

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

TYLER WEEKES, individually and on behalf )  
of all others similarly situated, )

*Plaintiff,* )

v. )

COLDWELL )  
BANKER, )

*Defendant.* )

Case No. 2024CH04177

**CLASS ACTION COMPLAINT**

Plaintiff Tyler Weekes (“Plaintiff”), 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 Defendant Coldwell Banker (“Coldwell” or “Defendant”), alleges on personal knowledge, due investigation of his counsel, and, where indicated, on information and belief as follows:

**NATURE OF THE ACTION**

1. The past two decades have seen an exponential growth in technologies capable of verifying a person’s identity based on his or her biometric data — *i.e.* “biometric identifiers” (immutable physical features such as fingerprints, retinal scans, scans of facial geometry, among others) and “biometric information” (any unique, identifying information captured, collected, and/or stored based on one’s biometric identifier). *See* 740 ILCS 14/15.

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,

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is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions.” *Id.*

3. These risks are prevalent in the employment context, as many businesses — such as Coldwell — have sought to reduce overhead by implementing biometric technology that collects and stores biometric data to verify the user’s identity.

4. Recognizing the need to protect its citizens from these type of risks, Illinois enacted BIPA in 2008 to regulate the manner in which private entities collect, store, use, and transmit biometric data. In pertinent part, BIPA prohibits private entities from obtaining and/or possessing an individual’s biometric data unless they first: (1) inform that person in writing that biometric identifiers or information will be collected or stored; (2) provide that person with written notice of the specific purpose and length of term for which such biometric identifiers and/or information is being collected, stored, and used; (3) receive a signed written release from the person authorizing the collection of his or her biometric identifiers and/or information; and (4) develop and comply with a publicly-available retention schedule and guidelines for permanently destroying the biometric identifiers and/or information within certain timeframes. *See* 740 ILCS 14/15(a)-(b).

5. Thus, employers remain free to implement biometric technology so long as they comply with BIPA’s comprehensive regulatory regime.

6. But despite that BIPA was enacted more than a decade ago, Coldwell disregarded its statutory obligations. At some point prior to 2017, Coldwell implemented a biometric lock box known as the “KeyTrack” that required current and former employees such as Plaintiff to verify their identities through a fingerprint scanner in order to access keys to available rental units — without first obtaining their informed consent to creating the requisite biometric retention and destruction policy.

7. Accordingly, Plaintiff, on behalf of himself and all other similarly-situated individuals, brings this class action to recover statutory damages for Coldwell’s illegal collection, storage, and use of its current and former employees’ biometric data in violation of BIPA.

**JURISDICTION AND VENUE**

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

9. Venue is proper in this County pursuant to 735 ILCS 5/2-101 because Coldwell conducts its usual and customary business in this County. 735 ILCS 5/2-102(a).

**PARTIES**

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

11. Defendant Coldwell Banker is a New Jersey limited liability company whose principal place of business is located in Atlanta, Georgia.

**FACTUAL BACKGROUND**

**I. Illinois enacts the Biometric Information Privacy Act.**

12. Biometrics are unlike other identifiers because they are a permanent, biologically-unique identifier associated with the individual. Because one cannot simply change her fingerprints or facial geometry, the collection, use, and storage of biometric identifiers and biometric information creates a heightened risk of identity theft. *See* 740 ILCS 14/5(c).

13. In the 2000s, major national corporations started using Chicago and other locations in Illinois to test new applications of biometric-facilitated transactions. *See* 740 ILCS 14/5(b).

14. In late 2007, a biometrics company called Pay by Touch—which provided major

retailers throughout the State of Illinois with biometric scanners to facilitate consumer transactions—filed for bankruptcy. That bankruptcy was alarming to the Illinois legislature because suddenly there was a serious risk that citizens’ biometric records—which 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. The bankruptcy also highlighted that many persons who used the biometric scanners were unaware that the scanners were transmitting their data to the now-bankrupt company, and that their biometric identifiers and information could then be sold to unknown third parties.

