

STATE OF ILLINOIS
CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION

2024CH02582

Mark Sorokowskyj, Individually, and on behalf of)	Case No. _____
all others similarly situated,)	
)	
Plaintiff,)	<u>CLASS ACTION</u>
)	
vs.)	<u>COMPLAINT</u>
)	
)	
The Martin-Brower Company, L.L.C.)	
)	
Defendant.)	
)	
)	
)	
)	
)	
_____)	

CLASS ACTION COMPLAINT

Plaintiff Mark Sorokowskyj (“Plaintiff”) brings this Class Action Complaint against Defendant The Martin-Brower Company, L.L.C. (“Martin-Brower” or “Defendant”) for its violations of the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”).

NATURE OF THE ACTION

1. Defendant Martin-Brower is a shipping company located in Illinois with its headquarters being in Rosemont.
2. Plaintiff is an employee at Martin Brower.
3. Martin Brower operates its distribution center via the use of biometrics, and, in particular, the use of “voiceprints” and voice/speaker recognition technology called “Vocollect”.
4. “Voiceprint” is another term for a voice template and is considered biometrics within the biometric industry.

FILED DATE: 3/27/2024 7:40 PM 2024CH02582

5. Through use of Vocollect, Defendant creates workers' voiceprints, voice patterns or templates, which are then used to enable its workers to interact with Martin Brower's warehouse technology to identify a worker. As exemplified in the Vocollect manual under "Training the Talkman Terminal to Recognize an Operator's Voice" it explains that: "The first time an operator uses a terminal in the Talkman system at your site, the operator must train the system to understand his or her speech by speaking the vocabulary words used at the particular site.

6. Specifically, at the beginning of a warehouse worker's training, a worker is required to provide Martin Brower with personal speech patterns by reading a series of voice template words repeatedly into Martin Brower's voice recognition software until a voiceprint or template of his voice is created, and the software is trained to understand his idiosyncratic way of speaking and to specifically identify and recognize the individual worker and his voice.

7. This voice template or voiceprint sets forth the worker's voice pattern, then becomes part of that worker's data file which contains the worker's name, the employee number, and his voiceprint. The Vocollect manual states that during training, the user is asked to repeat each word four times and then "the software then stores one version of each word in template files for that operator." The Vocollect system relies on data transmissions between a customer's host system, Vocollect VoiceCheck, and devices worn by technicians performing inspections.

8. At work, the employee's number is put into a wireless device containing, among other things, voice recognition software, that works with a headset. The voice template portion of his operator data file then loads into the device from a central database known as a voice console, where operator data files, including biometric voiceprints, are stored.

9. Thereafter, the worker is sent orders from a central worker management

computer through a headset and executes those orders by interacting and having a dialogue with the voice recognition software which responds based upon the worker's voiceprint or template.

10. The software does this by breaking down and analyzing the real time version of the worker's voice, essentially breaking it into small patterns, and comparing the voice with the characteristics of his voiceprint or voice template on which the voice recognition technology has been trained, thus effectively recognizing and identifying the worker.

11. The voiceprints are not merely voice "recordings" but biometric identifiers that are influenced by both the physical structure of an operator's vocal tract and the employee's specific vocal behavioral characteristics. As a worker's voice changes in different environments, the software adjusts the template to account for changes in the worker's voice, thereby changing the voiceprint to further refine its ability to recognize and ability to identify the worker.

12. A voiceprint or voice template, as used by the Vocollect system, is unique to each individual employee and is part of the operator's stored data file that also contains name and employee number and is therefore identified solely with that worker.

13. While Plaintiff and the Class members were required to provide their voiceprints or voice templates for Martin Brower's voice/speaker recognition technology, they were never first asked for their consent, nor were they ever provided with a written policy regarding the use of their biometric identifiers as required under BIPA.

14. Moreover, they were never told whether their voiceprints would be deleted from the Defendant's systems or when they would be deleted.

15. Voiceprints are unique, permanent biometric identifiers associated with each employee that cannot be changed or replaced if stolen or compromised. Defendant's unlawful collection, obtainment, storage, and use of its users' biometric data exposes them to serious and

irreversible privacy risks. For example, if Defendant's database containing facial geometry scans or other sensitive, proprietary biometric data is hacked, breached, or otherwise exposed, Martin Brower employees have no means by which to prevent identity theft, unauthorized tracking, or other unlawful or improper use of this highly personal and private information.

