

YES NO

EXHIBITS

CASE NO. 2020 CH 5431

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Location: District 1 Court
Cook County, IL

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

FILED
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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH05431

JUAN CARLOS SANTOS and LUDWIN SANDOVAL, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

UNITED SCRAP METAL, INC.,

Defendant.

2020CH05431

10142057

CLASS ACTION COMPLAINT

Plaintiffs Juan Carlos Santos (“Santos”) and Ludwin Sandoval (“Sandoval”) (together, “Plaintiffs”), individually and on behalf of all others similarly situated, by and through their attorneys, Caffarelli & Associates Ltd., complain against Defendant United Scrap Metal, Inc. (“USM” or “Defendant”), as follows:

NATURE OF ACTION

1. This is a class action under the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”) on behalf of all persons in Illinois who had their fingerprints improperly collected, captured, received, or otherwise obtained by Defendant.

PARTIES

2. Plaintiff Santos is an adult resident of Cicero, Illinois and worked for Defendant at its facility in Cicero, Illinois from April 2018 through September 2018.

3. Plaintiff Sandoval is an adult resident of Cicero, Illinois and has worked for Defendant at its location in Cicero, Illinois beginning in January 2018 and continuing through the present.

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4. United Scrap Metal, Inc. is a domestic corporation that is registered to do business in Illinois, has a registered agent in Cook County, Illinois; and conducts business in Cook County, Illinois.

5. At least 100 individuals performed work for Defendant in the State of Illinois. Defendant collects biometric identifiers and biometric information from these individuals through its timekeeping system. Plaintiffs and these individuals are referred to herein as the “putative BIPA Class” members.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois, has committed unlawful acts in Illinois, and is registered to conduct business in Illinois.

7. Additionally, this Court has jurisdiction over Plaintiffs Santos and Sandoval because they are residents of the state of Illinois.

8. Defendant is a resident of Cook County, Illinois. Venue is therefore proper in Cook County pursuant to 735 ILCS 5/2-101.

FACTUAL ALLEGATIONS

9. Santos worked for USM at its facility in Cicero from April 2018 through September 2018.

10. Sandoval began working for USM at its facility in Cicero, Illinois in January 2018 and, as of the date of filing of this Complaint, remains employed there.

11. Throughout Plaintiffs’ employment, USM implemented the use of a biometric scanner. Plaintiffs, like all members of the putative BIPA Class, were required to have their

fingerprints and/or handprint collected and/or captured so that USM could store them and use them as an authentication method for timekeeping purposes.

12. Defendant failed to maintain or publicize information about its biometric practices or policies; and failed to provide Plaintiffs or, upon information and belief, any member of the putative BIPA Class, with information about its policies or practices.

13. Each day, Plaintiffs, like all putative BIPA Class members, were required to place their fingers and/or hands on a panel to be scanned in order to ‘clock in’ and ‘clock out’ of work.

14. Defendant failed to provide Plaintiffs or, upon information and belief, any member of the putative BIPA Class, with written notice of the fact that it was collecting biometric information prior to collection.

15. Defendant failed to obtain prior written consent from Plaintiffs or, upon information and belief, any putative BIPA Class member before it collected, stored, or used those individuals’ biometric information.

16. Defendant did not inform Plaintiffs of the specific purposes or length of time for which it collected, stored, or used his fingerprints and/or handprints.

17. Defendant did not inform Plaintiffs of any biometric data retention policy developed by Defendant, nor has Defendant ever informed either Plaintiff of whether it will ever permanently delete their fingerprints and/or handprints.

18. Plaintiffs were not provided and did not sign written releases allowing Defendant to collect or store their fingerprints and/or handprints prior to their collection and/or storage.

19. Upon information and belief, Plaintiffs’ experiences as described above are typical and representative of the experiences of the putative BIPA Class.

20. Plaintiffs and the putative BIPA Class members have continuously and repeatedly

been exposed to risks, harmful conditions, and violations of privacy through Defendant's violations of BIPA as described herein.

CLASS ALLEGATIONS

21. Upon information and belief, the practices, policies, and consequences pertinent to Defendant's biometric system as described above applied to each Class member.

22. Upon information and belief, Defendant employs at least 100 individuals in Illinois who are similarly situated persons and potential Class members.

