

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

FILED  
9/11/2019 10:37 AM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2019CH10496

NANCY GEBEL, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

THE SALVATION ARMY,

Defendant.

6525243

**CLASS ACTION COMPLAINT**

Plaintiff, Nancy Gebel ("Plaintiff"), individually and on behalf of all others similarly situated (the "putative class members"), by her attorneys, complains against Defendant The Salvation Army as follows:

**NATURE OF ACTION**

1. This is a class action for money damages arising from Defendant's violations of the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"), in that Defendant unlawfully collected, stored, and used Plaintiff's and other similarly situated individuals' biometric identifiers and/or biometric information (collectively referred to herein as "biometrics") without providing adequate written notice or obtaining informed written consent.

2. Plaintiff seeks class certification pursuant to 735 ILCS 5/2-801, *et seq.* Gebel individually, and on behalf of all others similarly situated ("the Class"), brings this action against the Defendant as described in further detail below, for claims relating to the violation of Plaintiff's statutory privacy rights under BIPA and to recover damages based upon Defendant's unauthorized collection, storage, and use of Plaintiff's and Class members' respective biometrics.

## **PARTIES**

3. Plaintiff Nancy Gebel is, and at all times relevant to this action was, a resident citizen of Oak Lawn, Illinois. Gebel performs work for Defendant as a therapist. Beginning in or around March of this year, she was required to submit her fingerprint (which under BIPA constitutes biometrics), at the direction of and for use by Defendant. At no time was Gebel informed in writing that her biometrics were being collected or stored, or the specific purpose and length of time for which her biometrics were being collected, stored, and used. At no time did Gebel execute a written release or authorization permitting Defendant to utilize, collect, capture, or store her biometrics. Gebel was never provided with a publicly available written policy regarding a schedule or guideline for the retention and permanent destruction of her biometrics.

4. The Class members are other individuals who are citizens of the State of Illinois, whose biometrics were unlawfully captured, collected, stored, or used by the Defendant as described herein.

5. Defendant The Salvation is an Illinois citizen corporation organized under the laws of the State of Illinois. Its registered agent for service of process is Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, IL 62703. Upon information and belief, Defendant operates several divisions and offices throughout the State of Illinois, including but not limited to the Chicago Metro Division where Plaintiff worked.

## **JURISDICTION AND VENUE**

6. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois, has committed unlawful acts in Illinois, and is registered to conduct business in Illinois.

7. Additionally, this Court has jurisdiction over Plaintiff Gebel because she is a resident and citizen of the state of Illinois.

8. Defendant is headquartered in Cook County, Illinois, and Defendant conducts business in Cook County, Illinois; therefore, venue is proper in Cook County pursuant to 735 ILCS 5/2-101 because all or part of the transactions giving rise to this Complaint occurred in Cook County.

9. Plaintiff and each Class member have individually incurred damages in an amount less than \$75,000. Neither the Plaintiff nor any Class member seek damages exceeding \$75,000 each, nor do their damages individually exceed \$75,000 for any individual class member, inclusive of interest and attorneys' fees and all relief of any nature sought hereunder.

### FACTUAL ALLEGATIONS

10. 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, 2009 Reg. Sess. No. 276.

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 violate § 15(a) and all three prongs of § 15(b) of BIPA.

15. Plaintiff performed work for Defendant during the timeframe beginning in approximately 2011 and continuing through 2019.

16. Beginning in or around March 2019, Defendant asked Plaintiff to punch in and out of work like other hourly employees. Beginning at that time, she was required to have her fingerprint and/or palm print collected and/or captured for the ostensible purpose(s) of time tracking, recording attendance, and/or authentication.

17. Upon information and belief, all other hourly employees and workers were also required to have their fingerprints and/or palm prints collected and/or captured for the ostensible purpose(s) of time tracking, recording attendance, and/or authentication.

18. Defendant failed to maintain or publicize information about its biometric practices or policies; and failed to provide Plaintiff or, upon information and belief, any member of the putative BIPA Class, with information about its policies or practices.

19. Each day, Defendant required past and present workers at its Illinois facilities to provide a scan of their finger and/or palm print in order to “clock in” and “clock out” of its locations.

20. Upon information and belief, Defendant utilized the same common biometric system at each of its Illinois facilities, thus allowing persons enrolled in the system at one location to be able to scan in at different locations without having to be re-enrolled at each facility.

21. Upon information and belief, Defendant directed and controlled the installation and implementation of the biometric scanners at all of its Illinois facilities.

22. Upon information and belief, Plaintiff’s experiences as described above are typical and representative of the experiences of the putative BIPA Class.

23. Upon information and belief, the Defendant’s violations of BIPA as described herein are not occurring at just one location, just the location where Plaintiff worked, nor are they being perpetuated in only one area of Illinois. The Defendant’s violations of BIPA are occurring at all past and current locations in the State of Illinois, and have been occurring since Defendant’s implementation of biometric scanners/readers.

24. Plaintiff and the putative BIPA Class members have continuously and repeatedly been exposed to risks, harmful conditions, and violations of privacy through Defendant’s violations of BIPA as described herein.

## CLASS ALLEGATIONS

25. Upon information and belief, the practices, policies, and consequences pertinent to Defendant's biometric system as described above applied to each Class member.

26. Upon information and belief, Defendant employs at least 100 individuals in Illinois who are similarly situated persons and potential Class members.

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

**All citizens of Illinois who, within the past five years, have had their fingerprints, palm prints, and/or other biometric information collected, captured, received, otherwise obtained, used, or stored by The Salvation Army, at any location or facility 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 her counsel are committed to vigorously prosecuting his action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor her counsel has 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)**

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 at least 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 violations identified above, Plaintiff and the members of the putative Class are entitled to recover anywhere from \$1,000 to \$5,000 in statutory damages.

43. Therefore, Defendant violated Plaintiff’s and the Class’s rights to privacy in their biometric identifiers and biometric information, and committed an actionable statutory violation of BIPA. 740 ILCS 14/1, *et seq.*; *Rosenbach v. Six Flags Entertainment Corp.*, No. 123186, 2019 WL 323902 (Ill. Jan. 25, 2019).

WHEREFORE, Plaintiff Nancy Gebel, individually and on behalf of other similarly situated individuals, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against Defendant The Salvation Army and grant her 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 her 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: September 11, 2019

Alejandro Caffarelli (#6239078)  
 Lorrie T. Peeters (#6290434)  
 Caffarelli & Associates Ltd.  
 224 S. Michigan Ave., Ste. 300  
 Chicago, Illinois 60604  
 Tel. (312) 763-6880  
Firm ID 58616

Respectfully submitted,

NANCY GEBEL, individually and on behalf of  
 all others similarly situated,

By: /s/ Lorrie T. Peeters  
 One of Plaintiff's Attorneys