

Victor Chacon
*individually and on behalf of
all others similarly situated*

Plaintiff,

v.

Wendy's International, LLC
*c/o United Agent Group, Inc.
119 E. Court St.
Cincinnati, OH, 45202*

Defendant.

Case No. 2023CH08074

Judge.

CLASS ACTION

FILED DATE: 9/11/2023 3:27 PM 2023CH08074

CLASS ACTION COMPLAINT

NOW COMES Plaintiff, Victor Chacon ("Plaintiff"), individually, and on behalf of all others similarly situated, by and through her Counsel and brings this class action complaint against Wendy's International, LLC ("Wendy's"), pursuant to 735 ILCS §§ 5/2-801 and 2-802, and 740 ILCS § 740/14/15 and alleges as follows:

I. NATURE OF THE ACTION

1. This is a Class Action for money damages arising from Defendant's violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et. seq.*, ("BIPA") in that Defendant illegally collected, stored and used Plaintiff's and other similarly situated individuals' biometric identifiers and biometric information ("biometrics") without informed written consent, in direct violation of BIPA.

2. Illinois legislature has recognized 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.* In response to these concerns over the security of individuals’ biometrics, (740 ILCS 14/5(b)) Illinois enacted BIPA, which provides, *inter alia*, that a private entity 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, *see id.*; (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, *see id.*; (3) receives a written release from the person for the collection of his or her biometric identifiers or information, *see id.*; and (4) publishes publicly available written retention schedules and guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a) and (b).

3. In violation of each of the foregoing provisions of §15(a) and (b) of BIPA, the Defendant collected, stored, and used – without providing notice, obtaining informed written consent or publishing data retention policies – the biometrics of hundreds or more unwitting Illinois resident citizens.

4. If Defendant’s database of biometric information were to fall into the wrong hands, by data breach or otherwise, the individuals to whom these sensitive biometric identifiers belong could have their identities stolen. 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. Yet Defendant never adequately informed anyone of its biometrics collection practices, never obtained written consent from individuals regarding its biometric practices, and

never provided any data retention or destruction policies to anyone.

5. Plaintiff seeks class certification pursuant to 735 ILCS 5/2-801 and on behalf of all others similarly situated (“the Class”), brings this action against for claims against Wendy’s relating to actual harm and injury suffered by Plaintiff and others who are similarly situated.

II. FACTS COMMON TO ALL COUNTS

6. Plaintiff, Victor Chacon, is and at all times relevant to this action was domiciled in Illinois.

7. During 2018 and 2019, Plaintiff worked as a cook for Defendant’s Wendy’s restaurant located at 3700 Touhy Ave., Skokie, IL.

8. During Plaintiff’s employment, Wendy’s required its employees to clock in and out using their thumb and/or hand/finger scan.

9. Plaintiff observed other individuals also clock in and out using the same biometric device.

10. At no time was Plaintiff informed in writing that his biometric information was being collected or stored or of the specific purpose and length of term for which his biometric information was being collected, stored, and used.

11. At no time did Plaintiff execute a writing releasing or permitting Defendant to utilize his biometric information.

12. At no time was Plaintiff provided with a publicly available written policy regarding a schedule or guideline for the retention and permanent destruction of her biometric information.

13. Defendant is an Ohio Corporation and does substantial business in Illinois.

14. Finger scans are unique, permanent biometric identifiers associated with each

user that cannot be changed or replaced if stolen or compromised. Wendy's unlawful collection, obtainment, storage, and use of biometric data exposes the individual whose biometrics was captured to serious and irreversible privacy risks. For example, if the scanning device containing finger scans or other sensitive, proprietary biometric data is hacked, breached, or otherwise exposed, Plaintiff and similarly situated employees would have no means by which to prevent identity theft, unauthorized tracking or other unlawful or improper use of this highly personal and private information.

15. However, Wendy's does not inform the individuals in writing that biometric identifiers or information will be collected or stored.

16. Wendy's does not inform individuals in writing of the specific purpose and length of term for which such biometric identifiers or biometric information is being collected, stored and used.

17. Wendy's does not receive written releases from the workers for the collection of his or her biometric identifiers or information.

18. Wendy's does not publish publicly available written retention schedules and guidelines for permanently destroying biometric identifiers and biometric information.

I. Illinois' Biometric Information Privacy Act

19. In 2008, Illinois enacted BIPA due to the "very serious need [for] protections for the citizens of Illinois when it [comes to their] biometric information." Illinois House Transcript, 2008 Reg. Sess. No. 276. 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 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).

20. 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).

21. As alleged herein, Wendy's practice of collecting, storing, and using individuals' biometric identifiers without informed written consent violates all three prongs of § 15(b) of BIPA. Defendant's failure to provide a publicly available written policy regarding their schedule and guidelines for the retention and permanent destruction of individuals' biometric information also violates §15(a) of BIPA.

II. Defendant's Utilization of Biometric Information to Advance their Commercial Interests

22. Wendy's has implemented biometric technology including finger scans to verify workers' identities for time-keeping purposes.

23. Plaintiff's biometric information was collected, captured, stored and used by Defendant in furtherance of the commercial interests of the Defendant.

