

YES NO

EXHIBITS

CASE NO. 2021 CH 3273

DATE: 7/5/2021

CASE TYPE: Class Action

PAGE COUNT: 16

CASE NOTE

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

ANDREW L. BARTON,)
individually and on behalf of)
himself and all others similarly situated,)

13917159

Case No 2021CH03273

Plaintiff,)

v.)

JURY TRIAL DEMANDED

WALMART INC.,)

Defendant.)

PLAINTIFF’S CLASS ACTION COMPLAINT

Plaintiff Andrew L. Barton (“Barton” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Walmart Inc. (“Walmart” or the “Defendant”) to put a stop to its intentional, reckless and/or negligent unlawful collection, use, and storage of Plaintiff’s and the putative class (“Class”) members’ sensitive biometric data, to have Defendant return or destroy the biometric information that it has retained for over three years and for which the initial use is no longer pertinent, and to issue a written retention policy and/or to comply with any written policy that it issues, among other things. Plaintiff seeks statutory damages and injunctive relief, including causing Walmart to issue a written policy governing its collection and retention of biometric data. Plaintiff, for his Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, based upon counsel’s due diligent investigation, publicly available documents, and conduct and statements of Defendant.

NATURE OF THE ACTION

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1. Defendant Walmart is one of the largest retailers in the world, with both brick and mortar and on-line stores. It operates as Walmart US, Walmart International, and Sam's Club.

2. Walmart maintains one of the largest distribution operations in the world, consisting of over 150 distribution centers which service stores, clubs and direct delivery to customers.

3. It has significant operations in Illinois including 139 superstores, 15 discount stores, 11 neighborhood markets, and 13 Sam's Clubs. It also maintains at least four major distribution or fulfillment centers in Illinois.

4. Plaintiff Barton worked at the fulfillment/distribution center located in Elwood, Illinois, as an order "picker". "Pickers" are warehouse workers who select items from storage bins or other storage areas and fill orders by getting them ready for shipment, including pulling the items and placing them on pallets for order packers.

5. Walmart operates its distribution and/or fulfillment centers through the use of biometrics and in particular, the use of voice prints and voice recognition technology and prints.

6. Specifically, pickers are required to provide their voice print, by providing templates of their voices reciting the certain words, phrases and number combinations so that the voice recognition technology is able to learn their voice.

7. Once the voice recognition technology learns their voice, the pickers are then trained on the use of headsets, in some cases the Vocollect system, with which they interact. Through the headset they receive orders to fill and are required to respond into the headset telling it where they are in the warehouse, the product that they have just pulled from storage, the amount of that product that they have pulled, and the order that they are filling.

8. In this way, Walmart is able to track its inventory in real time, and to avoid waste and employee theft.

9. While Plaintiff and other Class members were required to provide their voice prints for Walmart's voice recognition technology, they were never asked for their consent, nor were they ever provided with a written policy regarding the use of their biometric data.

10. Moreover, they were never told whether their voice prints would be deleted from the Company's systems or when they would be deleted.

11. While there may be certain benefits to using biometric technology in the workplace, there are also serious risks. Voice prints are unique, permanent biometric identifiers associated with the employee.

12. Defendant's collection and storage of biometric identifiers and/or biometric information exposes employees to serious and irreversible privacy risks. For example, if an employee database is hacked, breached, or otherwise exposed, employees have no means by which to prevent identity theft and unauthorized tracking.

13. Recognizing the need to protect its citizens from situations like these, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"), specifically to regulate companies that collect and store Illinois citizens' biometrics.

14. Despite this law, Defendant, knowing full well what the law is respecting the collection and use of biometric data in Illinois, disregards its workers' statutorily and common law protected privacy rights and unlawfully collects, stores, and uses their biometric data in violation of the BIPA. Specifically, Defendant has violated (and continues to violate) BIPA because it did not:

- Issue a written policy governing the collection, maintenance and destruction of its workers voiceprint biometric data, and failed to comply with any written policy;
- Properly inform Plaintiff and the Class members in writing of the specific purpose and length of time for which their biometric identifying voiceprints were being

collected, stored, and used, as required by the BIPA;

- Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and the Class's voiceprints, as required by the BIPA; or
- Receive a written release from Plaintiff or the members of the Class to collect, capture, or otherwise obtain their voiceprints, as required by the BIPA.