16. The Illinois legislature enacted BIPA to protect residents' privacy interests in their biometric data. *See Heard v. Becton, Dickinson & Co.*, 440 F. Supp. 3d 960, 963 (N.D. Ill. 2020), citing *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, 432 Ill. Dec. 654, 129 N.E.3d 1197, 1199 (2019).

17. Courts analogize an individual's privacy interest in their unique biometric data to their interest in protecting their private domain from invasion, such as from trespass. *See Bryant v. Compass Group USA, Inc.*, 958 F.3d 617, 624 (7th Cir. 2020), as amended on denial of reh'g and reh'g *en banc*, (June 30, 2020) and opinion amended on denial of reh'g *en banc*, 2020 U.S. App. LEXIS 20468, 2020 WL 6534581 (7th Cir. 2020).

18. In recognition of these concerns over the security of individuals' biometrics – particularly in the City of Chicago, which has been selected by major national corporations as a “pilot testing site[] for new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias” (740 ILCS 14/5(b)) – the Illinois Legislature enacted the BIPA, which provides, *inter alia*, that a private entity like Martin Brower may not obtain and/or possess an individual's biometrics unless it: (1) informs that person in writing that biometric identifiers or information will be collected or stored; (2) informs that person in writing of the specific purpose and length of term for which such biometric identifiers or biometric information is being collected, stored and used; (3) receives a written release from the person for the collection of his or her biometric identifiers or information; and (4)

publishes publicly-available written retention schedules and guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a)-(b).

19. 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.*

20. Specifically, upon information and belief, Defendant has created, collected, and stored thousands of “voiceprints” from countless Illinois residents whose voice templates were collected by Defendant. Each voiceprint that Defendant extracts is unique to a particular individual in the same way that a fingerprint or face template uniquely identifies an individual.

21. Defendant is a “private entity” as that term is broadly defined by BIPA and Defendant is subject to all requirements of BIPA. *See* 740 ILCS § 14/10

JURISDICTION AND VENUE

22. This is a Class Action Complaint for violations of the Illinois Biometric Information Privacy Act (740 ILCS 14/1 et seq.) brought pursuant to Rule 801 seeking statutory and actual damages.

23. Venue is proper in this Court because the Defendant is a resident of this county.

25. At all relevant times, Plaintiff and the proposed Class are residents of the State of Illinois and the violations of BIPA as detailed herein occurred while Plaintiff and the proposed Class were located in Illinois.

26. At all relevant times, Defendant is incorporated under the laws and jurisdiction of Delaware, and Defendant's principal place of business is located in Rosemont, Illinois.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

27. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

28. Defendant Martin-Brower is a shipping company located in Illinois with its headquarters being in Rosemont.

29. Plaintiff is an employee at Martin-Brower.

30. Martin-Brower operates its distribution center through the use of biometrics, and in particular the use of "voiceprints" and voice/speaker recognition technology called "Vocollect".

31. "Voiceprints" is another term for a voice template and is considered biometrics within the biometric industry.

32. Defendant creates workers' voiceprints, voice patterns or templates, which are then used to enable its workers to interact with Martin-Brower's warehouse technology to identify a worker.

33. A voiceprint or voice template, as used by the Vocollect system, is unique to each individual employee and is part of the operator's stored data file that also contains name and employee number and is therefore identified solely with that worker.

34. While Plaintiff and the Class members were required to provide their voiceprints or voice templates for Martin-Brower's voice/speaker recognition technology, they were never first asked for their consent, nor were they ever provided with a written policy regarding the use of their biometric identifiers as required under BIPA.

35. Defendant never informed Plaintiff the specific limited purposes or length of time for which their voiceprints were being collected.

36. Defendant never informed Plaintiff when their voiceprints would be removed from the Defendant's systems or when they would be deleted.

37. Martin-Brower failed to permanently destroy Plaintiff's voiceprints as required by law.

38. Martin-Brower did not inform Plaintiff in writing that Martin-Brower was collecting or storing her biometric information.

39. In fact, Martin-Brower made no mention of biometric information, collection of biometric information, or storage of biometric information.

