

Return Date: No return date scheduled
Hearing Date: 7/22/2021 9:30 AM - 9:30 AM
Courtroom Number: 2308
Location: District 1 Court
Cook County, IL

12-Person Jury

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

FILED
3/23/2021 9:56 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH01393

VERONICA LOGAN,

Plaintiff,

v.

HBS MANAGEMENT CORP., MICHAEL
G. WELLEK, and LOUMAR
CORPORATION,

Defendants.

Case No. 2021CH01393

12691340

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Veronica Logan, individually and on behalf of all others similarly situated, brings this Class Action Complaint and Demand for Jury Trial against Defendants HBS Management Corp., Michael G. Wellek, and Loumar Corporation. Plaintiff alleges the following based upon personal knowledge as to Plaintiff's own experiences, and as to all other matters upon information and belief, including investigation conducted by Plaintiff's attorneys.

NATURE OF THE CASE

1. This class action alleges violations of the Biometric Information Privacy Act, 740 ILCS 14/1-99 ("BIPA").
2. Since 2008, BIPA has imposed a notice-and-consent requirement on companies possessing biometric data like fingerprints, voiceprints, and faceprints.
3. Defendants collected and disclosed Plaintiff's biometrics without proper notice and consent. Accordingly, Plaintiff seeks statutory damages as authorized by BIPA.

PARTIES

4. Plaintiff is a citizen of Illinois and a resident of Cook County.

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5. Defendant HBS Management Corp. is an Illinois corporation headquartered at 1300 Elmhurst Road, Elk Grove Village, IL 60007. According to the Illinois Secretary of State, HBS Management Corp. was involuntarily dissolved on November 14, 2014.

6. Defendant Loumar Corp. is an Illinois corporation. Loumar is headquartered at 2835 E Higgins Rd., Elk Grove Village, Illinois 60007. Loumar holds an Illinois liquor license for an establishment called the Old Higgins Inn, located at 2835 E. Higgins Rd., Elk Grove Village, Illinois 60007.

7. While their addresses may differ, Loumar and HBS operate out of the same building, which maintains both the 2835 E Higgins Rd address and the 1300 Elmhurst Rd address, and houses a strip club known as the Heavenly Bodies Fantasy Sports Bar. Loumar provides the food and alcohol, and HBS the adult entertainment. The signage outside Heavenly Bodies reads "OLD HIGGINS INN – FEATURING HEAVENLY BODIES." On information and belief, Loumar and HBS act jointly to operate as Heavenly Bodies Fantasy Sports Bar.

8. Defendant Michael G. Wellek is an individual residing in Illinois. On information and belief, Wellek owns and operates HBS Management Corp., and controls the operations of Heavenly Bodies, and Loumar.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over HBS because it was organized under the laws of this State, was registered to do business in this state, was headquartered in this State, and currently operates in this State, and because Plaintiff's claims against HBS arise out of HBS's conduct within this State.

10. This Court has personal jurisdiction over Loumar because it is organized under the laws of this State, is registered to do business in this state, and is headquartered in this State,

operates in this State, and because Plaintiff's claims against HBS arise out of HBS's conduct within this State.

11. This Court has personal jurisdiction over Wellek because he is an individual residing within Illinois, because he conducts substantial business in this State, and because Plaintiff's claims arise out of his conduct within this State.

12. Venue is proper in Cook County because Defendants conduct substantial business in Cook County and the conduct giving rise to Plaintiff's claims occurred in Cook County.

FACTUAL BACKGROUND

13. Defendants operate the adult business known as the Heavenly Bodies Fantasy Sports Bar.

14. Plaintiff worked for Defendants at their Elk Grove location as a waitress.

15. Defendants required their hourly workers, including Plaintiff, to clock in and out of shifts and breaks with a fingerprint scanner.

16. The fingerprint scanner was connected to Defendants' timekeeping and payroll system (collectively, the "Biometric System").

17. In addition to collecting fingerprints, the Biometric System collected and maintained reference templates derived from workers' fingerprints.

