

Firm No. 39042

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

TIMOTHY FRANKLIN & DARIEN EVANS,)	
individually and on behalf of others similarly)	
situated,)	
)	
Plaintiffs,)	Case No. 2023CH08102
)	
v.)	
)	
TROY DESIGN & MANUFACTURING CO.)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

Plaintiffs, Timothy Franklin and Darien Evans, bring this class action complaint against Defendant, Troy Design & Manufacturing Co. (“Troy”), for its violation of the Illinois Biometric Privacy Act, and allege:

NATURE OF THE ACTION

1. When workers are hired at Troy, they scan their facial geometry into its biometric timekeeping system. Thenceforth, an employee must present their face to the system to “punch” in or out of work each day, so Troy can record the employee’s arrival, departure and break times.

2. The use of a biometric timekeeping system in the workplace entails serious risks. Unlike key fobs or identification cards, which can be changed or replaced if stolen or compromised, facial geometry is a permanent, unique biometric identifier associated with the worker. This exposes workers to serious and irreversible privacy risks. For example, if a device or database containing workers’ facial geometry data is hacked, breached, or otherwise exposed,

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workers have no means by which to prevent identity theft and unauthorized tracking.

3. Recognizing the need to protect citizens from these risks, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, et seq. (“BIPA”), to regulate companies that collect and store biometric information based on facial geometry or other biometric identifiers.

4. Despite BIPA’s protections, Troy disregarded its workers’ privacy rights, unlawfully collected, stored, and/or used their biometric information in violation of the BIPA.

Specifically, Troy violated the BIPA by failing to:

- Inform its workers in writing it was storing their facial geometry data;
- Inform its workers in writing of the specific purposes and length of time for which it was collecting, storing, and using their facial geometry data;
- Provide a publicly available retention schedule and guidelines for permanently destroying its workers’ facial geometry data; or
- Obtain written releases from its workers allowing it to collect, capture, or otherwise obtain their geometry data.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Troy pursuant to 735 ILCS 5/2-209(a) because Troy transacts business and committed tortious acts in Illinois.

6. Venue is proper because Troy employs Illinois staff at 3400 E. 126th Pl., Chicago, Illinois 60633, and the actions alleged herein occurred in whole or in part at that location.

PARTIES

7. Plaintiff, Timothy Franklin, is a natural person who resides in Cook County, Illinois.

8. Plaintiff, Darien Evans, is a natural person who resides in Cook County, Illinois.

9. Defendant Troy is a wholly owned subsidiary of Ford Motor Company, that owns and operates an Illinois workshop to modify or customize Ford fleet vehicles.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

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

11. Biometrics are unlike other identifiers. For example, when an identification card or number is compromised, it can be changed. Biometrics, however, are biologically unique to the individual. Thus, once compromised, the individual has no recourse, and is at heightened risk for identity theft. *See* 740 ILCS 14/5(c).

12. 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 citizens' fingerprint records—which, like other unique biometric identifiers, 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 that company's biometric scanners were unaware that the scanners were transmitting their data to the now-bankrupt company, and that their biometric identifiers could then be sold to unknown third parties.

13. Recognizing the “very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information,” Illinois enacted the BIPA in 2008. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276, p.249 (May 30, 2008); and *see* 740 ILCS 14/5(g).

14. The BIPA makes it unlawful for a company to 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 person in writing that a biometric identifier or biometric information is being collected or stored;
- (2) informs the person 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 person whose biometric identifier or biometric information is being collected, stored, or used.

740 ILCS 14/15(b).

15. These restrictions were specifically meant to apply to Illinois workers. The BIPA defines a “written release” specifically “in the context of employment [as] a release executed by an employee as a condition of employment.” 740 ILCS 14/10.

16. The BIPA also 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. 740 ILCS 14/15(a).

17. The BIPA further prohibits a private entity in possession of a biometric identifier or information from selling, leasing, trading, or otherwise profiting from that information, and it generally prohibits disclosing or disseminating a person’s biometric identifier or information without the person’s consent. 740 ILCS 14/15(c) and (d).

18. By the time Illinois enacted the BIPA in 2008, many companies that had experimented with using biometric data as an authentication method stopped. That is because Pay By Touch’s bankruptcy, described above, was widely publicized and brought attention to the public’s discomfort with the use of their biometric data. Despite the recognized dangers of using biometric data, a number of companies still use biometric scanners to identify their workers.

