook County and operates stores located in Cook County. It is also the county in which Plaintiff resides.

FACTUAL BACKGROUND

I The Biometric Information Privacy Act.

11. In the early 2000's, major national corporations started using Chicago and other locations in Illinois to test "new [consumer] applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias." 740 ILCS 14/5(b). Given its relative infancy, an overwhelming portion of the public

became weary of this then-growing, yet unregulated technology. *See* 740 ILCS 14/5.

12. In late 2007, a biometrics company called Pay By Touch—which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions—filed for bankruptcy. That bankruptcy was alarming to the Illinois Legislature because suddenly there was a serious risk that millions of fingerprint records—which, are unique biometric identifiers, which can be linked to people’s sensitive financial and personal data— could now be sold, distributed, or otherwise shared through the bankruptcy proceedings without adequate protections for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who had used that company’s fingerprint scanners were completely unaware that the scanners were not actually transmitting fingerprint data to the retailer who deployed the scanner, but rather to the now-bankrupt company, and that their unique biometric identifiers could now be sold to unknown third parties.

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

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

15. BIPA specifically applies to employees who work in the State of Illinois. BIPA

defines a “written release” specifically “in the context of employment [as] a release executed by an employee as a condition of employment.” 740 ILCS 14/10.

16. Biometric identifiers include retina and iris scans, voiceprints, scans of hand and face geometry and fingerprints. *See* 740 ILCS 14/10.

17. Biometric information is separately defined to include *any* information based on an individual’s biometric identifier that is used to identify an individual. *See id.* In this case, Plaintiff and the Class’ biometric identifiers and/or biometric information were taken at Petco in connection with their employment and stored in Defendant’s system’s database and used to identify that individual.

18. The BIPA also establishes standards for how employers must handle Illinois employees’ biometric identifiers and biometric information. *See* 740 ILCS 14/15(c)–(d). For instance, the BIPA requires companies to develop and comply with a written policy—made available to the public—establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting such identifiers or information has been satisfied or within three years of the individual’s last interaction with the company, whichever occurs first. 740 ILCS 14/15(a).

II. Petco Violates the Biometric Information Privacy Act.

19. By the time the BIPA passed through the Illinois Legislature in mid-2008, many companies who had experimented with using biometric data as an authentication method stopped doing so, at least for a time. That is because Pay By Touch’s bankruptcy, described in Section I above, was widely publicized and brought attention to consumers’ discomfort with the use of their biometric data.

20. Unfortunately, Defendant continues to collect, store, and use its employees’ biometric data in violation of the BIPA.

21. Specifically, when employees first begin work at one of Defendant's stores, they are required to be photographed and their biometric identifiers taken as alleged above.

22. Defendant failed to inform its employees of the complete purposes for which it collects their sensitive biometric data or to whom the data is disclosed, if at all, and failed to obtain their knowing consent to use their biometric data

23. Defendant similarly failed to provide its employees with a written, publicly available policy identifying its retention schedule, and guidelines for permanently destroying its employees' biometric identifiers and/or biometric information when the initial purpose for collecting or obtaining the biometric identifiers and/or biometric information is no longer relevant, as required by the BIPA. An employee who leaves the company does so without any knowledge of when his biometric identifiers and/or biometric information will be removed from the company's system or databases -- or if they will ever be.

24. The Pay By Touch bankruptcy that catalyzed the passage of the BIPA highlights why conduct such as Defendant —whose employees are aware that they are providing biometric identifiers and/or biometric information but are not aware of to whom or the full extent of the reasons they are doing so—is so dangerous. That bankruptcy spurred Illinois citizens and legislators to realize a critical point: it is crucial for people to understand when providing biometric data who exactly is collecting it, who it will be transmitted to, for what purposes, and for how long. But Defendant disregards these obligations, and instead unlawfully collects, stores, and uses its employees' biometric identifiers and/or biometric information without proper consent.

25. Ultimately, Defendant disregards its employees' statutorily protected privacy rights by violating the BIPA.

FACTS SPECIFIC TO PLAINTIFF ROBINSON

26. Plaintiff Robinson worked for Defendant in a Petco store located in Highland Park,

Illinois, as a department manager from the period of 2012 to 2016.

27. Sometime during his employment, Plaintiff Robinson, in connection with his employment at Petco, was told that the Petco stores were converting to a system in which employees would be photographed for the specific purpose of identifying that person when they were clocking in and out. Plaintiff Robinson's photograph was taken in-person at the Petco store where he was employed, and was subsequently taken each time he clocked in and out. Consequently, each time that Plaintiff Robinson and any of the employees who worked at Petco, clocked in or out, they were required to provide Defendant with their employee identification number. A camera mounted or contained on an iPad type instrument then would snap a picture of the employee and that picture was used to determine whether the employee clocking in and using a specific employee number was the employee to whom that number was assigned.