18. The Biometric System then compared the reference templates against each subsequent fingerprint scan to identify the worker scanning in and associate the appropriate timekeeping information.

19. Defendants' payroll provider accessed the information collected through the Biometric System.

20. Defendants did not explain the Biometric System to their workers.

21. Defendants did not tell their workers how they used data collected through the Biometric System.

22. Defendants did not tell their workers how long they kept the data collected through the Biometric System.

23. Defendants' workers did not consent to Defendants' collection of their fingerprints or the identifying data derived from them.

24. Defendants' workers did not consent to Defendant's disclosure of information collected through the Biometric System.

25. BIPA has been the law of the State of Illinois since 2008.

26. At the beginning of the class period, five years ago, BIPA had been in effect for eight years.

27. By the beginning of the class period, BIPA had also been in the news for some time. Facebook had been sued for BIPA violations a year-and-a-half earlier,¹ and the case had already resulted in headline-generating rulings.² Google and Shutterfly had likewise found themselves in the news for alleged BIPA violations.³

¹See Tony Briscoe, *Suit: Facebook facial recognition technology violates Illinois privacy laws*, Chicago Tribune (Apr. 1, 2015), <https://www.chicagotribune.com/news/breaking/ct-facebook-facial-recognition-lawsuit-met-story.html>.

²Russell Brandom, *Lawsuit challenging Facebook's facial recognition system moves forward*, The Verge (May 5, 2016), <https://www.theverge.com/2016/5/5/11605068/facebook-photo-tagging-lawsuit-biometric-privacy>; see also Joel Rosenblatt, *Is Facebook's Facial-Scanning Technology Invading Your Privacy Rights*, Bloomberg (Oct. 26, 2016), <https://www.bloomberg.com/news/articles/2016-10-26/is-facebook-s-facial-scanning-technology-invading-your-privacy-rights>.

³Christopher Zara, *Google Gets Sued Over Face Recognition, Joining Facebook And Shutterfly In Battle Over Biometric Privacy In Illinois*, International Business Times (Mar. 4, 2016), <https://www.ibtimes.com/google-gets-sued-over-face-recognition-joining-facebook-shutterfly-battle-over-2330278>.

28. By the time the class period started, the first BIPA fingerprint case had not only been filed, but it had also been settled and finally approved.⁴

29. Throughout the class period, then, BIPA was well known, and its obligations clear.

CLASS ALLEGATIONS

30. Plaintiff brings this action on behalf of the following class of similarly situated individuals:

All individuals identified in Defendants' Biometric System within the preceding five years.

31. Excluded from the Class are any members of the judiciary assigned to preside over this matter, any officer or director of Defendants, counsel for the Parties, and any immediate family member of any of the same.

32. Upon information and belief, the Class contains scores, if not hundreds, of individuals. The Class is therefore so numerous that joinder of all members is impracticable. The precise number of Class members can be determined by reference to Defendants' records.

33. Plaintiff's claims are typical of the proposed Class's. Plaintiff's claims have the same factual and legal bases as the proposed Class members', and Defendants' conduct has resulted in identical injuries to Plaintiff and the other Class members.

34. Common questions of law and fact will predominate over any individualized inquiries. Those common questions include:

⁴Jonathan Bilyk, *L.A. Tan settles fingerprint scan privacy class action for \$1.5M; attorneys get \$600K*, Cook County Record (Dec. 9, 2016), <https://cookcountyrecord.com/stories/511056103-l-a-tan-settles-fingerprint-scan-privacy-class-action-for-1-5m-attorneys-get-600k>; see also Melissa Daniels, *Tanning Co. Settles For \$1.5M Under Illinois Biometric Law*, Law360 (Dec. 6, 2016), <https://www.law360.com/articles/869828/tanning-co-settles-for-1-5m-under-illinois-biometric-law>.

