

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

ANNA KACSO, on behalf of herself and the
proposed class,

Plaintiff,

v.

CHARTER SENIOR LIVING, LLC;
CHARTER SENIOR LIVING FOX LAKE,
LCC; and CHARTER SENIOR LIVING
VERNON HILLS, LLC,

Defendants.

Case No.: 2022LA00000342

Judge Joseph V. Salvi

AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Anna Kacso (“Plaintiff”), individually and on behalf of all others similarly situated, brings this Class Action Complaint and Demand for Jury Trial against Defendants Charter Senior Living, LLC (“Charter Senior Living”); Charter Senior Living Fox Lake, LLC (“Charter Fox Lake”); and Charter Senior Living Vernon Hills, LLC (“Charter Vernon Hills”). Plaintiff alleges the following based upon personal knowledge, and as to all other matters upon information and belief, including investigation conducted by Plaintiff’s counsel.

NATURE OF THE CASE

1. This class action alleges violations of the Biometric Information Privacy Act, 740 ILCS 14/1 *etc.* (“BIPA”).
2. Since 2008, BIPA has imposed a notice-and-consent requirement on companies possessing, collecting, or capturing biometric data, such as fingerprints, voiceprints, irises and faceprints.

3. Defendants captured and collected Plaintiff's biometrics without providing her with proper notice or obtaining her consent. Accordingly, Plaintiff seeks statutory damages as authorized by BIPA.

PARTIES

4. Plaintiff is a citizen of Illinois and a resident of Lake County.

5. Defendant Charter Senior Living manages at least seven senior living communities and rehabilitation centers across the state of Illinois, and it is headquartered at 2863 95th Street Ste. 143-365, Naperville, IL 60564 and organized under Delaware law.

6. Defendant Charter Fox Lake is an assisted living and memory care community managed by Defendant Charter Senior Living, LLC. It is located at 16 Lilac Avenue, Fox Lake, IL 60020 and organized under Illinois law.

7. Defendant Charter Vernon Hills is a memory care community managed by Defendant Charter Senior Living, LLC. It is located at 500 Atrium Drive Vernon Hills, IL 60061 and organized under Illinois law.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over Charter Senior Living because Charter Senior Living is registered to do business in this state and conducts substantial business in this State, and because Plaintiff's claims arise out of Charter Senior Living's conduct within this State.

9. This Court has personal jurisdiction over Charter Fox Lake because Charter Fox Lake is organized under the laws of this State, is registered to do business in this State, and conducts substantial business in this State, and because Plaintiff's claims arise out of Charter Fox Lake's conduct in this State.

10. This Court has personal jurisdiction over Charter Vernon Hills because Charter Vernon Hills is organized under the laws of this State, is registered to do business in this State, and conducts substantial business in this State, and because Plaintiff's claims arise out of Charter Vernon Hills's conduct in this State.

11. Venue is proper in Lake County because all Defendants conduct substantial business in Lake County and a substantial portion of the events giving rise to Plaintiff's claims took place in Lake County.

FACTUAL BACKGROUND

12. Charter Senior Living is an organization managing senior living communities throughout the United States, focusing on retirement living, assisted living, and memory care.

13. Charter Senior living operates at least seven living communities within Illinois, including Charter Senior Living New Lenox, Charter Senior Living Glen Ellyn, Charter Hazel Crest, Charter Poplar Creek, Charter Orland Park, Charter Fox Lake, and Charter Vernon Hills (collectively "the Charter Facilities").

14. Plaintiff worked for Charter Fox Lake from August 19, 2019 through December 27, 2019.

15. Plaintiff worked for Charter Vernon Hills during the month of February 2021.

16. As part of her employment duties at Charter Fox Lake, Plaintiff and the other Fox Lake Class members utilized a timeclock featuring a facial-recognition system to clock in and clock out for work and when taking breaks.

17. The facial-recognition timeclock at Charter Fox Lake was installed and operated by Charter Senior Living and Charter Fox Lake, and it was connected to the timekeeping and payroll system operated by Charter Senior Living (collectively, the "Fox Lake Biometric System").

18. As part of her employment duties at Charter Vernon Hills, Plaintiff and the other Vernon Hills Class members utilized a timeclock featuring a facial-recognition system to clock in and clock out for work and when taking breaks.

19. The facial-recognition timeclock at Charter Vernon Hills was installed by Charter Senior Living and Charter Vernon Hills, and it was connected to the timekeeping and payroll system operated by those two defendants (collectively, the “Vernon Hills Biometric System”).

20. Charter Senior Living installed and operated a biometric timeclock in each of the Charter Facilities. Through the timeclocks at those facilities, Charter Senior Living collects biometric data from all of its employees across the state of Illinois.

