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

GLORIA BRUNSON, KEVIN DAHLBERG, and SA'DONNA DICKERSON, individually and on behalf of all others similarly situated, Plaintiffs, v. LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company, and JOHN DOES 1–99, Defendants.	Case No. 2019CH10251 **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs Gloria Brunson, Kevin Dahlberg, and Sa'donna Dickerson bring this Class Action Complaint and Demand for Jury Trial ("Complaint") against Defendants Lowe's Home Centers, LLC ("Lowe's") and John Does 1–99 (collectively "Defendants") for violating the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq* ("BIPA"). Plaintiffs allege the following upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by their attorneys:

NATURE OF THE ACTION

1. Lowe's is one of the country's largest home-improvement retailers, with more than 2,000 stores generating over $68 billion in annual revenue.

2. Of those 2,000-plus stores, 36 are located in Illinois, where it has been illegal since 2008 to collect an individual's biometric information or identifier—such as a fingerprint, voiceprint, or faceprint—without the individual's informed, written consent. 740 ILCS 14/15(b).

3. The Illinois legislature was clear in its reasoning for prohibiting that collection. "Major national corporations ha[d] selected the City of Chicago and other locations in this State as pilot testing sites for new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias." 740 ILCS 14/5(b). Further, "biometrics are unlike other unique identifiers that are used to access finances or other sensitive information," in that "once compromised, the individual has no recourse, is at heightened risk of identity theft, and is likely to withdraw from biometric-facilitated transactions." 740 ILCS 14/5(c).

4. Despite the substantial risks incumbent with collecting such data, and the decade-old prohibition on collecting it without consent, Lowe's has augmented its in-store security cameras with software that tracks individuals' movements throughout the store using a unique scan of face geometry. Put simply, Defendants surreptitiously attempt to collect the faceprint of every person who appears in front of one of their facial-recognition cameras.

5. Defendants actively conceal their faceprinting practices from the public. When privacy-minded customers consult the U.S. Privacy Statement on www.lowes.com, they find no mention whatsoever of biometric information or faceprint collection, nor does Lowe's inform visitors on-site when it collects their faceprints.

6. Defendants' systemic and covert privacy intrusion is plainly unlawful in Illinois.

7. Plaintiffs bring this Complaint seeking an order (i) declaring that Defendants' conduct violates BIPA, (ii) requiring that Defendants cease the unlawful activities described herein and destroy the biometric data they unlawfully collected, and (iii) awarding Plaintiffs and the Class statutory damages of $5,000 per violation, plus their attorneys' fees and costs.

PARTIES

8. Plaintiff Brunson is a natural person and a citizen of the State of Illinois residing in Cook County.

9. Plaintiff Dahlberg is a natural person and a citizen of the State of Illinois residing in McLean County.

10. Plaintiff Dickerson is a natural person and a citizen of the State of Illinois residing in Cook County.

11. Defendant Lowe's is a limited liability company existing under the laws of the State of North Carolina, with its headquarters and principal place of business located at 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697. Lowe's conducts business throughout Cook County and the State of Illinois.

12. Defendant John Doe 1 is the vendor and operator of the facial-recognition system used by Lowe's. Doe 1's citizenship is unknown to Plaintiffs.

13. Defendants John Does 2–99 are the corporate entities or individuals responsible for overseeing the operation of the facial recognition camera systems at Lowe's store locations in Illinois. Many of the Doe Defendants are citizens of the State of Illinois.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 because they conduct business transactions in Illinois, have committed tortious acts in Illinois, and have store locations in Illinois. The Court additionally has personal jurisdiction over Defendant Lowe's because it is registered to do business in Illinois. The Court has personal jurisdiction over Plaintiffs because they reside in the State of Illinois.

15. Venue is proper in Cook County because Defendants conduct business in Cook County, and because the causes of action arose in substantial part in Cook County. Venue is additionally proper because Plaintiffs Brunson and Dickerson reside in Cook County and Lowe's has store locations in Cook County.