- a. Whether Defendants collected the Class's biometric identifiers or biometric information;
- b. Whether Defendants disclosed the Class's biometric identifiers or information;
- c. Whether Defendants published a written policy establishing a retention schedule and biometric-destruction guidelines;
- d. Whether Defendants obtained a written release prior to collecting the Class's biometrics;
- e. Whether Defendants informed the Class, in writing, of the purposes and duration for which their biometrics would be collected and stored;
- f. Whether Defendants obtained the Class's consent prior to disclosing their biometrics; and
- g. Whether Defendants are liable for \$5,000 or only \$1,000 per violation.

35. Absent a class action, most Class members would find their claims prohibitively expensive to bring individually, and would be left without an adequate remedy. Class treatment of the common questions is also superior because it conserves the Court's and Parties' resources and promotes efficiency and consistency of adjudication.

36. Plaintiff will adequately represent the Class. Plaintiff has retained counsel experienced in biometric class actions. Plaintiff and Plaintiff's counsel are committed to vigorously litigating this action on the Class's behalf, and have the resources to do so. Neither Plaintiff nor Plaintiff's counsel have any interest adverse to the Class.

37. Defendants have acted on grounds generally applicable to Plaintiff and the Class, requiring the Court's imposition of uniform relief, including injunctive and declaratory relief to the Class.

COUNT I
Violation of 740 ILCS 14/15
(On behalf of Plaintiff and the Class)

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

39. HBS is an Illinois corporation, and is therefore a private entity. 740 ICLS 14/10.

40. Wellek is an individual, and is therefore a private entity. 740 ICLS 14/10.

41. Loumar is an Illinois corporation, and is therefore a private entity. 740 ICLS 14/10.

42. By collecting Plaintiff's and the Class's fingerprints through the Biometric System, Defendants collected Plaintiff's and the Class's biometric identifiers. 740 ILCS 14/10.

43. By capturing and maintaining reference templates and associated timekeeping information, Defendants collected Plaintiff's and the Class's biometric information. 740 ILCS 14/10.

44. By sharing the Biometric System's data with its payroll provider, Defendants disclosed Plaintiff's and the Class's biometric identifiers and information.

45. Prior to collecting Plaintiff's and the Class's biometric identifiers and information, Defendants did not inform Plaintiff and the Class in writing that their biometrics were being collected, stored, and used. 740 ILCS 14/15(b)(1).

46. Prior to collecting Plaintiff's and the Class's biometric identifiers and information, Defendants did not inform Plaintiff and the Class of the specific purpose for which their biometrics were being collected, stored, and used. 740 ILCS 14/15(b)(2).

47. Prior to collecting Plaintiff's and the Class's biometric identifiers and information, Defendants did not inform Plaintiff and the Class of the length of time that their biometrics would be maintained. 740 ILCS 14/15(b)(2).

48. Prior to collecting Plaintiff's and the Class's biometric identifiers and information, Defendants did not obtain a written release authorizing such collection. 740 ILCS 14/15(b)(3).

49. Prior to disclosing Plaintiff's and the Class's biometric identifiers and information, Defendants did not obtain Plaintiff's and the Class's informed consent. 740 ILCS 14/15(d)(1).

50. While Defendants were in possession of Plaintiff's and the Class's biometric identifiers and information, Defendants failed to provide a publicly available retention schedule detailing the length of time it would maintain Plaintiff's and the Class's biometrics and guidelines for permanently destroying the same. 740 ILCS 14/15(a).

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 appointing Plaintiff's counsel as class counsel;
- b. Declaring that Defendants' actions as set forth herein violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the Class;
- d. Finding Defendants' conduct intentional or reckless and awarding \$5,000 in damages per violation, per Class member under 740 ILCS 14/20(2), or, if Defendants' conduct does not rise to that standard, \$1,000 per violation, per Class member under 740 ILCS 14/20(1);
- e. Awarding Plaintiff and the Class their reasonable attorneys' fees, costs, and other litigation expenses under 740 ILCS 14/20(3);
- f. Awarding Plaintiff and the Class pre- and post-judgment interest; and
- g. Awarding such other and further relief as the Court deems equitable and just.

JURY DEMAND

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

Dated: March 24, 2021

Respectfully submitted,

s/ J. Dominick Larry
One of Plaintiff's Attorneys

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