

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

JERMAINE KNOX, *individually and on
behalf of all others similarly situated,*

Plaintiff,

v.

HILTON MANAGEMENT, LLC and
LONDONHOUSE CHICAGO LEASECO
LLC,

Defendants.

Case No. 2022CH01847

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Jermaine Knox, individually and on behalf of all other persons similarly situated, by his undersigned attorneys, as and for his Class Action Complaint for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.*, against Defendants Hilton Management, LLC and Londonhouse Chicago Leaseco LLC (“Defendants”), alleges on personal knowledge, due investigation of his 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 Defendants in collecting, storing and using his and other similarly situated individuals’ biometric identifiers¹ and biometric information² (referred to collectively at times as “biometrics”) without obtaining informed written consent or providing 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 14/15(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 private entities like Defendants may not obtain and/or possess an individual’s biometrics unless they inform that person in writing that biometric identifiers or information will be collected or stored. *See* 740 ILCS 14/15(b).

4. The BIPA further requires that entities collecting biometrics must inform those persons in writing of the specific purpose and length of term for which such biometric identifiers or biometric information are being collected, stored and used. *See id.*

5. Moreover, entities collecting biometrics must publish publicly available written retention schedules and guidelines for permanently destroying biometrics collected. *See* 740 ILCS 14/15(a).

6. Further, the entity must store, transmit and protect an individual’s biometric identifiers and biometric information using the same standard of care in the industry and in a manner at least as protective as the means used to protect other confidential and sensitive information. *See* 740 ILCS 14/15(c).

7. Finally, the entity is expressly prohibited from selling, leasing, trading or otherwise profiting from an individual’s biometrics. *See* 740 ILCS 15/15(c).

8. In direct violation of each of the foregoing provisions of §§ 15(a) and 15(b) of BIPA, Defendants collected, stored and used—without first providing notice, obtaining informed written consent or publishing data retention policies—the fingerprints and associated personally identifying information of hundreds or thousands of their employees (and former employees), who are required to “clock in” with their fingerprints.

9. This practice of requiring employees to “clock in” using their fingerprints was in place at least since March 2018.

10. Plaintiff has been “clocking in” using his fingerprints during the last four years.

11. If Defendants’ database of digitized fingerprints were to fall into the wrong hands, by data breach or otherwise, the employees to whom these sensitive and immutable biometric identifiers belong could have their identities stolen, among other serious issues.

12. BIPA confers on Plaintiff and all other similarly situated Illinois residents a right to know of such risks, which are inherently presented by the collection and storage of biometrics, and a right to know how long such risks will persist after termination of their employment.

13. Yet, Defendants never adequately informed Plaintiff or the Class of their biometrics collection practices, never obtained the requisite written consent from Plaintiff or the Class regarding their biometric practices, and never provided any data retention or destruction policies to Plaintiff or the Class.

14. Plaintiff brings this action to prevent Defendants from further violating the privacy rights of Illinois residents and to recover statutory damages for Defendants’ unauthorized collection, storage and use of these individuals’ biometrics in violation of BIPA.

JURISDICTION AND VENUE

15. This Court has personal jurisdiction over Defendants because the biometrics that give rise to this lawsuit were (1) collected by Defendants at hotels in Illinois, (2) stored by Defendants at facilities in Illinois, and (3) used by Defendants at facilities in Illinois.

16. Venue is proper in this County pursuant to because Defendants conduct their usual and customary business in this County. 735 ILCS 5/2-102(a).

PARTIES

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

18. Defendant Hilton Management LLC is a Delaware limited liability company with its principal place of business in McLean, Virginia. Defendant Hilton Management LLC owns and operated hotels though Illinois and the United States. Defendant Hilton Management LLC is the parent company of Defendant Londonhouse Chicago Leaseco LLC.

19. Defendant Londonhouse Chicago Leaseco LLC is a Delaware limited liability company with its principal place of business in Chicago, Illinois. Defendant Londonhouse Chicago Leaseco LLC owns and operates the LondonHouse Chicago hotel. Defendant Londonhouse Chicago Leaseco LLC is a subsidiary of Defendant Hilton Management LLC.

FACTUAL BACKGROUND

I. Illinois' Biometric Information Privacy Act.

20. 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.

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

22. BIPA makes it unlawful for a company to, *inter alia*, “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifiers and/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 or the subject’s legally authorized representative.”

740 ILCS 14/15 (b).

23. Section 15(a) of BIPA also provides:

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.