COMMON FACTUAL ALLEGATIONS

The Biometric Information Privacy Act

16. Illinois enacted BIPA in 2008.

17. BIPA regulates two types of biometric data. First, BIPA regulates any "biometric identifier," which means "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry," and specifically excludes a lengthy list of identifiers outside that scope. 740 ILCS 14/10. Second, it regulates any "biometric information," which "means any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual." *Id.* Biometric information "does not include information derived from items or procedures excluded under the definition of biometric identifiers." *Id.*

18. BIPA regulates the entire lifecycle of biometric data, from capture and collection to use and disclosure.

19. As to the origination of biometric data, BIPA provides that "[n]o 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." 714 ILCS 14/15(b).

20. BIPA likewise restricts the disclosure of biometric data, providing that "[n]o 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 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).

21. When it comes to exploiting biometric data, BIPA creates even stricter proscriptions. Reflecting an intent to preclude the formation of a market for biometric data, BIPA provides without exception that "[n]o private entity in possession of a biometric identifier

or biometric information may sell, lease, trade, or otherwise profit from a person's or a customer's biometric identifier or biometric information." 740 ILCS 14/15/(c).

22. To facilitate the informed notice and consent provisions described above, BIPA also requires that any private entity in possession of biometric identifiers or information must publish a written policy "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).

23. Finally, given the persistent nature of biometric data and the increased risks that accompany their misuse, BIPA requires that any entity possessing biometric identifiers or information "(1) store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within the private entity's industry; and (2) store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information." 740 ILCS 14/15(e).

24. To remedy the serious but often intangible harms that accompany invasions of biometric privacy rights, BIPA also includes a private right of action authorizing "[a]ny person aggrieved by a violation of" the statute to sue and recover for each violation liquidated damages of $1,000, or $5,000 in the event of an intentional or reckless violation, plus attorneys' fees, costs, and appropriate injunctive relief. 740 ILCS 14/20.

Defendants' Wanton Disregard for Customer Privacy

25. Defendants operate a sweeping surveillance system with facial recognition at its core but disregard BIPA in its entirety.

26. In-store facial recognition systems work by scanning video footage of a person's face for certain geometric points, such as the distance between the eyes, nose, and ears, among others. Those geometric points are then reflected in a data string reflecting the individual's faceprint.

27. As the customer moves through a store and is detected by cameras, the facial-recognition technology repeatedly re-maps the customer's facial geometry and compares it against the faceprints stored in its database, all while tracking the individual's movement throughout the store.

28. Framed as a loss-prevention measure, these systems allow stores to follow customers, to identify particular individuals when they enter the store and, in some cases, to track shoppers across multiple stores and identify "suspicious" shopping activity.

29. Defendants begin tracking customers as soon as they enter Lowe's stores. Lowe's security cameras operate on a connected system, with facial-recognition technology running on the footage obtained. As the customer walks through the store and heads toward checkout, the facial-recognition software tracks their every movement, through and beyond their purchase.

30. Despite BIPA's clear edict, Defendants do not provide a publicly available biometric-data retention schedule, nor do they obtain Lowe's customers' informed, written consent prior to the collection, use, and disclosure of their biometric identifiers.

FACTUAL ALLEGATIONS SPECIFIC TO PLAINTIFF BRUNSON

31. Plaintiff Brunson made a purchase at an Illinois Lowe's store in September 2018.

32. When Plaintiff Brunson entered the Lowe's store, she was repeatedly viewed by Lowe's security cameras, which captured and collected Plaintiff Brunson's faceprint. In fact, Lowe's security-camera system collected a new faceprint from Plaintiff Brunson each time she appeared on a different security camera, meaning several times per store visit.

33. Lowe's shared the security-camera footage and Plaintiff Brunson's faceprint with the Doe Defendants.

34. Defendants do not provide a publicly available retention schedule specifying the period for which they will retain Plaintiff Brunson's faceprint.

35. Defendants never informed Plaintiff Brunson of the purpose for which they were collecting her faceprint or the duration for which they would retain it, nor did Defendants receive a written release from Plaintiff Brunson authorizing the capture, collection, or disclosure of her faceprint.

FACTUAL ALLEGATIONS SPECIFIC TO PLAINTIFF DAHLBERG

36. Plaintiff Dahlberg is a contractor and handyman. He has made purchases at an Illinois Lowe's store dozens of times in the last year.