15. Accordingly, this Complaint seeks an order: (i) declaring that Defendant's conduct violates BIPA; (ii) requiring Defendant to cease the unlawful activities discussed herein; (iii) awarding liquidated damages to Plaintiff and the proposed Class; (iv) awarding Plaintiff statutory damages for such violations; and (v) enjoining Defendant from its continued violations of BIPA by, among other things, causing it to issue a written policy regarding the collection, use and destruction of biometric data, and deleting from any of its databases and systems, the biometric data of Plaintiff and Class members.

PARTIES

16. Plaintiff Andrew L. Barton is a natural person and was a citizen of the State of Illinois at the time his voiceprint was taken. Barton worked as a picker for Defendant at its Elwood facility from March 16, 2019 to May 2021.

17. Defendant Walmart is one of the largest retailers in the world. It is a Delaware corporation with its principal place of business in Bentonville, Arkansas.

JURISDICTION AND VENUE

18. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business in Illinois and has committed the complained of acts in Illinois.

19. Venue is proper in Cook County because Plaintiff resides in this county, and Defendant conducts business transactions in this county, including maintaining stores and distribution centers in this county.

FACTUAL BACKGROUND

I The Biometric Information Privacy Act.

20. In the early 2000's, major national corporations started using Chicago and other locations in Illinois to test "new [consumer] applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias." 740 ILCS 14/5(b). Given its relative infancy, an overwhelming portion of the public became weary of this then-growing, yet unregulated technology. *See* 740 ILCS 14/5.

21. In late 2007, a biometrics company called Pay By Touch—which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions—filed for bankruptcy. That bankruptcy was alarming to the Illinois Legislature because suddenly there was a serious risk that millions of fingerprint records—which, are unique biometric identifiers, that can be linked to people's sensitive financial and personal data— could now be sold, distributed, or otherwise shared through the bankruptcy proceedings without adequate protections for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who had used that company's fingerprint scanners were completely unaware that the scanners were not actually transmitting fingerprint data to the retailer who deployed the scanner, but rather to the now-bankrupt company, and that their unique biometric identifiers could now be sold to unknown third parties.

22. Recognizing the "very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information," Illinois enacted BIPA in 2008. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS 14/5.

23. BIPA is an informed consent statute which achieves its goal by making it unlawful for a company to, among other things, "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers 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. 740 ILCS 14/15(b) (emphasis added).

24. Biometric identifiers include retina and iris scans, voiceprints, scans of hand and face geometry and fingerprints. *See* 740 ILCS 14/10.

25. Biometric information is separately defined to include any information based on an individual's biometric identifier that is used to identify an individual. *See id.* In this case, Plaintiff and the Class' voice prints were taken as a form of a biometric identifier to store in Defendant's database and used to identify them.

26. BIPA also establishes standards for how companies must handle Illinois workers' biometric identifiers and biometric information. *See* 740 ILCS 14/15(c)–(d). For instance, BIPA requires companies to develop and comply with 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 such identifiers or information has been satisfied or within three years of the individual's last interaction with the company, whichever occurs first, and must comply with that policy. 740 ILCS 14/15(a).

27. BIPA is applicable even for entities that are not employers but collect and maintain biometric data.

II. Walmart Violates the Biometric Information Privacy Act.

28. By the time BIPA passed through the Illinois Legislature in mid-2008, many companies who had experimented with using biometric data as an authentication method stopped doing so, at least for a time. That is because Pay By Touch's bankruptcy, described in Section I

above, was widely publicized and brought attention to consumers' discomfort with the use of their biometric data.

29. Unfortunately, Defendant, despite knowing about BIPA and its requirements, specifically continues to collect, store, and use its workers' biometric data in violation of the BIPA.

30. Specifically, when warehouse workers, in particular, pickers, first begin work at one of Defendant's warehouses or distribution facilities, as discussed above, they are required to provide extensive voice prints, by having to read into the biometric and inventory computer system what are known as "Pick Task-Voice Template Words" or certain words, phrases and numbers or numerical sequences that are likely to be used by a picker. They must repeat the word once, or several times in order to enable the technology's intelligence to recognize their voices and voice patterns.

