

YES NO

EXHIBITS

CASE NO. 22 Ch 7688

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CASE TYPE: Class Action

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CASE NOTE

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

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LATISHA SKINNER, *individually and on
behalf of all others similarly situated,*

Plaintiff,

v.

ID.ME, INC.,

Defendant.

Case No. 2022CH07688

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Latisha Skinner, 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 Defendant ID.me, Inc. (“ID.me” or “Defendant”), 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 Defendant in collecting, storing, and using her and other similarly situated individuals’ biometric identifiers¹ and biometric information² (referred to collectively at times as “biometrics”) without adhering to the requisite data retention and destruction policies, in direct violation of BIPA.

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.

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 14/5(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 a private entity like Defendant collecting biometrics must publish publicly available written retention schedules and guidelines for permanently destroying biometrics collected when the initial purpose for collecting or obtaining such biometrics has been satisfied or *within three years of the individual’s last interaction with the private entity*, whichever occurs first. See 740 ILCS 14/15(a) (emphasis added).

4. In direct violation of § 15(a) of BIPA, Defendant’s biometric data retention policy, prior to March 24, 2021, allowed it to retain an individual’s biometric data for up to seven and a half years after their last interaction with ID.me. A copy of Defendant’s retention policy prior to March 24, 2021, is attached hereto as Exhibit 1.

5. Plaintiff was employed by Ann & Robert H. Lurie Children’s Hospital of Chicago in Illinois.

6. Defendant provides its biometric data scanning services to a variety of facilities located in Illinois, including Plaintiff’s place of employment.

7. In January 2020, Plaintiff was required by her employer to register for ID.me so that ID.me could scan her face to verify her identity.

8. Defendant then used face scan technology to gather Plaintiff's biometric data.

9. BIPA ensures that Plaintiff's and all other similarly situated Illinois residents' biometric information and identifiers will only be stored by a private entity up to three years after their last interaction with the entity.

10. Yet, prior to March 24, 2021, Defendant's biometric data retention policy allowed it to store Plaintiff's and the Class's biometric information and identifiers for up to seven and a half years after they closed their ID.me accounts.

11. Plaintiff brings this action to prevent Defendant from further violating the privacy rights of Illinois residents and to recover statutory damages for Defendant's failure to establish a BIPA-compliant retention and deletion schedule.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over Defendant because (1) Defendant contracted with Illinois-based companies, (2) Defendant collected biometric data from Illinois residents in Illinois who were employees of Illinois-based companies, (3) the retention and deletion schedule at the heart of this action was presented to these Illinois-based employees in Illinois.

13. Venue is proper in this County pursuant to because Defendant conducts its usual and customary business in this County, Plaintiff's biometric data was possessed in this County, and Plaintiff was presented the retention and deletion schedule in this County. 735 ILCS 5/2-102(a).

14. By contracting with Illinois entities such as Ann & Robert H. Lurie Children's Hospital of Chicago for identity verification services, which includes possessing individual's biometric information and identifiers, Defendant has purposefully directed its activities to Illinois, and purposefully availed itself of the privilege of doing business in Illinois.

15. Plaintiff’s injuries arise out of or relate to these contracts because, but for Defendant’s contract with her place of employment, Plaintiff’s biometric information would not have been possessed by Defendant.

16. Defendant also specifically and knowingly targets its services at Illinois. Indeed, Defendant has an Illinois-specific carve-out to its current biometric privacy policy.³

PARTIES

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

18. Defendant ID.me, Inc. is a Virginia corporation with its principal place of business at 8280 Greensboro Drive, Suite 800, McLean, Virginia 22102. Defendant provides biometric scanning services to businesses throughout Illinois.

FACTUAL BACKGROUND

I. Illinois’ Biometric Information Privacy Act.

19. 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.

20. 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

³ <https://www.id.me/biometric> (specific provisions “[f]or ID.me members who are residents of Illinois, in accordance with Illinois state law”).

companies that collect and store biometric information, such as facial geometry. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276.

21. BIPA § 15(a) makes it unlawful for a company to, *inter alia*, possess a person's biometric data without developing a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of the individual's last interaction with the private entity, whichever occurs first.

22. Importantly here is BIPA § 15(a)'s requirement that a private entity cannot store an individual's biometric information and identifiers longer than three years after the individual's last interaction with the company.

23. As alleged below, Defendant's pre-March 24, 2021 biometric data retention policy allowing it to store an individual's biometric information and identifiers for up to seven and a half years after their last interaction with Defendant violated § 15(a) of BIPA.

II. Defendant Violates Illinois' Biometric Information Privacy Act.

24. Defendant is an online identity network company that allows people to prove their legal identity online through the use of biometric data. Defendant contracts with numerous companies, including various Illinois-based companies like the Ann & Robert H. Lurie Children's Hospital of Chicago, for the provision of identity-verification services.