740 ILCS 14/15(a).

24. As alleged below, Defendants’ practices of collecting, storing and using individuals’ biometric identifiers (specifically, fingerprints) and associated biometric information without informed written consent violated all three prongs of § 15(b) of BIPA. Defendants’ failure

to provide a publicly available written policy regarding their schedule and guidelines for the retention and permanent destruction of individuals' biometric identifiers and biometric information also violated § 15(a) of BIPA.

II. Defendants Violate Illinois' Biometric Information Privacy Act.

25. Unbeknown to the average person, and in direct violation of § 15(b)(1) of BIPA, Defendants scanned and collected, and then indefinitely stored in an electronic database, digital copies of each employee's fingerprints during the employee onboarding process from at least March 2018 to the present, and on each occasion an employee clocks in or out of one of Defendants' Illinois-based hotels – all without ever informing anyone of this practice in writing.

26. In direct violation of §§ 15(b)(2) and 15(b)(3) of BIPA, from at least approximately March 2018 to the present, Defendants did not inform Illinois employees who had their fingerprints collected of the specific purpose and length of time for which their biometric identifiers or information would be collected, stored and used, nor did Defendants obtain a written release from these individuals.

27. In direct violation of § 15(a) of BIPA, from at least March 2018, Defendants did not have written, publicly available policies identifying their retention schedules or guidelines for permanently destroying any of these biometric identifiers and/or biometric information.

III. Experience of Plaintiff Jermaine Knox.

28. Plaintiff began working for Defendants at one of their hotels in or around June 2016.

29. During the course of Plaintiff's employment, Defendants required Plaintiff to place his fingers on a fingerprint scanner, at which point Defendants scanned and collected, and stored in an electronic database, digital copies of Plaintiff's fingerprints.

30. Plaintiff current works for Defendants. During his employment tenure, Plaintiff has been required to place his fingers on a fingerprint scanner, which scanned, collected and stored his fingerprints each time he “clocked” in and out as part of the timekeeping system.

31. Then, upon information and belief, Defendants’ fingerprint matching technology compared Plaintiff’s scanned fingerprint against the fingerprint previously stored in Defendants’ fingerprint database.

32. On each occasion of “clocking in,” Plaintiff was granted access to Defendants’ hotel in order to begin work.

33. Plaintiff never consented, agreed or gave permission—written or otherwise—to Defendants for the collection or storage of his unique biometric identifiers and/or biometric information.

34. Further, Defendants never provided Plaintiff with nor did he ever sign a written release allowing Defendants to collect or store his unique biometric identifiers and/or biometric information.

35. Likewise, Defendants never provided Plaintiff with the requisite statutory disclosures nor an opportunity to prohibit or prevent the collection, storage or use of his unique biometric identifiers and/or biometric information.

36. By collecting Plaintiff’s unique biometric identifiers and/or biometric information without his consent, written or otherwise, Defendants invaded Plaintiff’s statutorily protected right to privacy in his biometrics.

37. Finally, Defendants never provided Plaintiff with a retention schedule and/or guideline for permanently destroying his biometric identifiers and biometric information.

38. Thus, Plaintiff has no reason to believe Defendants actually destroyed his biometric information.

39. Further, to the extent Defendants uses an outside vendor to process their payroll, there is a significant risk Plaintiff's biometric identifiers have already been disseminated without his knowledge or consent.

CLASS ALLEGATIONS

40. **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 individuals who had their fingerprints collected, captured, received or otherwise obtained and/or stored by Defendants in the state of Illinois.

41. **Numerosity:** Pursuant to 735 ILCS 5/2-801 (1), the number of persons within the Class is substantial, believed to amount to 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 Defendants' records.

42. **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 Defendants collected or otherwise obtained Plaintiff's and the Class' biometric identifiers and/or biometric information;
- (b) whether Defendants properly informed Plaintiff and the Class that it collected, used, and stored their biometric identifiers and/or biometric information;
- (c) whether Defendants obtained a written release (as defined in 740 ILCS 1410) to collect, use, and store Plaintiff's and the Class' biometric identifiers and/or biometric information;
- (d) whether Defendants 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;
- (e) whether Defendants used Plaintiff's and the Class' biometric identifiers and/or biometric information to identify them;
- (f) whether Defendants destroyed Plaintiff's and the Class' biometric identifiers and/or biometric information once that information was no longer needed for the purpose for which it was originally collected; and
- (g) whether Defendants' violations of BIPA were committed intentionally, recklessly, or negligently.