40. Moreover, Martin-Brower did not inform Plaintiff in writing of the specific purpose and length of term for which his biometric information was being collected, stored, and used.

41. Martin-Brower collected, stored, and used Plaintiff's biometric information without ever receiving a written release executed by Plaintiff which would provide informed consent to or authorize Martin-Brower to do the same.

42. At all relevant times, Martin-Brower had no written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric information when the initial purpose for collecting or obtaining such biometric information has been satisfied or within 3 years of the individual's last interaction with Martin-Brower, whichever occurs first.

CLASS DEFINITIONS AND ALLEGATIONS

43. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

44. Plaintiff brings Claims for Relief in violation of BIPA as a class action under Rule 801 Plaintiff brings these claims on behalf of himself and all members of the following Class:

All Illinois residents who had their biometric information collected by The Martin-Brower Company, LLC at any point in the five (5) years preceding the filing of this Complaint (the “Class Members”).

45. In the alternative, and for the convenience of this Court and the parties, Plaintiff may seek to certify other subclasses at the time the motion for class certification is filed.

46. **Numerosity:** The Class Members are so numerous that joinder of all members is impracticable. Plaintiff is informed and believes that there are more than 1,000 people who satisfy the definition of the Class.

47. **Existence of Common Questions of Law and Fact:** Common questions of law and fact exist as to Plaintiff and the Class Members including, but not limited to, the following:

a. Whether Martin-Brower possessed Plaintiff's and the Class Members' biometric identifiers or biometric information without first developing 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 Martin-Brower, whichever occurs first.

b. Whether Martin-Brower collected, captured, purchased, received through trade, or otherwise obtained Plaintiff's and the Class Members' biometric identifiers or biometric information, without first: (1) informing Plaintiff and the Class Members in writing that a biometric identifier or biometric information is being collected or stored; (2) informing Plaintiff and the Class Members in writing of the specific purpose and length of term for which their

biometric identifiers or biometric information was being collected, stored, and used; and (3) receiving a written release executed by Plaintiff and the Class Members

c. Whether Martin-Brower disclosed, redisclosed, or otherwise disseminated Plaintiff's and the Class Members' biometric identifiers or biometric information (1) without Plaintiff's and the Class Members' consent; (2) without Plaintiff's and the Class Members' authorization to complete a financial transaction requested or authorized by Plaintiff and the Class Members; (3) without being required by State or federal law or municipal ordinance; or (4) without being required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction.

d. The damages sustained and the proper monetary amounts recoverable by Plaintiff and the Class Members.

48. **Adequacy:** Plaintiff's claims are typical of the Class Members' claims. Plaintiff, like the Class Members, had his biometric identifiers and biometric information collected, retained or otherwise possessed by Martin-Brower without Martin-Brower's adherence to the requirements of BIPA as detailed herein. Plaintiff will fairly and adequately represent and protect the interests of the Class Members. Plaintiff has retained counsel competent and experienced in complex class actions.

49. **Predominance and Superiority of Class Action:** Class certification is appropriate because questions of law and fact common to the Class Members predominate over questions affecting only individual members of the class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Martin-Brower's common and uniform policies and practices illegally deprived Plaintiff and the Class Members of the privacy protections which BIPA seeks to ensure; thus, making the question of liability and damages much more manageable and efficient to resolve in a class action, compared to hundreds

of individual trials. The damages suffered by individual Class Members are small compared to the expense and burden of individual prosecution. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Martin-Brower's practices.

COUNT ONE: VIOLATION OF 740 ILCS § 14/15(a)

(Brought by Plaintiff on behalf of himself and the Class Members against Defendant)

50. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

51. 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. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines. 740 ILCS § 14/15(a).

52. Defendant collected Plaintiff's and the Class Members biometric identifiers and created voice templates of the Plaintiff's and the Class Members' voices which qualifies as biometric information as defined by BIPA.

53. At all relevant times, Defendant had no written policy, made available to either Martin-Brower employees or the public, establishing a retention schedule and guidelines for permanently destroying the voiceprints when the initial purpose for collecting or obtaining the

voiceprints has been satisfied or within 3 years of the individual's last interaction with Defendant, whichever occurs first.