15. To protect citizens from the risks posed by all biometric technology, the Illinois Legislature passed BIPA, a comprehensive regulatory regime governing the manner in which private entities such as Coldwell collect, store, use, transmit, and dispose of biometrics.

16. One component of this regime is Section 15(b) of BIPA, which requires entities to obtain informed written consent to their specific biometric technology before collecting one’s biometric identifiers and/or information. *See* 740 ILCS 14/15(b). To that end, Section 15(b) makes it unlawful for a private entity to collect, capture, purchase, receive through trade, or otherwise obtain a person’s biometric identifier or information without first::

(1) inform[ing] the subject...in writing that a biometric identifier or biometric information is being collected or stored;

(2) inform[ing] 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) receiv[ing] a written release executed by the subject of the biometric identifier or biometric information or the subject’s legally authorized representative.”

*Id.*

17. BIPA also prohibits a private entity from possessing biometrics without first

develop and adhering to a written policy—made available to the public—establishing a retention schedule and guidelines for permanently destroying biometric identifiers and 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. 740 ILCS 14/15(a).

## **II. Defendant Violates Illinois’ Biometric Information Privacy Act.**

18. The biometric device at issue — the KeyTrack — is a biometric lock box used to store keys to the rental units shown to Coldwell’s potential customers. Unlike traditional lock boxes, the KeyTrack verifies the user’s identity through a fingerprint scanner.

19. To use the KeyTrack, a new employee must first “enroll” in the system by providing a “template” fingerprint that is scanned and stored on the device.

20. Once the enrollment process is complete, the employee can then scan his or her fingerprint to access the keys stored inside the KeyTrack.

21. Since at least 2017, Coldwell has required its current and former employees to use the KeyTrack each time they seek access or return the keys to an available rental unit in connection with a showing.

22. In violation of § 15(b)(1) of BIPA, Coldwell scanned, collected, and stored digital copies of its current and former employees’ fingerprints on each occasion they use the KeyTrack at one of Coldwell’s Illinois locations — all without informing anyone of this practice.

23. In violation of §§ 15(b)(2) and 15(b)(3) of BIPA, Coldwell never informed those employees about the specific purpose and length of time for which their biometric identifiers or information would be collected, stored and used, nor did Coldwell obtain a written release from them.

24. In direct violation of § 15(a) of BIPA, Coldwell did not have written, publicly available policies identifying its retention schedules or guidelines for permanently destroying any of these biometric identifiers and/or biometric information.

### **III. Plaintiff's Experiences.**

25. From January 2017 to October 2022, Coldwell employed Plaintiff as a real estate broker at a number of its facilities in Chicago.

26. At the outset of his employment, Coldwell required Plaintiff to enroll his fingerprints in the KeyTrack by using its fingerprint scanner, and thereby collected and stored digital copies of his fingerprints.

27. From that point forward, Coldwell required Plaintiff to access the keys to available rental units via the KeyTrack, which scanned, collected, and stored Plaintiff's fingerprints to verify his identity each time he did so.

28. Coldwell did not provide Plaintiff with the requisite statutory disclosures — let alone the opportunity to prevent the collection, storage and use of his unique biometric identifier and/or biometric information — before it began requiring him to use the KeyTrack.

29. Plaintiff did not receive, nor did he sign, a written disclosure authorizing the collection, use, and storage of his unique biometric identifier and/or biometric information before Coldwell began requiring him to use the KeyTrack.

30. By collecting Plaintiff's unique biometric identifiers and/or biometric information without first obtaining his informed written consent, Coldwell invaded Plaintiff's statutorily protected right to privacy in his biometrics data.

31. Finally, Coldwell did not provide Plaintiff with a written policy setting forth its retention schedules and guidelines for permanently destroying his biometric identifiers and/or

biometric information before it began requiring him to use the KeyTrack. Indeed, Coldwell did not even have such a policy at the time (publicly-available or otherwise).