37. On each occasion Plaintiff Dahlberg entered the Lowe's store, he was repeatedly viewed by Lowe's security cameras, which captured and collected Plaintiff Dahlberg's faceprint. In fact, Lowe's security-camera system collected a new faceprint from Plaintiff Dahlberg each time he appeared on a different security camera, meaning several times per store visit.

38. Lowe's shared the security-camera footage and Plaintiff Dahlberg's faceprint with the Doe Defendants.

39. Defendants do not provide a publicly available retention schedule specifying the period for which they will retain Plaintiff Dahlberg's faceprint.

40. Defendants never informed Plaintiff Dahlberg of the purpose for which they were collecting is faceprint or the duration for which they would retain it, nor did Defendants receive a written release from Plaintiff Dahlberg authorizing the capture, collection, or disclosure of his faceprint

FACTUAL ALLEGATIONS SPECIFIC TO PLAINTIFF DICKERSON

41. Plaintiff Dickerson made a purchase at an Illinois Lowe's store in May 2019.

42. When Plaintiff Dickerson entered the Lowe's store, she was repeatedly viewed by Lowe's security cameras, which captured and collected Plaintiff Dickerson's faceprint. In fact, Lowe's security-camera system collected a new faceprint from Plaintiff Dickerson each time she appeared on a different security camera, meaning several times per store visit.

43. Lowe's shared the security-camera footage and Plaintiff Dickerson's faceprint with the Doe Defendants.

44. Defendants do not provide a publicly available retention schedule specifying the period for which they will retain Plaintiff Dickerson's faceprint.

45. Defendants never informed Plaintiff Dickerson of the purpose for which they were collecting her faceprint or the duration for which it would retain it, nor did Defendants receive a written release from Plaintiff Dickerson authorizing the capture, collection, or disclosure of her faceprint.

CLASS ALLEGATIONS

46. Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on behalf of themselves and the following class and subclass (collectively, the "Class"):

> **Lowe's Class:** All citizens of Illinois who had their faceprints collected, captured, received, or otherwise obtained while visiting a Lowe's store in Illinois.
>
> **Purchaser Subclass**: All Lowe's Class members who made a purchase at a Lowe's store after Defendants implemented their facial-recognition program.

The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers, and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

47. **Numerosity**: The exact number of Class members is unknown to Plaintiffs at this time, but it is clear that individual joinder is impracticable. Defendants have collected, captured, received, or otherwise obtained biometric identifiers or biometric information from tens of thousands, if not hundreds of thousands, of individuals within the Class definition. Members of the Class can be identified through Defendants' records.

48. **Commonality and Predominance**: Questions of law and fact common to the claims of Plaintiffs and the Class predominate over any questions that may affect individual members. Those common questions include:

a. Whether Defendants collected or captured the Class members' biometric identifiers or information;

b. Whether Defendants maintained a publicly available retention schedule for biometric identifiers or information;

c. Whether Defendants informed the Class members that they would collect or capture the Class members' biometric identifiers or information;

d. Whether Defendants informed the Class members of the purpose for which they would collect their biometric identifiers or information, or the duration for which they would retain that data;

e. Whether Defendants obtained the written release required by BIPA to collect or capture, use, and store the Class members' biometric identifiers or information;

f. Whether Doe 1 profited from the Class members' biometric identifiers or information; and

g. Whether Defendants' BIPA violations were intentional, reckless, or merely negligent.

49. **Fair and Adequate Representation**: Plaintiffs will fairly and adequately represent and protect the interests of the Class and have retained competent counsel experienced in complex litigation and class actions under BIPA specifically. Plaintiffs have no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiffs. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class members and have the resources to do so.

50. **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 the Class members is otherwise impracticable. The damages suffered by the individual Class members are small relative to the burden and cost of individual litigation, and individual litigation is therefore infeasible. Even if Class members could sustain individual litigation, it would increase the delay and expense to all parties relative to a class action because of the complex factual issues raised by the Complaint. A class action presents fewer manageability difficulties and provides economies of scale and uniformity of decisions.

