

☐ YES ☒ NO

EXHIBITS

CASE NO. 2022 CH 280

DATE: 1/13/2022

CASE TYPE: Class Action

PAGE COUNT: 13

CASE NOTE

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FILED  
1/13/2022 3:06 PM  
IRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2022CH00280  
Calendar, 10  
16292640

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

TAMMY VELAZQUEZ, individually )  
and on behalf of all similarly situated )  
individuals, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PEARSON EDUCATION, INC., a )  
Delaware Corporation, )  
 )  
Defendant. )

No. 2022CH00280

Hon.

**CLASS ACTION COMPLAINT WITH JURY DEMAND**

Plaintiff Tammy Velazquez (“Plaintiff”), individually and on behalf of all similarly situated individuals, brings this Class Action Complaint against Defendant Pearson Education, Inc. (“Defendant”) for its violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), and to obtain redress for persons injured by its conduct. Plaintiff alleges the following based on personal knowledge as to Plaintiff’s own experiences, and as to all other matters, upon information and belief, including an investigation conducted by Plaintiff’s attorneys.

**INTRODUCTION**

1. Plaintiff seeks to represent a class of individuals who had their unique hand biometrics collected and used without their consent or authorization by Defendant when they utilized Defendant’s testing services.
2. Plaintiff and the other members of the putative class have suffered a concrete injury resulting from their hand biometrics being collected, disseminated, and used for profit without their knowledge or consent, thus materially decreasing the security of this intrinsically inalterable

information, and substantially increasing the likelihood that they will suffer as victims of fraud and/or identity theft in the future.

3. On behalf of herself and the proposed Class defined below, Plaintiff seeks an injunction requiring Defendant to comply with BIPA, as well as an award of statutory damages to the Class, together with costs and reasonable attorneys' fees.

### **PARTIES**

4. At all relevant times, Plaintiff has been a resident of Cook County, Illinois.

5. Defendant Pearson Education, Inc. is a Delaware corporation that conducts, and is licensed by the Illinois Secretary of State to conduct, business throughout Illinois, including in Cook County, Illinois.

### **JURISDICTION AND VENUE**

6. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant conducts business within this state and because Plaintiff's claims arise out of Defendant's unlawful in-state actions, as Defendant captured, collected, stored, and used Plaintiff's biometric identifiers and/or biometric information in this state.

7. Venue is proper in Cook County, Illinois pursuant to 735 ILCS 5/2-101, because Defendant conducts business in Cook County, Illinois, and thus resides there under § 2-102, and because the transaction out of which this cause of action arises occurred in Cook County, Illinois.

### **THE BIOMETRIC INFORMATION PRIVACY ACT**

8. "Biometrics" refers to a "biology-based set[s] of measurements." *Rivera v. Google Inc.*, 238 F. Supp. 3d 1088, 1094 (N.D. Ill. 2017). Specifically, "biometrics" are "a set of measurements of a specified physical component (eye, finger, voice, hand, face)." *Id.* at 1296.

9. BIPA was enacted in 2008 in order to safeguard individuals' biometrics as the result of the "very serious need [for] protections for the citizens of Illinois when it [comes to their] biometric information." Illinois House Transcript, 2008 Reg. Sess. No. 276. BIPA is codified as Act 14 in Chapter 740 of the Illinois Compiled Statutes.

10. As set forth in BIPA, biologically unique identifiers, such as a person's unique hand vein-prints, cannot be changed. 740 ILCS 14/5(c). The inalterable nature of biologically unique identifiers presents a heightened risk when an individual's biometrics are not protected in a secure and transparent fashion. 740 ILCS 14/5(d)–(g).

11. As a result of the need for enhanced protection of biometrics, BIPA imposes various requirements on private entities that collect or maintain individuals' biometrics, including hand scans.

12. Among other things, BIPA seeks to regulate "the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." 740 ILCS 14/5(g). BIPA thus applies to entities that interact with two forms of Biometric Data: biometric "identifiers" and biometric "information." 740 ILCS 14/15(a)-(e).

13. BIPA defines a "biometric identifier" as any personal feature that is unique to an individual, including fingerprints, voiceprints, palm scans and facial geometry. "Biometric identifiers" are physiological, as opposed to behavioral, characteristics. BIPA's text provides a non-exclusive list of protected "biometric identifiers," including "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." 740 ILCS 14/10.

14. "Biometric information" is defined by BIPA as "any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual." *Id.* This definition helps ensure that information based on a biometric

identifier that can be used to identify a person is covered by BIPA. Collectively, biometric identifiers and biometric information are known as “biometrics.”

15. In BIPA, the Illinois General Assembly identified four distinct activities that may subject private entities to liability:

- a. possessing biometrics without a proper policy publicly available, 740 ILCS 14/15(a);
- b. collecting biometrics, 740 ILCS 14/15(b);
- c. profiting from biometrics, 740 ILCS 14/15(c); and
- d. disclosing biometrics, 740 ILCS 14/15(d).

