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Cook County, IL

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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2019CH13272

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

DANNY ROUND, on behalf of himself and all
others similarly situated,

7387056

Plaintiff,

v.

2019CH13272

DO & CO CHICAGO CATERING, INC,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Danny Round brings this Class Action Complaint against Defendant DO & CO Chicago Catering, Inc. ("D&C") to put a stop to its unlawful collection, use, and storage of Plaintiff's and the proposed Class's sensitive biometric data. Plaintiff alleges as follows based upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. This is an action under the Biometric Information Privacy Act, 740 ILCS 14/ 1, *et seq.* ("BIPA") brought by Plaintiff on behalf of a putative class of similarly situated individuals, namely, all Illinois citizens who performed work for Defendant in Illinois who had their biometric identifiers, including but not limited to fingerprints, improperly collected, captured, received, or otherwise obtained or used by D&C.

2. In Illinois, upon information and belief, at least one hundred individuals perform work for Defendant, including at the Des Plaines location where Plaintiff performed

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work as a laborer.

3. Individuals who perform work for Defendant in Illinois have been required to place their finger on Defendant's biometric time clocks. That is because Defendant uses a biometric time tracking system (their "Biometric Scanner System") that requires workers and employees to use their fingerprint as part of a means of authentication (in addition to a 4-digit PIN).

4. Illinois enacted the BIPA as an informed consent statute, specifically imposing safeguards to (a) ensure that individuals' privacy rights and control over their biometric identifiers and biometric information are properly honored and protected, and (b) subject private entities who fail to follow the statute's requirements to substantial potential liability.

5. Defendant disregards their workers' statutorily protected rights and unlawfully collects, stores, and uses their biometric data in violation of the BIPA. Specifically, Defendant has committed four distinct violations of (and continues to so violate) the BIPA because it did not (and continues not to):

- Properly inform Plaintiff and Class members in writing that their biometric information or identifiers were being collected;
- Properly inform Plaintiff and the Class members of the specific purpose and length of time for which their fingerprints were being collected, stored, and used, as required by the BIPA;
- Provide a publicly available retention schedule and guidelines for permanently destroying Plaintiff' and the Class's fingerprints, as required by the BIPA; nor
- Receive a prior written authorization from Plaintiff or the members of the Class to collect, capture, or otherwise obtain their fingerprints, as required by the BIPA.

6. Accordingly, this Complaint seeks an Order: (i) declaring that Defendant's

conduct violates BIPA; (ii) requiring Defendant to cease the unlawful activities addressed herein; and (iii) awarding statutory damages to Plaintiff and the proposed Class.

PARTIES

7. Plaintiff Danny Round is a natural person and citizen of the State of Illinois. He performed work for Defendant at its Des Plaines location from approximately March through April 2018.

8. Defendant D&C is a Delaware corporation registered to do business in the State of Illinois (File No. 69428959). Its primary place of business is 2150 Frontage Road, Des Plaines, IL, where the Plaintiff performed work.

JURISDICTION AND VENUE

9. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant is headquartered in Illinois, conducts business transactions in Illinois, has committed its BIPA violations in Illinois, and is registered to conduct business in Illinois. Additionally, this Court has jurisdiction over Plaintiff because he is a resident and citizen of the state of Illinois.

10. Venue is proper in Cook County because Defendant is a citizen of Illinois that conducts business transactions in Cook County.

FACTUAL ALLEGATIONS

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

12. 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).

13. 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).

14. As alleged herein, Defendant’s practices in collecting, storing, and using individuals’ biometrics violates § 15(a) and all three prongs of § 15(b) of BIPA.

15. Defendant’s Biometric Scanner System requires workers to use their fingerprint, in addition to a four-digit pin, as a means of authentication. Unlike a traditional time clock, workers using the Biometric Scanner System are required to use their fingerprints to “punch” in to or out of work.

16. Since the implementation of Defendant’s Biometric Scanner System, individuals performing work at the Defendant’s Illinois location(s) have been required to have their

fingerprints scanned in order to enroll them in their database and to clock in and out of work.

17. Plaintiff performed work for Defendant in 2018, working as a laborer at the D&C location in Des Plaines, IL.

18. During the entire time that Plaintiff performed work for Defendant, he used the Biometric Scanner System to have his fingerprint collected and/or captured for the ostensible purpose(s) of time tracking, recording attendance, and/or authentication.

19. Defendant failed to inform Plaintiff in writing that his biometric information or data was being collected.

20. Defendant failed to inform Plaintiff of the extent of the purposes for which it collected his sensitive biometric data or to whom the data was disclosed, if at all.