23. **Class Definition:** Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on behalf of themselves and a BIPA Class of similarly situated individuals, defined as follows:

All citizens of Illinois who had their fingerprints collected, captured, received, otherwise obtained, used, distributed, or stored by United Scrap Metal, Inc. in the State of Illinois.

24. **Numerosity:** The exact number of Class members is unknown to Plaintiffs at this time, but upon observation, information and belief, it is at least 100 individuals, making individual joinder impracticable. Defendant has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from at least 100 people who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

25. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiffs 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 Plaintiffs' and the Class's biometric identifiers or biometric information;

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

26. **Adequate Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the Class and have retained counsel competent and experienced in complex litigation and class actions. Plaintiffs have no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs. Plaintiffs are adequate representatives of the Class because all potential plaintiffs were subject to Defendant's uniform policies and practices. Plaintiffs and their 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 Plaintiffs nor their counsel have any interest adverse to those of the other members of the Class.

27. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other 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 this 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.

**COUNT I – BIOMETRIC INFORMATION PRIVACY ACT
(Class Action)**

28. Plaintiffs restate and incorporate the foregoing allegations as though fully set forth herein.

29. BIPA is an informed consent statute that achieves its goal of protecting individuals' privacy rights 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).

30. In the employment context, a “written release” means “a release executed by an employee as a condition of employment.” 740 ILCS 14/10.

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

32. BIPA also established standards for how companies must handle individuals’ biometric identifiers and biometric information, as follows: “[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. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines.” 740 ILCS 14/15(a).

33. Ultimately, BIPA is simply an informed consent statute, which mandates that entities wishing to collect, store, and/or use biometric information must put in place certain reasonable safeguards to protect individuals’ privacy. *See* 740 ILCS 14/15.

34. 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).

35. 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 (e.g. 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).

36. Defendant failed to comply with BIPA mandates, thus committing at least four distinct violations of BIPA with respect to each Plaintiff and each putative BIPA Class member.

37. Defendant’s failure to comply with BIPA mandates was negligent and/or reckless.

38. Defendant qualifies as a “private entity” under the BIPA. *See* 740 ILCS 14/10.

39. Plaintiffs and the BIPA Class members are individuals who had their “biometric identifiers” (in the form of their fingerprints and/or handprints) collected by Defendant by way of Defendant’s biometric scanner, i.e. time clock. *See* 740 ILCS 14/10.

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

41. Defendant violated 740 ILCS 14/15(a) by failing to publicly provide a retention schedule or guideline for permanently destroying biometric identifiers and biometric information it collected from Plaintiffs and the Class.

42. Defendant violated 740 ILCS 14/15(b)(1) by failing to inform Plaintiffs and the

BIPA Class in writing that their biometric identifiers and/or biometric information were being collected and stored.

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

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

45. For each of the violations identified above, Plaintiffs and the members of the putative BIPA Class are entitled to recover anywhere from \$1,000 to \$5,000 in statutory damages.

46. Therefore, Defendant violated Plaintiffs' and the Class's rights to privacy in their biometric identifiers and biometric information, and committed an actionable statutory violation of BIPA. 740 ILCS 14/1, *et seq.*; *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, 29 N.E.3d 1197 (Ill. 2019).

WHEREFORE, Plaintiffs Juan Carlos Santos and Ludwin Sandoval, individually and on behalf of other similarly situated individuals, respectfully request that this Honorable Court enter judgment in his favor and against Defendant United Scrap Metal, Inc. and grant them the following relief:

- a) Certifying this case as a class action on behalf of the BIPA Class defined above, appointing Plaintiffs as representatives of the BIPA Class, and appointing their counsel as Class Counsel;
- b) Awarding injunctive and other equitable relief as is necessary to protect the interests of the BIPA Class, including an Order requiring Defendant to collect, store, and use biometric identifiers or biometric information in compliance with the BIPA;

- c) Awarding statutory damages to each person whose rights were violated under BIPA, pursuant to 740 ILCS 14/20;
- d) Awarding Plaintiffs and the Class their reasonable litigation expenses and attorneys' fees and costs;
- e) Awarding Plaintiffs and the Class pre- and post-judgment interest, to the extent allowable; and
- f) Any further relief that is deemed just and equitable.

Dated: August 18, 2020

Respectfully submitted,

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By: /s/ Alejandro Caffarelli
One of Plaintiffs' Attorneys

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: United Scrap Metal Violated Illinois Privacy Law by Collecting Workers' Fingerprints](#)