21. In addition to performing facial recognition and capturing and collecting scans of face geometry, the facial-recognition timeclocks and timekeeping systems at the Charter Facilities (collectively, the “Biometric Systems”) captured, collected, and maintained reference templates, which are algorithmic representations of the points of a face, derived from the scans of face geometry.

22. The Biometric Systems then compared the reference templates against each subsequent scan to identify the worker clocking in and associate the appropriate timekeeping information.

23. Defendants did not explain the Biometric Systems to their workers and did not publish a written policy explaining its retention schedule or guidelines for destroying their biometric identifiers or biometric information.

24. Defendants did not tell their workers how they used data collected through the Biometric Systems.

25. Defendants did not tell their workers how long they kept the data collected through the Biometric Systems.

26. Defendants' workers did not consent to Defendants' capture and collection of their face geometry, or the identifying data derived from them.

27. BIPA has been the law of the State of Illinois since 2008.

28. At the beginning of the class period, BIPA had been in effect for nine years.

29. By the beginning of the class period, BIPA had also been in the news for some time: Facebook had been sued for BIPA violations three and-a-half years earlier,¹ and the case had already resulted in headline-generating rulings;² Google and Shutterfly had likewise found themselves in the news for alleged BIPA violations;³ and the first BIPA fingerprint case had not only been filed, but it had also been settled and finally approved.⁴

30. Thus, throughout the class period, BIPA was well known, and its obligations clear.

¹ See Tony Briscoe, *Suit: Facebook facial recognition technology violates Illinois privacy laws*, Chicago Tribune (Apr. 1, 2015), <https://www.chicagotribune.com/news/breaking/ct-facebook-facial-recognition-lawsuit-met-story.html>.

² Russell Brandom, *Lawsuit challenging Facebook's facial recognition system moves forward*, The Verge (May 5, 2016), <https://www.theverge.com/2016/5/5/11605068/facebook-photo-tagging-lawsuit-biometric-privacy>; see also Joel Rosenblatt, *Is Facebook's Facial-Scanning Technology Invading Your Privacy Rights*, Bloomberg (Oct. 26, 2016), <https://www.bloomberg.com/news/articles/2016-10-26/is-facebook-s-facial-scanning-technology-invading-your-privacy-rights>.

³ Christopher Zara, *Google Gets Sued Over Face Recognition, Joining Facebook And Shutterfly In Battle Over Biometric Privacy In Illinois*, International Business Times (Mar. 4, 2016), <https://www.ibtimes.com/google-gets-sued-over-face-recognition-joining-facebook-shutterfly-battle-over-2330278>.

⁴ Jonathan Bilyk, *L.A. Tan settles fingerprint scan privacy class action for \$1.5M; attorneys get \$600K*, Cook County Record (Dec. 9, 2016), <https://cookcountyrecord.com/stories/511056103-1-a-tan-settles-fingerprint-scan-privacy-class-action-for-1-5m-attorneys-get-600k>; see also Melissa Daniels, *Tanning Co. Settles For \$1.5M Under Illinois Biometric Law*, Law360 (Dec. 6, 2016), <https://www.law360.com/articles/869828/tanning-co-settles-for-1-5m-under-illinois-biometric-law>.

CLASS ALLEGATIONS

31. Plaintiff brings this action on behalf of the following class and subclasses of similarly situated individuals:

Class: All individuals identified in any biometric system at any Charter Facility in Illinois at any time from November 1, 2018 through May 25, 2021.

Fox Lake Subclass: All individuals identified in the Fox Lake Biometric System at any time from November 1, 2018 through May 25, 2021.

Vernon Hills Subclass: All individuals identified in the Vernon Hills Biometric System at any time from November 1, 2018 through May 25, 2021.

32. Excluded from the class and subclasses (collectively, the “classes”) are any members of the judiciary assigned to preside over this matter, any officer or director of Defendants, counsel for the Parties, and any immediate family member of any of the same.

33. Upon information and belief, the classes contain scores, if not hundreds, of individuals. The classes are therefore so numerous that joinder of all members is impracticable. The precise number of members of the classes can be determined by reference to Defendants’ records.

34. Plaintiff’s claims are typical of the proposed classes’. Because Plaintiff used the Biometric Systems in the same fashion as the members of the classes, Plaintiff’s claims have the same factual and legal bases as the proposed members’, and Defendants’ conduct has resulted in identical injuries to Plaintiff and the other members of the classes

35. Common questions of law and fact will predominate over any individualized inquiries. Those common questions include:

- a. Whether Defendants collected the class members’ biometric identifiers or biometric information;

- b. Whether Defendants published a written policy establishing a retention schedule and biometric-destruction guidelines;
- c. Whether Defendants obtained a written release prior to collecting the class members' biometrics;
- d. Whether Defendants informed the class members, in writing, of the purposes and duration for which their biometrics would be collected and stored; and
- e. Whether Defendants are liable for \$5,000 or only \$1,000 per violation.

