

**Firm ID No. 90747**

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

**KRISTEN NEDIALKOVA**, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

**TOTAL AIRPORT SERVICES, LLC**

Defendant.

Case No. 2019-CH-02300

Calendar: 15

Honorable Anna M. Loftus

**DEFENDANT TOTAL AIRPORT SERVICES, LLC'S  
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S CLASS ACTION  
COMPLAINT**

Defendant Total Airport Services, LLC ("TAS" or "Defendant"), by and through its undersigned counsel, answers Plaintiff's Class Action Complaint as follows:

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.

**ANSWER:**

Defendant admits that Plaintiff has filed this action seeking damages pursuant to the BIPA on behalf of a purported class as described in this paragraph but denies that Defendant improperly collected, captured, received, or otherwise obtained Plaintiff's or any putative class member's fingerprints.

2. Plaintiff Kristin Nedialkova 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.

**ANSWER:**

Defendant lacks sufficient information to answer the allegation with respect to Plaintiff’s place of residence. Defendant admits that Plaintiff worked for TAS at O’Hare Airport 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.

**ANSWER:**

Defendant admits that at least 100 individuals performed work for it at its location near O’Hare Airport in Chicago. Defendant denies the remaining allegations contained in Paragraph 3 of Plaintiff’s Complaint.

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.

**ANSWER:**

Defendant admits that the Court has personal jurisdiction over it and that it conducts business in Illinois and is registered to conduct business in Illinois. Defendant denies that it has committed any unlawful acts in Illinois.

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

**ANSWER:**

Defendant lacks information sufficient to admit the allegations contained in Paragraph 5 of Plaintiff’s Complaint.

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.

**ANSWER:**

Defendant admits the allegations of Paragraph 6 of Plaintiff's Complaint.

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

**ANSWER:**

Defendant admits the allegations of Paragraph 7 of Plaintiff's Complaint.

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

**ANSWER:**

Defendant admits the allegations of Paragraph 8 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant admits that in approximately it installed a timekeeping system for use by its employees. Defendant denies the remaining allegations of Paragraph 9 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies that it collected, stored, or used biometric information or biometric identifiers, as defined by the BIPA, and denies the allegations of Paragraph 10 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies that it collected, stored, or used biometric information or biometric identifiers, as defined by the BIPA, and denies the allegations of Paragraph 11 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant admits that employee used a timekeeping system to clock in and clock out of work. Defendant denies the remaining allegations of Paragraph 12 of Plaintiff's Complaint.

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

**ANSWER:**

Defendant denies that it collected, stored, or used Plaintiff's fingerprint or any biometric information and denies the allegations of Paragraph 13 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies that it collected, stored, or used Plaintiff's fingerprint or biometric information or data and denies the allegations of Paragraph 14 of Plaintiff's Complaint.

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

**ANSWER:**

Defendant admits that it did not obtain from Plaintiff a signed written release. Defendant denies that it collected, stored, or used Plaintiff's fingerprint and denies the remaining allegations of Paragraph 15 of Plaintiff's Complaint.

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

**ANSWER:**

Defendant denies the allegations of Paragraph 16 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 17 of Plaintiff's Complaint.

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

**ANSWER:**

Defendant denies the allegations of Paragraph 18 of Plaintiff's Complaint.

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

**ANSWER:**

Defendant denies the allegations of Paragraph 19 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant admits that Plaintiff purports to bring a class action against it under the BIPA. Defendant denies that it violated BIPA and that Plaintiff can meet the requirements to certify a class. Defendant further denies the remaining allegations in this paragraph.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 21 of Plaintiff's Complaint.

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 Plaintiffs 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.

**ANSWER:**

Defendant denies the allegations of Paragraph 22 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 23 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 24 of Plaintiff's Complaint.

**COUNT I- BIOMETRIC INFORMATION PRIVACY ACT  
(Class Action)**

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

**ANSWER:**

Defendant incorporates its answers to Paragraphs 1 through 24 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).

**ANSWER:**

Defendant states that there are no allegations against it in this paragraph, thus, no response is required. To the extent there are allegations against Defendant, they are denied.

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

**ANSWER:**

Defendant states that there are no allegations against it in this paragraph, thus, no response is required. To the extent there are allegations against Defendant, they are denied.

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.*

**ANSWER:**

Defendant states that there are no allegations against it in this paragraph, thus, no response is required. To the extent there are allegations against Defendant, they are denied.

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).

**ANSWER:**

Defendant states that there are no allegations against it in this paragraph, thus, no response is required. To the extent there are allegations against Defendant, they are denied.

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.

**ANSWER:**

Defendant states that there are no allegations against it in this paragraph, thus, no response is required. To the extent there are allegations against Defendant, they are denied.

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).

**ANSWER:**

Defendant states that there are no allegations against it in this paragraph, thus, no response is required. To the extent there are allegations against Defendant, they are denied.

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).

**ANSWER:**

Defendant states that there are no allegations against it in this paragraph, thus, no response is required. To the extent there are allegations against Defendant, they are denied.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 33 of Plaintiff’s Complaint.

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

**ANSWER:**

Defendant admits the allegations of Paragraph 34 of Plaintiff’s Complaint.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 35 of Plaintiff’s Complaint.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 36 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 37 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 38 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 39 of Plaintiff's Complaint.

40. TAS violated 740 ILCS 14/15(6)(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.

**ANSWER:**

Defendant denies the allegations of Paragraph 40 of Plaintiff's Complaint.

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.