FIRST CAUSE OF ACTION
Violation of 740 ILCS 14/15
Against All Defendants
On Behalf of Plaintiffs, the Lowe's Class, and the Purchaser Subclass

51. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

52. Lowe's is a North Carolina LLC and is therefore a "private entity" under 740 ILCS 14/10.

53. The Doe Defendants are either individuals or partnerships, corporations, or limited liability companies. The Doe Defendants are not State or local government agencies, courts of Illinois, clerks of the court, or judges or justices thereof. The Doe Defendants are, therefore, "private entities" under 740 ILCS 14/10.

54. When Plaintiffs and the Class members entered Lowe's stores, Defendants used the Lowe's security-camera systems to create faceprints of Plaintiffs and the Class members. Those faceprints mapped the geometry of Plaintiffs' and the Class members' faces, and Defendants used that geometry to identify them as they moved through the store, returned to the store, and visited other stores. Defendants therefore collected, captured, received through trade, or otherwise obtained Plaintiffs' and the Class members' biometric identifiers and biometric information.

55. Prior to collecting, capturing, receiving through trade, or otherwise obtaining Plaintiffs' and the Class members' biometric identifiers and biometric information, Defendants did not inform Plaintiffs or the Class members or their legally authorized representatives that their biometric identifiers and information would be collected or stored.

56. Prior to collecting, capturing, receiving through trade, or otherwise obtaining Plaintiffs' and the Class members' biometric identifiers and biometric information, Defendants did not inform Plaintiffs or the Class members or their legally authorized representatives of the specific purpose and length of term for which their biometric identifiers and information were being collected, stored, and used.

57. Prior to collecting, capturing, receiving through trade, or otherwise obtaining Plaintiffs' and the Class members' biometric identifiers and biometric information, Defendants did not receive a written release from Plaintiffs and the Class members or their legally authorized

representatives authorizing the collection, capture, receipt through trade, or other obtainment and use of their biometric identifiers or information.

58. Plaintiffs and the Class members did not consent to the disclosure or dissemination of their biometric identifiers and information before Lowe's shared their faceprints with the Doe Defendants.

59. Lowe's disclosure and dissemination of Plaintiffs' and the Class members' biometric identifiers and information did not complete a financial transaction requested or authorized by Plaintiff and the Class members.

60. Lowe's disclosure and dissemination of Plaintiffs' and the Class members' biometric identifiers and information was not required by State or federal law or municipal ordinance.

61. Lowe's disclosure and dissemination of Plaintiffs' and the Class members' biometric identifiers and information was not required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction.

62. By capturing and collecting, storing, using, and disclosing Plaintiffs' and the Class members' biometric identifiers and information as described herein, Defendants violated Plaintiffs' and the Class members' rights to privacy and property in their biometric data under BIPA.

63. On behalf of themselves and the Class, and pursuant to 740 ILCS 14/20, Plaintiffs seek: (1) injunctive relief requiring Defendants to stop their unlawful practices and destroy the biometric data unlawfully obtained; (2) liquidated damages of $5,000 per violation for Defendants' intentional and/or reckless violations of BIPA, or, in the event the Court finds those

violations to be negligent, liquidated damages of $1,000 per violation; and (3) reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, respectfully request that this Court enter an order:

A. Certifying this case as a class action on behalf of the Class and Subclass defined above, appointing Plaintiffs as representatives of the Class and Subclass, and appointing their lawyers as Class Counsel;

B. Declaring that Defendants' actions, as described above, violate 740 ILCS 14/15;

C. Awarding liquidated damages under 740 ILCS 14/20 of $5,000 per violation for Defendants' intentional and/or reckless violations of BIPA, or, alternatively, liquidated damages of $1,000 per violation if the Court finds that Defendants' violations were negligent;

D. Awarding injunctive and other equitable relief as necessary to protect the Class, including an order requiring Defendants to stop their unlawful collection of biometric data and to delete any such data that was unlawfully obtained;

E. Awarding Plaintiffs and the Class their reasonable litigation expenses and attorneys' fees;

F. Awarding Plaintiffs and the Class pre- and post-judgment interest; and

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

JURY TRIAL

Plaintiffs demand a trial by jury for all issues so triable.

Date: September 4, 2019

GLORIA BRUNSON, KEVIN DAHLBERG, and SA'DONNA DICKERSON, individually and on behalf of all others similarly situated,

s/ J. Dominick Larry
One of their Attorneys

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