43. **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 his 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 his 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 Defendants took.

44. **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**

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

46. BIPA 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 (at most three years after the company’s last interaction with the individual); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

47. Defendants failed to comply with these BIPA mandates.

48. Defendants are companies registered to do business in Illinois and thus each qualify as “private entity” under BIPA. *See* 740 ILCS 14/10.

49. Plaintiff is an individual who had his “biometric identifiers” captured and/or collected by Defendants, as explained in detail in above. *See* 740 ILCS 14/10.

50. Plaintiff’s biometric identifiers were used to identify Plaintiff and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

51. Defendants failed to provide a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified by BIPA. *See* 740 ILCS 14/15(a).

52. Defendants lacked retention schedules and guidelines for permanently destroying Plaintiff’s and the Class’s biometric data. As such, the only reasonable conclusion is that Defendants have not, and will not, destroy Plaintiff’s and the Class’s biometric data when the initial purpose for collecting or obtaining such data has been satisfied.

53. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with BIPA’s requirements for the collection, capture, storage, and use of biometric identifiers and biometric information as described herein; (3) 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 (4) reasonable attorneys’ fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jermaine Knox, on behalf of himself 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 his counsel as Class Counsel;
- B. Declaring that Defendants’ actions, as set out above, violate BIPA, 740 ILCS 14/15(a), *et seq.*;
- 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 injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an Order requiring Defendants to collect, store, and use biometric identifiers and/or biometric information in compliance with BIPA;
- E. Awarding Plaintiff and the Class their reasonable attorneys’ fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- 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.

**COUNT II – FOR DAMAGES AGAINST DEFENDANTS
 VIOLATION OF 740 ILCS 14/15(B) –
 FAILURE TO OBTAIN INFORMED WRITTEN CONSENT AND RELEASE BEFORE
OBTAINING BIOMETRIC IDENTIFIERS OR INFORMATION**

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

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

56. Defendants failed to comply with these BIPA mandates.

57. Defendants are companies registered to do business in Illinois and thus each qualify as a "private entity" under BIPA. *See* 740 ILCS 14/10.

58. Plaintiff and the Class are individuals who have had their "biometric identifiers" collected and/or captured by Defendants, as explained in detail above. *See* 740 ILCS 14/10.

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

60. Defendants systematically and automatically collected, captured, used, and stored Plaintiff's and the Class's biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS 14/15(b)(3).

61. Defendants never informed Plaintiff, and never informed any member of the Class in writing that their biometric identifiers and/or biometric information were being collected, captured, stored, and/or used, nor did Defendants inform Plaintiff and the Class in writing of the specific purpose(s) and length of term for which their biometric identifiers and/or biometric information were being collected, stored, used and disseminated as required by 740 ILCS 14/15(b)(1)-(2).

62. By collecting, capturing, storing, and/or using Plaintiff's and the Class's biometric identifiers and biometric information as described herein, Defendants violated Plaintiff's and the

Class's rights to privacy in their biometric identifiers and/or biometric information as set forth in BIPA. *See* 740 ILCS 14/1, *et seq.*

63. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with BIPA's requirements for the collection, captures, storage, use and dissemination of biometric identifiers and biometric information as described herein; (3) 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 (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jermaine Knox, on behalf of himself 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 his counsel as Class Counsel;
- B. Declaring that Defendants' actions, as set out above, violate BIPA, 740 ILCS 14/1, *et seq.*;
- 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 injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an Order requiring Defendants to collect, store, and use biometric identifiers and/or biometric information in compliance with BIPA;
- E. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- 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 DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: March 3, 2022

Respectfully submitted,

/s/ Carl V. Malmstrom .
**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLC**
Attorney No. 38819
Carl V. Malmstrom
111 W. Jackson Blvd., Suite 1700
Chicago, IL 60604
Tel: (312) 984-0000
Fax: (212) 686-0114
E-mail: malmstrom@whafh.com

*Local Counsel for Plaintiff and the
Putative Class*

BURSOR & FISHER, P.A.
Joseph I. Marchese*
Philip L. Fraietta*
888 Seventh Avenue
New York, NY 10019
Tel: (646) 837-7150
Fax: (212) 989-9163
jmarchese@bursor.com
pfraietta@bursor.com

**Pro Hac Vice Application Forthcoming*

Attorneys for Plaintiff and the Putative Class