16. As the Illinois Supreme Court has held, BIPA “codified that individuals possess a right to privacy in and control over their biometric identifiers and biometric information.” *Rosenbach v. Six Flags Entm’t Corp.*, 2019 IL 123186, ¶ 33, 129 N.E.3d 1197, 1206 (Ill. 2019). The Illinois Supreme Court further held that when a private entity fails to comply with BIPA “that violation constitutes an invasion, impairment, or denial of the statutory rights of any person or customer whose biometric identifier or biometric information is subject to the breach.” *Id.*

### **FACTUAL BACKGROUND**

17. Defendant is a major operator of test centers across the country, including throughout Illinois.

18. Defendant’s test centers allow individuals to take proctored exams for a variety of certifications and degrees ranging from medical licensing exams to IT certifications at its in-person test locations.<sup>1</sup>

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<sup>1</sup> <https://home.pearsonvue.com/Test-takers/A-to-Z-program-list/View-all.aspx>.

19. In addition, Defendant also allows individuals to take remotely proctored exams that utilize their computer's webcam functionality to monitor them and ensure that there is no misconduct during the test taking process.<sup>2</sup>

20. As part of its efforts to verify that the individual registered to take any particular exam at its in-person test centers is the same individual who appears at the testing center on the day of the examination, Defendant has implemented a biometric scanning device that scans the unique vein patterns within an individual's hand.<sup>3</sup> Such devices collect their users' biometric identifiers, i.e. hand vein-prints, and convert them to an electronic format *derived from* those identifiers, i.e. biometric information. Such conversion is necessary for storing biometrics on the device itself, and to allow Defendant to transmit biometric data to third parties, such as data storage and identity verification vendors.

21. Plaintiff signed up to take the Massage & Bodywork Licensing Examination ("MBLEx") at one of Defendant's testing locations in Schaumburg, Illinois in the summer of 2021. When Plaintiff showed up at the testing facility to take her MBLEx exam as part of her intake process before she could take the exam she had to provide her hand to be scanned and was told it was for security purposes.

22. However, even though Defendant obtained the hand vein-print biometrics of individuals who visited its testing centers in Illinois, including Plaintiff's and the other Class members, Defendant failed to obtain written consent as required by BIPA to collect their hand vein-print biometrics.

23. Furthermore, Defendant has also failed to make publicly available a valid policy as to its retention and deletion practices regarding the biometrics in its possession.

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<sup>2</sup> <https://home.pearsonvue.com/Test-takers/OnVUE-online-proctoring.aspx>.

<sup>3</sup> <https://home.pearsonvue.com/Documents/Deliver-your-exam/palm-vein.aspx>.

24. In addition, Defendant disseminated electronic information derived from the scanning of Plaintiff's and the other Class members' biometric identifiers to third parties, including its vendor(s) responsible for providing the hand vein-print scanning technology, as well as for data storage purposes, without first informing Plaintiff and the other Class members in writing that their biometrics were being stored, disseminated, or publishing any policy specifically about the collection, retention, use, deletion, or dissemination of biometrics, as required by BIPA.

25. As a result of Defendant's failures to comply with Section 15(b) and 15(d) of BIPA, Plaintiff is to this day unaware of the status of the biometrics obtained by Defendant. Defendant has not informed Plaintiff whether it still retains Plaintiff's biometrics, and if it does, for how long it intends to retain such information without Plaintiff's consent.

### **CLASS ALLEGATIONS**

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

Class: All individuals whose biometrics were captured, collected, stored, used, transmitted, or disseminated by or on behalf of Defendant within the state of Illinois at any time within the applicable limitations period.

27. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officers or directors.

28. Upon information and belief, there are hundreds of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of members of the Class is currently unknown to Plaintiff, the members can be easily identified through Defendant's test records.

29. Plaintiff's claims are typical of the claims of the members of the Class Plaintiff seeks to represent, because the factual and legal bases of Defendant's liability to Plaintiff and the other members are the same, and because Defendant's conduct has resulted in similar injuries to Plaintiff and to the Class. As alleged herein, Plaintiff and the Class have all suffered damages as a result of Defendant's BIPA violations and common law transgressions.

30. 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. Common questions for the Class include, but are not limited to, the following:

- a. Whether Defendant's conduct is subject to BIPA;
- b. Whether Defendant made available to the public a written policy that establishes a retention schedule and guidelines for destroying biometrics;
- c. Whether Defendant obtained a written release from the Class before capturing, collecting, or otherwise obtaining their biometrics;
- d. Whether Defendant provided a written disclosure that explains the specific purposes, and the length of time, for which biometrics were being collected, stored and used before taking such biometrics;
- e. Whether Defendant disseminated the Class' biometrics;
- f. Whether Defendant's conduct violates BIPA;
- g. Whether Defendant's violations of BIPA are willful or reckless; and
- h. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

31. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class

treatment of common questions of law and fact is superior to multiple individual actions in that it conserves the resources of the courts and the litigants and promotes consistency of adjudication.

32. Plaintiff will adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and Plaintiff's counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither Plaintiff nor Plaintiff's counsel have any interest adverse to those of the other members of the Class.

33. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

### **COUNT I**

#### **Violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(a), *et seq.* (On behalf of Plaintiff and the Class)**

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

35. Defendant is a private entity under BIPA.

36. As discussed above, Plaintiff and the other Class members have had their "biometric identifiers," namely their hand vein-print biometrics, collected and stored, and thus possessed, by Defendant as part of its test taking process at one of Defendant's Illinois test facilities.

37. Section 15(a) of BIPA requires any entity in possession of biometric identifiers or biometric information to "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).

38. Though Defendant has come into possession of Plaintiff's and other Class members' hand vein-print biometric identifiers, it has failed to make publicly available any policy addressing its biometric retention and destruction practices.

39. As a result, Defendant has violated Section 15(a) of BIPA.

40. Defendant knew, or was reckless in not knowing, that its practice of collecting test takers' hand vein-print biometrics, would be subject to Section 15(a) of BIPA, a statutory provision passed in 2008, yet failed to comply with the statute.

41. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1)-(2).

42. Defendant's violations of Section 15(a) of BIPA, which has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with Section 15(a) of BIPA.

43. Accordingly, with respect to Count I, Plaintiff, individually and on behalf of the proposed Class, prays for the relief set forth below.

## **COUNT II**

### **Violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(b), *et seq.* (On behalf of Plaintiff and the Class)**

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

45. Defendant is a private entity under BIPA.

46. As discussed above, Plaintiff and the other Class members have had their "biometric identifiers," namely their hand vein-print biometrics, collected and stored, and thus possessed, by Defendant as part of its test taking process at one of Defendant's Illinois test facilities.

47. BIPA requires a private entity, such as Defendant, to obtain informed written consent from individuals before acquiring their biometric identifiers or biometric information. Specifically, BIPA makes it unlawful to “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or 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 time for which a biometric identifier or biometric information is being captured, 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).

48. Each instance when Plaintiff and the other Class members underwent Defendant’s palm scanning procedure, Defendant captured, collected or otherwise obtained Plaintiff’s and the other Class members’ hand vein-print biometric identifiers without their written consent and without complying with and, thus, in violation of BIPA.

49. Defendant’s practice with respect to capturing, collecting, storing, and using biometrics fails to comply with applicable BIPA requirements:

- a. Defendant failed to inform Plaintiff and the Class in writing of the specific purpose for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- b. Defendant failed to inform Plaintiff and the Class in writing the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2); and
- c. Defendant failed to obtain a written release, as required by 740 ILCS 14/15(b)(3).

50. As a result, Defendant has violated Section 15(b) of BIPA.

51. Defendant knew, or was reckless in not knowing, that its practice of collecting test takers' hand vein-print biometrics, would be subject to Section 15(b) of BIPA, a statutory provision passed in 2008, yet failed to comply with the statute.

52. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1)-(2).

53. Defendant's violations of Section 15(b) of BIPA, a statutory provision that has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with Section 15(b) of BIPA.

54. Accordingly, with respect to Count II, Plaintiff, individually and on behalf of the proposed Class, prays for the relief set forth below.

### **COUNT III**

#### **Violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(d), *et seq.* (On behalf of Plaintiff and the Class)**

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

56. Defendant is a private entity under BIPA.

57. As discussed above, Plaintiff and the other Class members have had their "biometric identifiers," namely their hand vein-print biometrics, collected and stored, and thus possessed, by Defendant as part of its test taking process at one of Defendant's Illinois test facilities.

58. Section 15(d) of BIPA prohibits any private entity in possession of biometrics, such as Defendant, from disclosing, redisclosing, or otherwise disseminating an individual's biometric identifiers or biometric information without that individual's consent. 740 ILCS 14/15(d).

59. As alleged herein, after Plaintiff's and the other Class members' biometric identifiers were obtained by Defendant, Defendant disclosed or otherwise disseminated their biometrics for identity verification and data storage purposes.

60. Defendant never obtained Plaintiff's or other Class members' consent to disclose or disseminate their biometrics.

61. Accordingly, Defendant has violated Section 15(d) of BIPA.

62. Defendant knew, or was reckless in not knowing, that its biometric dissemination practices would be subject to the provisions of Section 15(d) of BIPA, a statutory provision in effect since 2008, yet failed to comply with the statute.

63. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1)-(2).

64. Defendant's violations of Section 15(d) of BIPA, a statutory provision that has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with Section 15(d) of BIPA.

65. Accordingly, with respect to Count III, Plaintiff, individually and on behalf of the proposed Class, prays for the relief set forth below.

### **PRAYER FOR RELIEF**

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

- a. Certifying the Class as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendant's actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(2);

- e. Awarding statutory damages of \$1,000 for each negligent violation of BIPA, pursuant to 740 ILCS 14/20(1);
- f. Awarding reasonable attorneys' fees, costs, and other litigation expenses pursuant to 740 ILCS 14/20(3);
- g. Awarding pre- and post-judgment interest, as allowable by law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

### **JURY DEMAND**

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: January 13, 2022

Respectfully submitted,

TAMMY VELAZQUEZ, individually and on  
behalf of all similarly situated individuals

By: /s/ Eugene Y. Turin  
*One of Plaintiff's Attorneys*

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