**CLASS ALLEGATIONS**

32. **Class Definition:** Plaintiff brings this action on behalf of a class of similarly situated individuals, defined as follows (the “Class”):

All individuals who had their fingerprint scanned at any of Defendant’s Illinois facilities during the applicable statutory period.

33. Plaintiff represents and is a member of the Class. Excluded from the Class are Defendant and any entities in which Defendant has a controlling interest, Defendant’s employees and agents, the Judge to whom this action is assigned, and any member of the Judge’s staff and immediate family.

34. Plaintiff and all members of the Class have been harmed by Defendant’s acts and omissions.

35. Defendant’s acts and omissions denied the Class the opportunity to consider whether the terms of Defendant’s collection, storage, and usage of their biometric identifiers and/or biometric information were acceptable given the attendant risks, and denied them the ability to use the undisclosed information in the way BIPA envisioned, all of which harmed their concrete interests that the legislature sought to protect by enacting BIPA.

36. **Numerosity:** The number of persons within the Class is substantial and includes hundreds of persons. It is, therefore, impractical to join each member of the Class as named plaintiffs. 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 Defendant's and/or third-parties' records.

37. **Commonality and Predominance:** 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 Defendant collected or otherwise obtained Plaintiff's and the Class's biometric identifiers and/or biometric information;
- (b) whether Defendant properly informed Plaintiff and the Class that it collected, used, and stored their biometric identifiers and/or biometric information;
- (c) whether Defendant obtained a written release (as defined in 740 ILCS 1410) to collect, use, and store Plaintiff's and the Class's biometric identifiers and/or biometric information;
- (d) 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 3 years of their last interaction, whichever occurs first;
- (e) whether Defendant used Plaintiff's and the Class's biometric identifiers and/or biometric information to identify them; and
- (f) whether Defendant's violations of BIPA were committed intentionally, recklessly, or negligently.

38. **Adequate Representation:** 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 Defendant took.

39. **Appropriateness:** A class action is an appropriate method 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 DEFENDANT  
VIOLATION OF 740 ILCS 14/15(a) – FAILURE TO INSTITUTE, MAINTAIN, AND ADHERE TO  
PUBLICLY AVAILABLE RETENTION SCHEDULE**

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

41. BIPA mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention and 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).

42. Defendant failed to comply with these statutory obligations.

43. Defendant is a company registered to do business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS 14/10.

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

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

46. Defendant 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).

47. Defendant lacked retention schedules and guidelines for permanently destroying Plaintiff's and the Class's biometric data.

48. As such, the only reasonable conclusion is that Defendant has 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.

49. 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 Defendant 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).

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

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

51. BIPA requires companies to obtain informed written consent from individuals 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).

52. Defendant failed to comply with these BIPA mandates.

53. Defendant is a company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS 14/10.

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

55. 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.

56. Defendant 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).

57. Defendant 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 Defendant 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).

58. By collecting, capturing, storing, and/or 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 and/or biometric information as set forth in BIPA. *See* 740 ILCS 14/1, et seq.

59. These violations stemmed from a deliberate, company-wide policy to implement a biometric temperature screening system at Defendant's Illinois facilities. To that end, Defendant specifically intended to collect Plaintiff's and the Class's unique biometric identifiers and/or information for the purpose of verifying their identities as a part of the temperature screening process.

60. 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 Defendant 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 Tyler Weekes 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 representatives of the Class, and appointing his counsel as Class Counsel;
- B. Declaring that Defendant's actions, as set out above, violate BIPA, 740 ILCS 14/1, *et seq.*;
- C. Awarding Plaintiff and the Class 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 Defendant's 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 Defendant 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.

Dated: May 6, 2024

Respectfully submitted,

**TYLER WEEKES, individually and on behalf of  
all others similarly situated,**

By: /s/ Gregg M. Barbakoff

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