

12-Person Jury

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Location: District 1 Court
Cook County, IL

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DOROTHY BROWN
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COOK COUNTY, IL
2020CH03292

**IN THE CIRCUIT COURT OF COOK COUNTY, IL – FIRST DISTRICT,
COUNTY DEPARTMENT, CHANCERY DIVISION**

Laura Schmecht, and all other similarly
situated individuals

Plaintiff,

v.

Churchill Downs, Inc., Arlington
International Racecourse, Inc. and any and
all other affiliated or subsidiary entities

Defendants.

8902028

No: 2020CH03292

PLAINTIFF’S CLASS ACTION COMPLAINT

Laura Schmecht (hereinafter known as “Ms. Schmecht”) files this Class Action Complaint against the Churchill Downs, Inc., Arlington International Racecourse, Inc., and any and all other affiliated or subsidiary entities (hereinafter collectively known as the “Defendants”) for violations of the Illinois Biometric Information Privacy Act 740 ILCS/14 and Public Act 095-994 (“BIPA” or the “Act”).

SUMMARY OF CLAIMS

1. Defendant Churchill Downs, Inc. owns and operates Arlington International Racecourse, Inc. – DBA, Arlington Park, a horse racing track and off-track betting (“OTB”) venue (hereinafter collectively known as “Arlington Park”) based in Arlington Heights, Illinois.

2. The Defendants use facial recognition devices, and employ the software associated with them, at Arlington Park, during various horse racing and associated gambling events at Arlington Park, which located at 2200 W. Euclid Avenue, Arlington Heights, IL 60005-1004.

3. The Defendants' facial recognition devices and associated software scans for, but does not limit itself to, identifiers such as individual's facial geometry, retinas, and then, among other actions, compares that scan to the files it has stored in their internal database.

4. Ms. Schmecht has attended Arlington Park on several occasions, most recently in 2019.

5. At her most recent visit Ms. Schmecht learned that biometric software was being used, and her facial geometry, among other things, was scanned via the facial recognition cameras used by the Defendants that employ facial recognition software.

6. Facial geometry is a *unique* and *personal* identifier.

7. In enacting the Biometric Information Privacy Act, the Illinois legislature recognized that biologically unique identifiers, such as facial geometry and other unique identifiers clearly cannot be changed when compromised, and in turn realized, that among other things, that individuals are at a heightened risk to be a victim of identity theft and other related cybercrimes.

8. As a result, the State of Illinois restricted private entities, like the Defendants, from collecting, storing, using, or transferring a person's biometric identifiers and information without adhering to strict informed consent procedures and data retention/destruction policies.

9. The Defendants collected, stored and used the unique biometric facial geometry identifiers, or identifying information derived from facial geometry, of Ms. Schmecht and others similarly situated without following the detailed requirements articulated by the Illinois state legislature in BIPA.

10. As a result, Ms. Schmecht, and others similarly situated, lost the right to control their biometric identifiers and information.

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over the Defendants pursuant to 735 ILCS 5/2- 209(a)(1) and (c) because, during the relevant period, the Defendants conducted business in Illinois, and was registered to do business in Illinois, and committed the statutory violations alleged in this Complaint in Illinois.

12. Cook County, Illinois is an appropriate venue for this litigation because Defendants engages in business operations in Cook County, Illinois, and committed the statutory violations alleged in this Complaint in Cook County, Illinois.

THE PARTIES

13. Ms. Schmecht is an individual who is a citizen of Illinois.

14. The Defendants conduct business in Illinois and benefit from that relationship through its derivation of profits within the state.

REQUIREMENTS OF THE BIOMETRIC INFORMATION PRIVACY ACT

15. In enacting BIPA, the Illinois legislature recognized that the full ramifications of biometric technology are not yet fully known and so the public would benefit from “regulations on the collection, use, safeguarding, handling, storage retention, and description of biometric identifiers and information.” 740 ILCS 14/5(f)-(g).

16. BIPA prohibits a “private entity” from capturing or collecting biometric identifiers or information from an individual unless that private entity first obtains the individual’s written release authorizing the private entity to capture or collect an individual’s biometric identifiers and/or biometric information. 740 ILCS 14/15(b)(3).

17. Relatedly, BIPA prohibits a private entity from capturing or collecting biometric identifiers or information from an individual unless that private entity first informs the individual in writing of the following: (a) that the private entity is collecting biometric identifier or information, (b) the purpose of such collection, and (c) the length of time the private entity will retain the

biometric identifiers or information. 740 ILCS 14/15(b)(1) - (2).

18. Further, BIPA prohibits a private entity from possessing biometric identifiers or information unless it creates and follows a written policy, made available to the public, establishing a retention schedule and destruction guidelines for its possession of biometric identifiers and information. 740 ILCS 14/15(a).

BACKGROUND FACTS

19. Ms. Schmecht has attended several events at Arlington Park, and in 2019 learned that facial recognition devices and software were being used on the premises.

20. The Defendants' facial recognition technology scanned Ms. Schmecht's facial geometry from security camera footage¹ and stored a facial geometry template for Ms. Schmecht.

21. The Defendants failed to inform Ms. Schmecht in writing that it was collecting her biometric identifiers or information, the purpose and length of term for such collection, and failed to obtain their written consent *before* Defendants collected her facial geometry scan.