III. Defendant's Violations of Illinois' Biometric Information Privacy Act

24. Upon investigation and belief, Defendant has violated BIPA by collecting and

storing the biometric information of its employees in Illinois without first informing them in writing that their biometric information is or will be collected and stored; Wendy's is not first informing users in writing of the specific purpose and length of term for which their respective biometric identifiers or biometric information will be collected, stored, and/or used; nor is Wendy's first securing written releases from each respective user.

III. CLASS ACTION ALLEGATIONS

25. This action is brought by the named Plaintiff on his own behalf and on behalf of a proposed Class of all other persons similarly situated, pursuant to 735 ILCS 5/2-801 defined as follows: All Illinois citizens who had their biometric identifiers, information or data captured, collected, stored or used by the Defendant in violation of 740 ILCS 14/1, et. seq.

26. All members of the proposed Class are citizens of Illinois. The principal injuries resulting from the alleged conduct or any related conduct were incurred in Illinois.

27. The Class is so numerous that the individual joinder of all members is impracticable. While the exact number of Class members is unknown at this time, it is generally ascertainable by appropriate discovery, is in the exclusive control of the Defendant's, and it is believed that the Class may include hundreds or thousands of members.

28. Common questions of law or fact arising from the Defendant's conduct exist as to all members of the Class, as required by 735 ILCS 5/2-801. These common questions include, but are not limited to, the following:

- a. Whether the Defendant captured, collected, stored or used the biometric information of Plaintiff and the Class?
- b. If the Defendant captured, collected, stored or used the biometric information of the Plaintiff and the Class, did the Defendant inform the Plaintiff and the Class in writing that a biometric identifier or biometric

information was being collected or stored?

- c. If the Defendant captured, collected, stored or used the biometric information of the Plaintiff's and the Class, did the Defendant inform the Plaintiff and the Class in writing of the specific purpose and length of term for which a biometric identifier or biometric information was being collected, stored, and used?
- d. If the Defendant captured, collected, stored or used the biometric information of the Plaintiff's and the Class, did the Defendant receive a written release executed by the Plaintiff and the Class of the biometric identifier or biometric information or the Plaintiff's or Class' legally authorized representative?
- e. If the Defendant captured, collected, stored or used the biometric information of the Plaintiff's and the Class, did the Defendant 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?
- f. Whether the Defendant captured, collected, stored or used the biometric information of its employees?

29. Class action treatment provides a fair and efficient method for the adjudication of the controversy herein described, affecting a large number of persons, joinder of whom is impracticable. The class action device provides an appropriate and effective method whereby the enforcement of the rights of Plaintiff and members of the Class can be fairly managed without unnecessary expense or duplication. The expense and burden of individual litigation of a case of this magnitude makes it impracticable for individual Class members to seek redress for the wrongs worked upon them.

30. Individual litigation of all claims which might be asserted by all Class members

would produce such a multiplicity of cases that the judicial system having jurisdiction of the claims would remain congested for years. The certification of a Class would allow litigation of claims that, in view of the expenses of litigation, may be insufficient in amounts to support separate actions. Concentrating this litigation in one forum would aid judicial economy and efficiency, promote parity among the claims of individual Class members, and result in judicial consistency.

31. Plaintiff will fairly and adequately protect the interests of the Class which Plaintiff represents. The interests of Plaintiff, as the Class representative, is consistent with those of the members of the Class. In addition, Plaintiff is represented by counsel experienced in complex and class action litigation.

32. The prosecution of separate actions by individual members of the Class would create a risk of:

- a. Inconsistent or varying adjudications with respect to individual members of the Class; and
- b. Adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

33. Plaintiff and Class members envision no unusual difficulty in the management of this action as a Class action.

34. Defendant is duly licensed to transact business in the State of Illinois.

35. Defendant is a “private entity” pursuant to BIPA.

36. Defendant is a private entity that collects biometric information from many of the employees.

IV. LEGAL CLAIMS

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

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

38. 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).

39. As part of clocking in and out of work, Plaintiff and the Class Members were required to allow Defendant to collect their thumb and/or hand/finger scan *i.e.*, their biometric information.

40. At the time of collecting and retaining Plaintiff's and the Class Members' biometric information, Defendant 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 Defendant, whichever occurs first.

41. 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).

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

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

50. 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).

51. Defendant did not inform Plaintiff and the Class Members in writing that Defendant was collecting or storing his biometric information.

52. In fact, Defendant made no mention of biometric information, collection of biometric information, or storage of biometric information.

53. Moreover, Defendant did not inform Plaintiff and the Class Members in writing of the specific purpose and length of term for which their biometric information was being collected, stored, and used.

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

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

55. Plaintiff realleges and incorporates by reference all allegations in all preceding

paragraphs.

56. 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).

57. 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).

WHEREFORE, individually, and on behalf of the proposed Class members, the Plaintiff prays for: (1) certification of this case as a class action pursuant to 735 ILCS 5/2-801 appointing the undersigned counsel as class counsel; (2) a declaration that Wendy's has violated BIPA, 740 ILCS 14/1 *et seq.*; (3) statutory damages of \$5,000.00 per violation for the 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 non-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 deemed appropriate.

Dated: September 11, 2023

Respectfully submitted,

s/ Michael L. Fradin

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wendy's Collected Employees' Fingerprints Without Permission, Class Action Claims](#)