19. Troy was one such company during Plaintiffs' time there. When Plaintiffs were hired to work at Troy, they had to scan their face into Troy's facial-recognition timekeeping system, which recorded their facial geometries.

20. Unlike a traditional timekeeping system that allows workers to "punch" in and out using a card or key fob, Troy's system requires the employee to stand before a camera that "reads" the employee's facial points and contours, and then compares that information to stored facial geometry information the system has for that worker.

21. The Federal Trade Commission ("FTC") has raised concerns about the use of facial-recognition technology, and released a "Best Practices" guide in 2012. In the guide, the FTC underscores the importance of obtaining affirmative consent before collecting a person's biometric identifiers and information, and maintaining appropriate "retention and disposal" practices for any biometric data collected.

22. Despite using this technology, and despite the fact BIPA has been the law for more than a decade, Troy did not (a) inform its workers in writing that it would capture or store their facial geometry information; (b) inform its workers in writing of the specific purposes and length of time for which it would capture, store, and use their facial geometry information; or (c) obtain a written release from each worker authorizing Troy to capture or store their facial geometry information, thus violating BIPA.

23. Also, Troy did not give its workers a written, publicly-available policy identifying its retention schedule, or guidelines for permanently destroying its employees' facial geometry information when its initial purpose for capturing that information was no longer relevant, as required by the BIPA. Thus, when a worker stopped working for Troy, the worker was not told

when their biometric information would be removed from Troy's database—if ever—in further violation of BIPA.

II. Plaintiffs' Factual Allegations

24. Plaintiffs were each hired as temporary mechanics for Troy's Chicago location.

25. Each workday, at the start and end of their shifts, Plaintiffs were required to look into a device attached to Troy's timekeeping system to allow it to scan their facial geometries. The system would then compare the scan to the facial geometry information the system had on file for them, so it could identify them and mark the time of their arrival or departure from work.

26. Plaintiffs observed other workers clocking-in and out of Troy's timekeeping system in the same manner.

27. Troy stored or caused Plaintiffs' and other workers' facial geometry information to be stored in its computer system.

28. Plaintiffs were never specifically informed of the purposes or length of time for which Troy collected, stored, or used their facial geometry information.

29. Plaintiffs were not informed of any biometric data retention policy at Troy, nor were they informed of whether Troy would ever permanently delete their facial geometry information.

30. Plaintiffs were never provided with nor signed a written releases allowing Troy to collect or store their facial geometry information.

31. As a result of Troy's actions, Plaintiffs are concerned about what happened to the biometric information Troy collected for them, whether Troy deleted their information, and whether (and with whom) Troy may have shared their information.

CLASS ALLEGATIONS

32. Plaintiffs bring this action on behalf of themselves and the following class of similarly-situated individuals:

All persons whose face was scanned using Troy's timekeeping system in Illinois at any time from five years before the date of Plaintiffs' original complaint to the date the class is certified. The following people are excluded from the Class: (1) any judge presiding over the action and their families and staff (2) Defendant and its owners, officers, directors, parents, subsidiaries, successors, predecessors; and (3) Plaintiffs' and Defendant's counsel and their staffs.

Plaintiffs reserve the right to amend this definition following discovery about the class.

33. The class is so numerous that joinder is impracticable. Plaintiffs worked at Troy five to six days a week for months and, based on their observations, they estimate Troy had forty persons working at a time during their employment, and observed new temporary workers were brought in on a regular basis. Further, Plaintiffs observed Troy had its other workers use its facial-geometry-scanning timekeeping system to "punch" in and out, and thus it collected, captured, received, or otherwise obtained biometric identifiers or information from each worker.

34. There are questions of law or fact common to the Class that predominate over any questions that may affect individual members. The common questions include, but are not necessarily limited to:

- a) whether Troy collected, captured, or otherwise obtained the Class's biometric identifiers or information;
- b) whether Troy informed Class members in writing of the specific purposes for collecting, using, and storing their biometric identifiers or information, and the length of time it would store or use them;
- c) whether Troy obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store the Class's biometric identifiers or information;

- d) whether Troy disclosed or re-disclosed the Class members' biometric identifiers or information to any third party;
- e) whether Troy sold, leased, traded, or otherwise profited from the Class's biometric identifiers or information;
- f) whether Troy developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and information;
- g) whether Troy complies with any such written policy;
- h) whether Troy violated the BIPA; and
- i) whether Troy's BIPA violations were negligent, reckless, or intentional.

35. Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex and class action litigation. Plaintiffs have no interests antagonistic to those of the Class.

36. A class action is appropriate to resolve the claims at issue because: (i) the prosecution of separate actions by the members of the Class would wastefully burden the judicial system with the need to resolve the common factual and legal questions this case presents over and over; (ii) requiring members of the Class to prosecute their own individual lawsuits would work an injustice, as it would prevent class members who are unaware they have a claim, or lack the time, ability, or wherewithal to bring their own lawsuit and find a lawyer willing to take their case, from obtaining relief; (iii) requiring individual class member lawsuits would create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests, or create conflicting and incompatible standards of conduct; and (iv) proceeding on a class basis will not create any significant difficulty in the management of this litigation, as the class members' claims can be proven from Troy's

business records and, having been employed by Troy, class members will be easily identified from Troy's business records.

COUNT I
Violation of 740 ILCS 14/1, *et seq.*
(On Behalf of Plaintiffs and the Class)

37. Plaintiffs incorporate the above allegations as if fully set forth herein.

38. The BIPA requires companies to obtain informed written consent from workers before acquiring their biometric data. Specifically, the BIPA makes it unlawful for any private entity to “collect, capture, purchase, receive through trade, or otherwise obtain a person’s ... biometric identifier 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).

39. The BIPA also mandates that companies in possession of a biometric identifiers or information establish and maintain a satisfactory biometric data retention and—importantly—deletion policy. Specifically, such companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanently destroying biometric identifiers and information when the initial purpose for collecting or obtaining that data has been satisfied (*e.g.*, when the employment relationship ends); and (ii) actually adhere to that schedule. *See* 740 ILCS 14/15(a).

40. Plaintiffs and class members are individuals whose “biometric identifiers” or “biometric information,” as defined by the BIPA, were collected by Troy. *See* 740 ILCS 14/10.

41. Troy captured Plaintiffs' and the class members' facial geometry information to identify them.

42. Troy is a corporation, and thus a "private entity" subject to BIPA. *See* 740 ILCS 14/10.

43. Nevertheless, Troy negligently, recklessly, or intentionally violated the BIPA's mandates. Troy owed Plaintiffs and class members an obligation to comply with their BIPA rights, but instead violated their BIPA rights.

44. Troy's violation of Plaintiffs' and the class members' BIPA rights renders it liable to Plaintiffs and the Class members for \$1,000 or \$5,000 in liquidated damages per violation, plus equitable relief, attorneys' fees, and costs. 740 ILCS 14/20.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Timothy Franklin and Darien Evans, on behalf of themselves and the Class, respectfully request that the Court enter an Order:

A. Certifying this case as a class action on behalf of the Class defined above (or on behalf of such other class the Court deems appropriate), appointing Plaintiffs as representatives of the Class, and appointing their attorneys as class counsel;

B. Awarding liquidated damages of \$1,000 for each negligent violation, and \$5,000 for each intentional or reckless violation, of the BIPA that Troy committed;

C. Awarding injunctive and other equitable relief as is necessary to protect the interests of Plaintiffs and the Class, including an order requiring Troy to destroy their biometric identifiers and information after termination of their relationship;

D. Awarding Plaintiffs and the Class their reasonable attorneys' fees and costs; and

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

Dated: September 12, 2023

Respectfully submitted,

s/Keith J. Keogh

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Judge: No hearing information was found.

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Chancery Division Civil Cover Sheet
General Chancery Section

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Timothy Franklin & Darien Evans, individually and on behalf of o
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CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

Only one (1) case type may be checked with this cover sheet.

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- 0014 Dissolution of Partnership
- 0015 Equitable Lien
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- 0017 Mandamus
- 0018 Ne Exeat
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- 0020 Quiet Title
- 0021 Quo Warranto
- 0022 Redemption Rights
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- 0024 Rescission of a Contract
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- 0050 Internet Take Down Action (Compromising Images)
- Other (specify) _____

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