22. The Defendants never established or followed a publicly available written policy establishing a retention schedule and guidelines for permanently destroying scans of Ms. Schmecht facial geometry.

¹ These are cameras that employ facial recognition technology and its associated software to identify individuals' facial geometry.

CLASS ACTION ALLEGATIONS

23. Ms. Schmecht seeks to represent the following class: all individuals who had their facial geometry scans collected or possessed by the Defendants in Illinois between October 15, 2014 and the present (the “Class”).

24. The members of the Class are so numerous that joinder of all members is impractical. Based on the investigation by her counsel, Ms. Schmecht reasonably believes that the class comprises tens, if not hundreds, of thousands of members. The exact number of persons the class can be determined from records maintained by the Defendants.

25. Common questions of law and fact exist as to the Class, including, but not limited to: whether Defendant used facial recognition technology at its hockey games; whether Defendants collected and/or possessed the Class’s “biometric identifiers” or “biometric information” through the use of facial recognition technology at Arlington Park’s facilities; and whether Defendants complied with the procedures in the Act. These common questions of law and fact predominate over variations that may exist between members of the Class, if any.

26. Ms. Schmecht, the members of the Class, and the Defendants have a commonality of interest in the subject matter of the lawsuit and remedies sought.

27. Ms. Schmecht will fairly and adequately protect the interests of the members of the class. Ms. Schmecht has retained competent counsel experienced in class action litigation in state and

federal courts nationwide and Ms. Schmecht has no interest adverse to any member of the Class. Ms. Schmecht intends to prosecute this case vigorously on behalf of herself and the Class.

28. A class action is an appropriate method for the fair and efficient adjudication of the controversy pursuant to 735 ILCS 5/2-801(4) because it involves a uniform course of conduct equally applicable to the Plaintiff and all members of the Class. A class action can therefore best secure the economies of time, effort and expense or accomplish the other ends of equity and justice that this action seeks to obtain.

COUNT I

Violation of the Biometric Information Privacy Act (740 ILCS 14/15 (b))

(Class Action)

29. Ms. Schmecht realleges and incorporates the previous allegations of this Complaint.

30. The Defendants are “private entit[ies]” as defined within BIPA.

31. Ms. Schmecht and the Class’s facial geometry scans qualify as “biometric identifiers” as defined by the Act. The Defendants have “biometric information” from Ms. Schmecht and the Class through its acquisition and retention of identifying based on Ms. Schmecht’s and the Class’s facial geometry scans.

32. The Defendants violated the Act by capturing or collecting Ms. Schmecht's and the Class's facial geometry scans and identifying information based on those scans without *first* informing her in writing of the purpose of the Defendant's doing so and the length of time the Defendants would store and use Ms. Schmecht's and the Class's biometric identifiers and/or biometric information.

33. Unlike other companies in Illinois, the Defendants failed to take notice and follow the requirements of the Act, even though the law was enacted in 2008 and numerous articles and court filings were published about the law's requirements before the Defendants committed the violations alleged in this Complaint.

34. As a result, Defendant's violations of BIPA were reckless or, in the alternative, negligent.

WHEREFORE, Ms. Schmecht and the Class pray for a judgment against the Defendants as follows:

- A. Awarding liquidated or actual monetary damages, whichever is higher, to the Plaintiff and the Class for each violation of BIPA.
- B. Enjoining the Defendants from committing further violations of BIPA.
- C. Awarding the Plaintiffs reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by BIPA; and

D. Awarding such other and further relief as this Court deems appropriate and just as provided under BIPA.

COUNT II

Violation of the Biometric Information Privacy Act (740 ILCS 14/15(a))

(Class Action)

35. Ms. Schmecht realleges and incorporates the previous allegations of the Complaint.

36. The Defendants are “private entit[ies]” under the Act.

37. Ms. Schmecht’s and the Class’s facial geometry scans qualify as “biometric identifier(s) as defined within BIPA.

38. The Defendants have “biometric information” from Ms. Schmecht and the Class through its acquisition and retention of identifying based on Ms. Schmecht’s and the Class’s facial geometry scans.

39. The Defendants violated BIPA by possessing Ms. Schmecht’s and the Class’s facial geometry scans and identifying information based on those scans without creating and following a written policy, made available to the public establishing and following a retention schedule and destruction guidelines for their possession of biometric identifiers and information.

40. Unlike other companies in Illinois, the Defendants failed to take notice and follow the requirements of the Act, even though the law was enacted in 2008 and numerous articles and court filings were published about the law's requirements before the Defendants committed the violations alleged in this Complaint.

41. As a result, the Defendants' violations of BIPA were reckless or, in the alternative, negligent.

WHEREFORE, the Plaintiff and the Class pray for a judgment against the Defendant as follows:

- A. Awarding liquidated or actual monetary damages, whichever is higher, to the Plaintiff and the Class for each violation of BIPA.
- B. Enjoining the Defendants from committing further violations of BIPA.
- C. Awarding the Plaintiff reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by BIPA; and
- D. Awarding such other and further relief as this Court deems appropriate and just as provided under BIPA.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues that may be tried and decided by jury.

Dated: 3/18/2020

Respectfully Submitted,

/s/ Nathaniel A. Frenkel

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