54. Defendant failed to permanently destroy Plaintiff's and the Class Members' voiceprints and instead retained Plaintiff's and the Class Members' voiceprints.

55. As such, Defendant's retention of Plaintiff's and the Class Members' biometric information was unlawful and in violation of 740 ILCS § 14/15(a).

COUNT TWO: VIOLATION OF 740 ILCS § 14/15(b)

(Brought by Plaintiff on behalf of himself and the Class Members against Defendant)

56. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

57. No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

(1) informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored;

(2) informs the subject or the subject's legally authorized representative 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).

58. Defendant did not inform Plaintiff and the Class Members in writing that Defendant was collecting or storing their voiceprints.

59. Instead, Defendant simply instructed Plaintiff and the Class Members to take part in the employee training process during which a voice template is created and the VoCollect system's software identifies Plaintiff and Class Member's voiceprints.

60. In fact, Defendant made no mention of biometric information, collection of biometric information, or storage of biometric information when referencing the voiceprints.

61. Moreover, Defendant did not inform Plaintiff and the Class Members in writing of the specific purpose and length of term for which their voiceprints were being collected, stored, and used.

62. Defendant collected, stored, and used Plaintiff's and the Class Members' voiceprints without ever receiving a written release executed by Plaintiff and the Class Members which would consent to or authorize Defendant to do same.

63. As such, Defendant's collection of Plaintiff's and the Class Members' biometric information was unlawful and in violation of 740 ILCS § 14/15(b).

COUNT THREE: VIOLATION OF 740 ILCS § 14/15(d)

(Brought by Plaintiff on behalf of himself and the Class Members against Defendant)

64. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

65. No private entity in possession of a biometric identifier or biometric information may disclose, redisclose, or otherwise disseminate a person's or a customer's biometric identifier or biometric information unless:

(1) the subject of the biometric identifier or biometric information or the subject's legally authorized representative consents to the disclosure or redisclosure;

(2) the disclosure or redisclosure completes a financial transaction requested or authorized by the subject of the biometric identifier or the biometric information or the subject's legally authorized representative;

(3) the disclosure or redisclosure is required by State or federal law or municipal ordinance; or

(4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction. 740 ILCS § 14/15(d).

66. While discovery will ascertain all of the ways in which Defendant disclosed, redisclosed, or otherwise disseminated Plaintiff's and the Class Members' biometric information, upon information and belief, Defendant disclosed, redisclosed, or otherwise disseminated Plaintiff's and the Class Members' biometric information to numerous third party service providers for Defendant's business purposes, including but not limited to, Honeywell, Inc. and other third party providers that provide business services to Defendant, third party service providers that provide professional services to Defendant, and third party service providers that provide technical support functions to Defendant.

67. Defendant's disclosures, redisclosures, or otherwise disseminating of Plaintiff's and the Class Members' biometric information was unlawful and in violation of 740 ILCS § 14/15(d).

PRAYER FOR RELIEF

WHEREFORE, individually, and on behalf of the Class Members, Plaintiff prays for: (1) certification of this case as a class action appointing the undersigned counsel as class counsel; (2) a declaration that Defendant has violated BIPA, 740 ILCS 14/1 *et seq.*; (3) statutory damages of \$5,000.00 for each intentional and reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or alternatively, statutory damages of \$1,000.00 per violation pursuant to 740 ILCS 14/20(1) in the event the court finds that Defendant's violations of BIPA were not willful; (4) reasonable attorneys' fees and costs and other litigation expense pursuant to 740 ILCS 14/20(3); (5) actual damages; and (6) for any other relief the Court deems appropriate.

Dated: March 27, 2024

Respectfully submitted,

FRADIN LAW

By: /s/ Michael L. Fradin
Michael L. Fradin, Esq.
8401 Crawford Ave. Suite 104
Skokie, Illinois 60076
Telephone: 847-986-5889
Facsimile: 847-673-1228
Email: mike@fradinlaw.com

SIMON LAW CO.

By: /s/ James L. Simon
James L. Simon (*pro hac vice* forthcoming)
Simon Law Co.
11 1/2 N. Franklin Street,
Chagrin Falls, Ohio 44022.
Telephone: (216) 816-8696
Email: james@simonsayspay.com