

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

FILED
2/21/2019 10:57 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL

KRISTIN NEDIALKOVA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

TOTAL AIRPORT SERVICES, LLC

Defendant.

2019CH02300

CLASS ACTION COMPLAINT

Plaintiff, Kristin Nediaalkova (“Plaintiff”), individually and on behalf of all others
similarly situated (the “putative class members”), by her attorneys, complains against Defendant
Total Airport Services, LLC (“Defendant” or “TAS”) as follows:

NATURE OF ACTION

1. This is a class action under the Biometric Information Privacy Act, 740 ILCS
14/1, *et seq.* (“BIPA”) on behalf of all persons in Illinois who had their fingerprints improperly
collected, captured, received, or otherwise obtained by TAS.

PARTIES

2. Plaintiff Kristin Nediaalkova is an adult resident of Wood Dale, Illinois. She
worked for Defendant at its location in O’Hare International Airport, Chicago, Illinois from May
2015 through June 2017.

3. In Illinois, at least 100 individuals performed work for TAS at its Chicago
location. TAS collects biometric identifiers and biometric information from these individuals
through its timekeeping system. Plaintiff and these individuals are referred to herein as the
“putative BIPA Class” members.

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JURISDICTION AND VENUE

4. 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.

5. Additionally, this Court has jurisdiction over Plaintiff Nedialkova because she is a resident of the state of Illinois.

6. Defendant conducts business at O'Hare International Airport, Chicago, Cook County, Illinois. 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.

FACTUAL ALLEGATIONS

7. Plaintiff began working for Defendant in May 2015 and was an employee of Defendant through June of 2017.

8. Plaintiff's final position with Defendant was working in its Customer Service Department.

9. In or around 2016, TAS installed and implemented the use of a biometric scanner. Plaintiff, and all other members of the putative BIPA Class, was required to have her fingerprint collected and/or captured so that TAS could store it and use it moving forward as an authentication method.

10. 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.

11. Defendant failed to provide Plaintiff or, upon information and belief, any member of the putative BIPA Class, with written notice of the fact that it was collecting biometric

information prior to collection. Defendant failed to obtain prior written consent from Plaintiff or any putative BIPA Class member before it collected, stored, or used those individuals' biometric information.

12. Each day, Plaintiff and the putative BIPA Class members were each required to place their finger on a panel to be scanned in order to 'clock in' and 'clock out' of work.

13. TAS did not inform Plaintiff of the specific purposes or length of time for which it collected, stored, or used her fingerprint.

14. TAS did not inform Plaintiff of any biometric data retention policy developed by Defendant, nor has she ever been informed of whether TAS will ever permanently delete her fingerprint.

15. Plaintiff was not provided with nor ever signed a written release allowing TAS to collect or store her fingerprint.

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

17. 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

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

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

20. **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 had their fingerprints and/or other biometric information collected, captured, received, otherwise obtained, used, distributed, or stored by Total Airport Services, LLC in the State of Illinois.

21. **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.

22. **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:

- a. whether TAS collected, captured, or otherwise obtained Plaintiff's and the Class's biometric identifiers or biometric information;
- b. whether TAS properly informed Plaintiff and the Class of its purposes for collecting, using, and/or storing their biometric identifiers or biometric information;
- c. whether TAS 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;
- d. whether TAS 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;

- e. whether TAS complies with any such written policy (if one exists);
- f. whether TAS used Plaintiff's and the Class's fingerprints to identify them; and
- g. whether TAS violations of the BIPA were committed negligently or recklessly.

23. **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 her 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.

24. **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)**

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

26. BIPA is an informed consent statute that achieves its goal of protecting individuals' privacy rights by making it unlawful for a company to, among other things, "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.

740 ILCS 14/15(b).

27. In the employment context, a "written release" means "a release executed by an employee as a condition of employment." 740 ILCS 14/10.

28. Biometric identifiers 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.*

29. BIPA also established standards for how companies must handle individuals'

biometric identifiers and biometric information, as follows: “[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. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines.” 740 ILCS 14/15(a).

30. 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.

31. 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).

32. BIPA also mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention (and – importantly – 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 (e.g. when the

employment relationship ends); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

33. TAS failed to comply with BIPA mandates, thus committing up to four distinct violations of BIPA with respect to Plaintiff and each putative BIPA Class member.

34. TAS qualifies as a “private entity” under the BIPA. *See* 740 ILCS 14/10.

35. Plaintiff and the BIPA Class members are individuals who had their “biometric identifiers” (in the form of their fingerprints) collected by TAS by way of Defendant’s biometric scanner, i.e. time clock. *See* 740 ILCS 14/10.

36. 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.

37. TAS 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.

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

39. TAS violated 740 ILCS 14/15(b)(2) by failing to inform Plaintiff and the BIPA 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.

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

41. For *each* of the violations identified above, Plaintiff and the members of the

putative BIPA Class are entitled to recover anywhere from \$1,000 to \$5,000 in statutory damages.

42. Therefore, TAS 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 Kristin Nedialkova, individually and on behalf of other similarly situated individuals, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against Defendant, Total Airport Services, LLC, 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 TAS to collect, store, and use biometric identifiers or biometric information in compliance with the BIPA;
- c) Awarding liquidated 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: February 21, 2019

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Respectfully submitted,
KRISTIN NEDIALKOVA, individually and on
behalf of all others similarly situated,

By: /s/ Alejandro Caffarelli
Attorney for the Plaintiff