**ANSWER:**

Defendant denies the allegations of Paragraph 41 of Plaintiff's Complaint and further specifically denies that Plaintiff may seek damages in the amount of \$5,000 per violation, per the Court's order dated January 9, 2024.

42. Therefore, TAS violated Plaintiffs 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).

**ANSWER:**

Defendant denies the allegations of Paragraph 42 of Plaintiff's Complaint.

WHEREFORE, Defendant denies that Plaintiff or any putative class member is entitled to the relief sought.

**DEFENDANT'S AFFIRMATIVE DEFENSES**

1. No damages or other relief can be recovered by Plaintiff or members of the asserted putative class to the extent the Complaint and each purported cause of action alleged therein are barred, in whole or in part, by an applicable contract provision or the statute of limitations. To the extent Plaintiff's claims are based on any acts that occurred prior to any applicable statute of limitations, her claims are time-barred.

2. Plaintiff's claims are barred, in whole or in part, due to the fact that she fails to allege facts sufficient to state a claim upon which relief can be granted.

3. Plaintiff lacks standing to seek the relief demanded because, for example, Plaintiff has not suffered a sufficient injury in fact from the conduct alleged in the Complaint.

4. Upon information and belief, Defendant alleges that Plaintiff and the members of the asserted putative class consented to the conduct alleged in the Complaint. Each purported

cause of action alleged in the Complaint is thus barred, in whole or in part, by the doctrine of unclean hands.

5. Upon information and belief, Plaintiff and members of the asserted putative class consented to the conduct of which they now complain. Upon information and belief, the Complaint and each purported cause of action alleged therein are thus barred, in whole or in part, by the doctrine of waiver.

6. The Complaint and each purported cause of action alleged therein are barred to the extent that Defendant's conduct was not the actual or proximate cause of any loss suffered by Plaintiff or members of the asserted putative class.

7. The claims in the Complaint are barred in whole or in part by Defendant's good faith, and the absence of negligent, intentional, or reckless conduct. To the extent that BIPA applies to Defendant's conduct, Defendant is not liable because it relied in good faith upon a reasonable interpretation of BIPA's statutory language and any alleged violation was not negligent, intentional, or reckless.

8. The claims of the Complaint are barred, in whole or in part, because Defendant does not retain, store, collect, possess, capture, purchase, receive, transmit, or disclose biometric identifiers or biometric information as defined under BIPA.

9. Plaintiff's claim is barred, in whole or in part, by the doctrine of laches. Plaintiff filed this action after an unreasonable delay, including because Plaintiff impliedly consented to the conduct complained of when she allegedly used the purported timekeeping system over a year earlier.

10. The claims in the Complaint are barred in whole or in part because, to the extent that BIPA applies to the conduct alleged (which Defendant denies), Defendant substantially complied with the requirements of BIPA

11. Plaintiff or members of the asserted putative class failed to mitigate the alleged damages, and to the extent of such failure to mitigate, any damages awarded to Plaintiff or members of the asserted putative class should be reduced accordingly. Upon information and belief, Plaintiff and the members of the asserted putative class failed to mitigate damages by continuing to use the alleged time clocks, or by taking or failing to take other actions.

12. All or part of the damages alleged in the Complaint were caused by the acts or omissions of other persons or entities (including, without limitation, acts or omissions of Plaintiff or members of the asserted putative class or persons who acted on their behalf), for whose conduct Defendant is not legally responsible. Therefore, if Plaintiff or members of the asserted putative class are found to be entitled to recover any of the alleged damages, Defendant's share thereof must be apportioned or reduced to the extent that such damages are attributable to persons or entities other than Defendant.

13. The prayer for relief is barred in whole or in part because the recovery of statutory damages would not be a reasonable estimate of actual damages. Instead, such recovery amounts to a disparate penalty, akin to punitive damages for strict liability, and should be deemed unenforceable

14. Plaintiff's claim is barred, in whole or in part, because BIPA's liquidated damages provisions are discretionary, rather than mandatory, and Plaintiff's allegations provide no basis for the award of liquidated damages. Upon information and belief, Plaintiff and the individuals

she seeks to represent have not suffered any injury due to Defendant's alleged conduct, and awarding liquidated damages under such circumstances would be inappropriate and unjust.

15. The putative class asserted in the Complaint is inappropriate for class certification because there is no ascertainable class.

16. The putative class asserted in the Complaint is inappropriate for class certification because Plaintiff's claims are not typical of the claims of other members of the asserted putative class.

17. The putative class asserted in the Complaint is inappropriate for class certification because a class action is not superior to other methods for fairly and efficiently adjudicating this controversy.

18. The putative class asserted in the Complaint is inappropriate for class certification because neither Plaintiff nor her counsel is able to fairly and adequately protect the interest of all members of the alleged putative class.

19. The BIPA is unconstitutional as Plaintiff seeks to have it applied in this case because its application would violate the dormant Commerce Clause.

WHEREFORE, having fully answered Plaintiff's Class Action Complaint, Defendant respectfully prays that the Court:

1. Dismiss Plaintiff's Class Action Complaint with prejudice;
2. Award the costs of this action and any other expenses as allowed by law to Defendant; and
3. Grant such other and further relief as this Court deems just and proper.

DATED: April 26, 2024

Respectfully submitted,

Total Airport Services, LLC

By: /s/ Danielle M. Kays

One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, Danielle Kays, do hereby certify that I have caused a true and correct copy of the foregoing **DEFENDANT TOTAL AIRPORT SERVICES, LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S CLASS ACTION COMPLAINT** to be served on this 26th day of April, 2024, by email on the following counsel:

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*/s/ Danielle M. Kays*