31. Such words or phrases include "next pick", "repeat pick", "trip summary", "say again" and "repeat label". Numbers include "000", "101" and "929".

32. Pickers thereafter use this voice recognition technology each time that they are engaged in filling orders by assembling goods from various parts of the warehouse and filling a pallet to be packaged thereafter.

33. Defendant intentionally, recklessly or negligently failed to inform its workers of the complete purposes for which it collects their sensitive biometric data or to whom the data is disclosed, if at all, and failed to obtain their knowing consent to use their biometric data

34. Defendant intentionally, recklessly or negligently failed to provide its workers with a written, publicly available policy identifying its retention schedule, and guidelines for permanently destroying its workers' voiceprints when the initial purpose for collecting or obtaining their voice prints is no longer relevant, as required by BIPA. A worker who leaves the company does so without any knowledge of when his biometric identifiers will be removed from

Defendant's databases -- or if they will ever be. Moreover, Defendant failed to comply with any written schedule.

35. The Pay By Touch bankruptcy that catalyzed the passage of BIPA highlights why conduct such as Defendant's —whose workers are aware that they are providing biometric identifiers but are not aware of to whom or the full extent of the reasons they are doing so—is so dangerous. That bankruptcy spurred Illinois citizens and legislators to realize a critical point: it is crucial for people to understand when providing biometric data who exactly is collecting it, who it will be transmitted to, for what purposes, and for how long. But Defendant disregards these obligations, and instead unlawfully collects, stores, and uses its employees' and workers' biometric identifiers and information without proper consent.

36. Ultimately, Defendant disregards its employees' and workers' statutorily protected privacy rights by violating the BIPA.

II. FACTS SPECIFIC TO PLAINTIFF

A. Plaintiff Barton

37. Plaintiff Barton worked as a picker at Walmart's distribution facility in Elwood from the period of March 16, 2019 to May 2021.

38. In order to train pickers, Walmart has trainers who would direct pickers to provide voice templates of certain words, phrases, numbers, and series of numbers that would be relevant to picking. It would take the technology several hours of training and working with the picker for the technology to be able to recognize a picker's voice.

39. Specifically, pickers would enter their employee numbers into a system. The technology would confirm with them that they were using a voice recognition technology method of picking, and then the system would tell them where on the lot to go to pick up an order. Once they picked up that order, they would then have to tell the technology that they had picked up that

order and what they had picked up.

40. At the beginning of his employment, Plaintiff was told that the Company used a voice print system for its pickers, and that he was required to provide certain voice templates, including certain words, phrases and numbers, often used in picking, as described above, so that Walmart's voice recognition technology would learn and become calibrated to his voice.

41. Accordingly, Plaintiff provided his voice print for the technology and in order to use the headset that was necessary to perform his job.

42. Thereafter, each time he was filling an order, he would use a headset, with which he would interact, as described above, and from which he would get orders, and speak into the headset, telling it where he was in the facility, the goods that he was picking and the number of items that he was picking.

43. Defendant never informed Plaintiff Barton of the specific limited purposes or length of time for which it collected, stored, or used his biometric identifier. Similarly, Defendant never informed Plaintiff Barton of any biometric data retention policy it developed, or whether it will ever permanently delete his biometric identifying information.

44. Plaintiff Barton never signed a written release allowing Defendant to collect or store his voice print.

45. Plaintiff Barton has continuously and repeatedly been exposed to the risks and harmful conditions created by Defendant's violations of BIPA alleged herein.

46. Plaintiff Barton now seeks statutory damages under the BIPA as compensation for the injuries Defendant has caused as well as injunctive or other relief.

CLASS ALLEGATIONS

Class Definition

47. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23 on

behalf of himself and a Class of similarly situated individuals, defined as follows:

All persons who, within the applicable statute of limitations and while residing in Illinois, had their voice print collected, captured, received, otherwise obtained, or disclosed by Defendant in Illinois.