25. When a person signs up for an ID.me account, Defendant prompts them to provide certain biometric data to Defendant, including, but not limited to, a voiceprint or a photograph of their face.

26. Defendant then stores that biometric data in its servers and uses it for facial recognition.

27. In direct violation of BIPA § 15(a), prior to March 24, 2021, Defendant's retention and deletion schedule allowed it to store an individual's biometric information and identifiers for up to *seven and a half years* after they close their account with ID.me, as opposed to three years as BIPA requires. *See Exhibit 1.*

28. Defendant has implicitly admitted that its pre-March 24, 2021 biometric policy was out of compliance with BIPA § 15(a). In its March 24, 2021 update to its biometric policy, Defendant stated it

may retain your Biometric Data for up to seven and a half years to comply with legal, contractual and policy obligations, except where applicable law provides for a shorter period (*for example, for Illinois residents, we destroy Biometric Data 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 ID.me, whichever occurs first*) subsequent versions of Defendant's biometric policy.⁴

29. All subsequent versions of Defendant's biometric policy have included this Illinois-specific language. Thus, not only does Defendant admit that it must comply with BIPA, it likewise implicitly admits that its pre-March 24, 2021 biometric policy was not in compliance with BIPA § 15(a).

30. Defendant has taken the biometrics of hundreds, if not thousands, of individuals within the state of Illinois while maintaining that it would store their biometric information and identifiers for up to seven and a half years after their last interaction with ID.me. And Defendant knowingly targets its services at Illinois because it (1) contracts with Illinois-based companies,

⁴ <http://web.archive.org/web/20210413073836/https://www.id.me/biometric> (emphasis added).

and (2) includes an Illinois-specific provision in all versions of its biometric policy since and including March 24, 2021.

III. Experience Of Plaintiff Latisha Skinner

31. Plaintiff worked for Ann & Robert H. Lurie Children's Hospital of Chicago in January 2020.

32. In January 2020, Plaintiff was required by her employer to register for an ID.me account.

33. When she created her ID.me account, she was prompted to upload a photograph of her face to the ID.me site for facial identification.

34. Then, upon information and belief, Defendant's biometric identification technology created a facial geometry or faceprint of Plaintiff's face, which it then used for purposes of identity verification. Defendant thus possessed Plaintiff's biometric data.

35. Defendant's retention and deletion policy at the time it stored Plaintiff's biometric data provided that Defendant was allowed to retain Plaintiff's biometric data for up to seven and a half years after she closed her ID.me account.

36. Defendant's retention policy at the time it possessed Plaintiff's biometric data was in violation of BIPA § 15(a)'s requirement that a private entity can only retain an individual's biometric data for up to three years after the individual's last interaction with the company.

CLASS ALLEGATIONS

37. **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 Illinois residents who, prior to March 24, 2021, used ID.me to scan their face in the state of Illinois.

38. **Numerosity:** Pursuant to 735 ILCS 5/2-801 (1), the number of persons within the Class is substantial, believed to amount to hundreds, if not 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 Defendant's records.

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

- (a) whether Defendant possessed Plaintiff's and the Class' biometric identifiers and/or biometric information;
- (b) whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of their last interaction, whichever occurs first; and
- (c) whether Defendant's violations of BIPA were committed intentionally, recklessly, or negligently.

40. **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 Defendant took.

41. **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**

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

43. BIPA mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention and deletion policy. Importantly, the policy

established by these must state that these entities will store an individual's biometric identifiers and information only up until *three years* after the individual's last interaction with the company. 740 ILCS 14/15(a).

44. Defendant failed to comply with this BIPA mandate.

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

46. Plaintiff is an individual who had her "biometric identifiers" possessed by Defendant, as explained in detail in above. *See* 740 ILCS 14/10.

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

48. Defendant's biometric data retention policy, prior to March 24, 2021, allowed it to store an individual's biometric identifiers and information for up to *seven and a half years* after an individual cancels their ID.me account. *See* 740 ILCS 14/15(a). This violates the requirement that a retention and deletion schedule allow an entity to possess biometric data no longer than *three years* after an individual's last interaction with the company.

49. On behalf of herself and the Class, Plaintiff seeks: (1) declaratory relief; (2) 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 (3) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Latisha Skinner, 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 740 ILCS 14/15(a) (*i.e.*, BIPA § 15(a));
- 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 Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- E. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- F. 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: August 8, 2022

Respectfully submitted,

**WOLF HALDENSTEIN ADLER
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**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiff and the Putative Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Biometric Identification Vendor ID.me's Data Policy Violates Illinois Law](#)