28. Upon information and belief, Defendant's biometric technology compared Plaintiff's employer identification number (which was associated with the source photograph and the biometric identifiers and/or biometric information collected therefrom) to the biometric identifiers from subsequent photographs taken by the system.

29. Defendant never informed Plaintiff of the specific limited purposes or length of time for which it collected, stored, or used his biometric identifiers and/or biometric information. Similarly, Defendant never informed Plaintiff of any biometric data retention policy it developed, nor whether it will ever permanently delete his biometric identifying information.

30. Plaintiff never signed a written release allowing Defendant to collect or store his photograph.

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

32. Plaintiff Robinson now seeks statutory damages under the BIPA as compensation

for the injuries Defendant has caused as well as injunctive or other relief.

CLASS ALLEGATIONS

Class Definition

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

All citizens of the State of Illinois who, within the applicable statute of limitations, had their biometric information collected, captured, received, otherwise obtained, or disclosed by Defendant while residing in Illinois.

34. The following people are excluded from the Class: (1) any judge or magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

35. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but it is clear that individual joinder is impracticable. Defendant has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from at least hundreds of employees who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

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

- a) whether Defendant collected, captured, or otherwise obtained Plaintiff's and the Class's biometric identifiers and/or biometric information;
- b) whether Defendant properly informed Plaintiff and the Class of its purposes for collecting, using, and storing their biometric identifiers and/or biometric information;
- c) whether Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's and the Class's biometric identifiers and/or biometric information;
- d) whether Defendant has sold, leased, traded, or otherwise profited from Plaintiff's and the Class's biometric identifiers and/or biometric information;
- e) whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and/or biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of their last interaction, whichever occurs first;
- f) whether Defendant complies with any such written policy (if one exists); and
- g) whether Defendant used Plaintiff's and the Class's photographs to identify them.

37. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to those of the other members of the Class.

38. **Appropriateness:** This class action is appropriate for certification because class

proceedings are superior to all others available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in their Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

CAUSE OF ACTION
COUNT I

Violation of 740 ILCS 14/1, *et seq.*

(On Behalf of Plaintiff and the Class)

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

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

41. The BIPA also 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 (*i.e.*, when the employment relationship ends); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

42. Defendant fails to comply with these BIPA mandates.

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

44. Plaintiff and the Class are individuals who had their “biometric identifiers” collected by Defendant, as explained in detail in Section II. *See* 740 ILCS 14/10.

45. Plaintiff’s and the Class’s biometric identifiers or information based on those biometric identifiers were used to identify them, constituting “biometric information” as defined by the BIPA. *See* 740 ILCS 14/10.

46. Defendant violated 740 ILCS 14/15(b)(3) by failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and/or biometric information.

47. Defendant violated 740 ILCS 14/15(b)(1) by failing to inform Plaintiff and the Class in writing that their biometric identifying information was being collected and stored.

48. Defendant violated 740 ILCS 14/15(b)(2) by failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or biometric information was being collected, stored and used.

49. Defendant violated 740 ILCS 14/15(a) by failing to publicly provide a retention schedule or guideline for permanently destroying its employees' biometric identifiers and biometric information.

50. By collecting, storing, and using Plaintiff's and the Class's biometric identifiers and biometric information as described herein, Defendant violated Plaintiff's and the Class's rights to privacy in their biometric identifiers or biometric information as set forth in the BIPA, 740 ILCS 14/1, *et. seq.*

51. On behalf of themselves and the Class, Plaintiff seeks:

(A) Injunctive and equitable relief as necessary to protect the interests of the Plaintiff and the Class by requiring Defendant to comply with the BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein;

(B) statutory damages of \$1,000 per violation for each of Defendant's negligent violations of the BIPA pursuant to 740ILCS 14/20(1); and

(C) reasonable attorneys' fees and costs and expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Robinson, on behalf of himself and the Class, respectfully request that the Court enter an Order:

A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff Robinson as representative of the Class, and appointing his counsel as Class Counsel;

B. Declaring that Defendant's actions, as set out above, violate the BIPA;

C. Awarding statutory damages of \$1,000 for each of Defendant's violations of the BIPA, pursuant to 740 ILCS 14/20(1);

D. Awarding injunctive and other equitable relief as is necessary to protect the interests

of the Class, including an Order requiring Defendant to collect, store, and use biometric identifiers or biometric information in compliance with the BIPA;

E. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

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 TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

Date: January 19, 2021

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**ATTORNEYS FOR PLAINTIFF AND THE
PROPOSED CLASS**

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Petco Hit with Class Action Over Alleged Collection of Employee Photos Without Proper Disclosure, Consent](#)