21. Defendant also failed to obtain prior written authorization from Plaintiff, regarding the collection, use, storage, or disposal of biometric information.

22. Defendant similarly failed to provide Plaintiff with a written, publicly available policy identifying its retention schedule, and guidelines for permanently destroying any biometric data, as required by the BIPA.

23. At the location where Plaintiff worked, Defendant's practices regarding informed consent as to its Biometric Scanner System and related policies are identical as to all individuals performing work for the Defendant.

24. Plaintiff seeks statutory damages under BIPA based on Defendant's four articulated violations of BIPA.

CLASS ALLEGATIONS

25. Upon information and belief, Plaintiff's experiences as described above are

typical and representative of the experiences of the putative BIPA Class.

26. Upon information and belief, at least 100 individuals in Illinois who are similarly situated persons and potential Class members perform(ed) work for the Defendant.

27. **Class Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801 on behalf of himself and a BIPA Class of similarly situated individuals, defined as follows:

All citizens of Illinois who, using the Defendant's Biometric Scanner System or other device, had their fingerprints or other biometric information collected, captured, received, otherwise obtained, used, or stored by the Defendant, at any of Defendant's locations in the State of Illinois.

28. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but upon observation, information and belief, it is at least 100 individuals, making individual joinder impracticable. Defendant has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from at least 100 people who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Defendant's records.

29. **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:

- 1) Whether Defendant required workers and/or other individuals to provide biometric information;
- 2) Whether Defendant collected, captured, or otherwise obtained Plaintiff's and the Class's biometric identifiers or biometric information;
- 3) Whether Defendant properly informed Plaintiff and the Class of their purposes for collecting, using, and/or storing their biometric identifiers or biometric information;

- 4) Whether Defendant obtained 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;
- 5) 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;
- 6) Whether Defendant complies with any such written policy (if one exists);
- 7) Whether Defendant used Plaintiff's and the Class's fingerprints and/or handprints to identify them; and
- 8) Whether Defendant's violations of the BIPA were committed negligently or recklessly.

30. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has 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 is an adequate representative of the Class because all potential plaintiffs were subject to Defendant's uniform policies and practices. Plaintiff and his counsel are committed to vigorously prosecuting their 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.

31. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other 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 this 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.

COUNT I – BIOMETRIC INFORMATION PRIVACY ACT
(Class Action against Defendant)

32. Plaintiff restates and incorporates the foregoing allegations as though fully set forth herein.

33. Ultimately, BIPA is simply an informed consent statute, which mandates that entities wishing to collect, store, and/or use biometric information must put in place certain reasonable safeguards to protect individuals' privacy. *See* 740 ILCS 14/15.

34. Defendant failed to comply with BIPA mandates, thus committing four distinct violations of BIPA § 15(a) and § 15(b) with respect to Plaintiff and each putative BIPA Class member.

35. Defendant qualifies as a "private entity" under the BIPA. *See* 740 ILCS 14/10.

36. Plaintiff and the BIPA Class members are individuals who had their "biometric identifiers" (in the form of their handprints and/or fingerprints) collected by Defendant by way of Defendant's biometric scanner, i.e. time clock. *See* 740 ILCS 14/10.

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

38. Defendant violated 740 ILCS 14/15(a) by failing to publicly provide a retention

schedule or guideline for permanently destroying biometric identifiers and biometric information it collected from Plaintiff and the Class.

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

40. 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 and/or biometric information was being collected, stored, and/or used.

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

42. For each of the four violations identified herein, Plaintiff and the members of the putative Class are entitled to recover anywhere from \$1,000 to \$5,000 in statutory damages. 740 ILCS 14/20.

WHEREFORE, Plaintiff Danny Round, individually and on behalf of other similarly situated individuals, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against Defendant D&C, and grant him the following relief:

- a) Certifying this case as a class action on behalf of the BIPA Class defined above, appointing Plaintiff as representative of the BIPA Class, and appointing his counsel as Class Counsel;
- b) Awarding injunctive and other equitable relief as is necessary to protect the interests of the BIPA Class, including an Order requiring Defendant to collect, store, and use biometric identifiers or biometric information in compliance with the BIPA;
- c) Awarding statutory damages to each person whose rights were violated under BIPA, pursuant to 740 ILCS 14/20;

- d) Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees and costs;
- e) Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- f) Any further relief that is deemed just and equitable.

Dated: November 15, 2019

Respectfully submitted,

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DANNY ROUND, on behalf of himself and all
others similarly situated,

By: /s/ Lorrie T. Peeters
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