48. The following people are excluded from the Class: (1) any judge or magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, agents, and any entity in which the Defendant or its parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

49. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but it is clear that individual joinder is impracticable. Defendant has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from hundreds of workers who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

50. **Commonality and Predominance:** 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 of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a) whether Defendant collected, captured, or otherwise obtained Plaintiff's and the Class's biometric identifiers or biometric information;
- b) whether Defendant properly informed Plaintiff and the Class of its purposes for collecting, using, and storing their biometric identifiers or biometric information;

- c) whether Defendant issued a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's and the Class's biometric identifiers or biometric information;
- d) whether Defendant has sold, leased, traded, or otherwise profited from Plaintiff's and the Class's biometric identifiers or biometric information;
- e) whether Defendant 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 three years of their last interaction, whichever occurs first;
- f) whether Defendant complies with any such written policy (if one exists); and
- g) whether Defendant used Plaintiff's' and the Class's voice prints to identify them.

51. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and have retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to those of the other members of the Class.

52. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all others available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective

relief from Defendant’s misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in their Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

CAUSE OF ACTION

COUNT I

Violation of 740 ILCS 14/1, *et seq.*

(On Behalf of Plaintiff and the Class)

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

54. BIPA requires companies to obtain informed written consent before acquiring biometric data from employees or workers, among others. Specifically, the 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).

55. BIPA also 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 (*i.e.*, when the employment relationship ends); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

56. Defendant fails to comply with these BIPA mandates.

57. Defendant is a corporation and thus qualifies as a “private entity” under the BIPA. *See* 740 ILCS 14/10.

58. Plaintiff and the Class are persons who had their “biometric identifiers” collected by Defendant, as explained in detail in Section II. *See* 740 ILCS 14/10.

59. Plaintiff and the Class’s biometric identifiers or information based on those biometric identifiers were used to identify them, constituting “biometric information” as defined by the BIPA. *See* 740 ILCS 14/10.

60. Defendant violated 740 ILCS 14/15(b)(3) by failing to obtain written releases from Plaintiff and the Class before it collected, used, and stored their biometric identifiers and biometric information.

61. Defendant violated 740 ILCS 14/15(b)(1) by failing to inform Plaintiff and the Class in writing that their biometric identifying information was being collected and stored.

62. Defendant violated 740 ILCS 14/15(b)(2) by failing to inform Plaintiff and the Class in writing of the specific purpose and length of term for which their biometric identifiers or biometric information was being collected, stored and used.

63. Defendant violated 740 ILCS 14/15(a) by failing to publicly provide a retention schedule or guideline for permanently destroying its workers’ biometric identifiers and biometric information and by failing to comply with such a policy.

64. By collecting, storing, and using Plaintiff’s and the Class’s biometric identifiers and biometric information as described herein, Defendant violated Plaintiff’s and the Class’s rights

to privacy in their biometric identifiers or biometric information as set forth in the BIPA, 740 ILCS 14/1, *et. seq.*

65. On behalf of themselves and the Class, Plaintiff seeks:

(A) Injunctive and equitable relief as necessary to protect the interests of the Plaintiff and the Class by requiring Defendant to comply with BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein;

(B) Injunctive and equitable relief as necessary to protect the public good and the public's right to the issuance of a written policy;

(C) Statutory damages of \$1,000 per violation for each of Defendant's negligent violations of the BIPA pursuant to 740ILCS 14/20(1) or \$5,000 for Defendant's intentional or reckless violation of BIPA pursuant to 740ILCS 14/20(2); and

(D) reasonable attorneys' fees and costs and expenses pursuant to 740 ILCS14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, respectfully requests that the 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 Defendant's actions, as set out above, violate the BIPA;

C. Awarding statutory damages of \$1,000 for each of Defendant's violations of BIPA, pursuant to 740 ILCS 14/20(1) and/or \$5,000 for each of Defendant's violations of BIPA, pursuant to 740 ILCS 14/20(2);

D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including an Order requiring Defendant to collect, store, and use biometric identifiers or biometric information in compliance with BIPA;

E. Awarding injunctive and other equitable relief as is necessary to protect the interests of the public in Defendant's issuance of a written policy governing its collection, maintenance and deletion of biometric data;

F. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

G. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and

H. Awarding such other and further relief as equity and justice may require.

JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

Date: July 2, 2021

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