36. Absent a class action, most members of the classes would find their claims prohibitively expensive to bring individually and would be left without an adequate remedy. Class treatment of the common questions is also superior because it conserves the Court's and Parties' resources and promotes efficiency and consistency of adjudication.

37. Plaintiff will adequately represent the classes. Plaintiff has retained counsel experienced in biometric class actions. Plaintiff and Plaintiff's counsel are committed to vigorously litigating this action on the classes' behalf and have the resources to do so. Neither Plaintiff nor Plaintiff's counsel have any interest adverse to the classes.

38. Defendants have acted on grounds generally applicable to Plaintiff and the classes, requiring the Court's imposition of uniform relief, including injunctive and declaratory relief to the classes.

COUNT I

Violation of 740 ILCS 14/15

On behalf of Plaintiff and the Charter Senior Living Class, against Charter Senior Living

39. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

40. Charter Senior Living is a limited liability company and is therefore a private entity.

41. By capturing and collecting scans of Plaintiff's and the Class's face geometry through the biometric systems at its properties, including, but not limited to the Fox Lake

Biometric System and the Vernon Hills biometric system, Charter Senior Living captured, collected, or otherwise obtained Plaintiff's and the Class's biometric identifiers. 740 ILCS 14/10.

42. By capturing, collecting, and maintaining reference templates and associated timekeeping information, Charter Senior Living captured, collected, or otherwise obtained Plaintiff's and the Class's biometric information. 740 ILCS 14/10.

43. While in possession of Plaintiff's and the Classes' biometric identifiers and biometric information, Charter Senior Living did not establish a publicly available, written policy outlining its retention schedule or guidelines for destroying biometric data. 740 ILCS 14/15(a).

44. Prior to capturing and collecting Plaintiff's and the Class's biometric identifiers and information, Charter Senior Living did not inform Plaintiff and the Class in writing that their biometrics were being captured, collected, stored, and used. 740 ILCS 14/15(b)(1).

45. Prior to capturing and collecting Plaintiff's and the Class's biometric identifiers and information, Charter Senior Living did not inform Plaintiff and the Class of the specific purpose for which their biometrics were being captured, collected, stored, and used. 740 ILCS 14/15(b)(2).

46. Prior to capturing and collecting Plaintiff's and the Class's biometric identifiers and information, Charter Senior Living did not inform Plaintiff and the Charter Senior Living Class of the length of time that their biometrics would be maintained. 740 ILCS 14/15(b)(2).

47. Prior to capturing and collecting Plaintiff's and the Class's biometric identifiers and information, Charter Senior Living did not obtain a written release authorizing such collection. 740 ILCS 14/15(b)(3).

48. While Charter Senior Living was in possession of Plaintiff's and the Class's biometric identifiers and information, Charter Senior Living failed to provide a publicly available

retention schedule detailing the length of time it would maintain Plaintiff's and the Class's biometrics and guidelines for permanently destroying the same. 740 ILCS 14/15(a).

COUNT II

Violation of 740 ILCS 14/15

On behalf of Plaintiff and the Fox Lake Subclass, against Charter Fox Lake

49. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

50. Charter Fox Lake is a limited liability company and is therefore a private entity.

51. By capturing and collecting scans of Plaintiff's and the Fox Lake Subclass's face geometry through the Fox Lake Biometric System, Charter Fox Lake collected Plaintiff's and the Fox Lake Subclass's biometric identifiers. 740 ILCS 14/10.

52. By capturing, collecting, and maintaining reference templates and associated timekeeping information, Charter Fox Lake captured and collected Plaintiff's and the Fox Lake Subclass's biometric information. 740 ILCS 14/10.

53. While in possession of Plaintiff's and the Classes' biometric identifiers and biometric information, Charter Fox Lake did not establish a publicly available, written policy outlining its retention schedule or guidelines for destroying biometric data. 740 ILCS 14/15(a).

54. Prior to capturing and collecting Plaintiff's and the Fox Lake Subclass's biometric identifiers and information, Charter Fox Lake did not inform Plaintiff and the Fox Lake Subclass in writing that their biometrics were being captured, collected, stored, and used. 740 ILCS 14/15(b)(1).

55. Prior to capturing and collecting Plaintiff's and the Fox Lake Subclass's biometric identifiers and information, Charter Fox Lake did not inform Plaintiff and the Fox Lake Subclass of the specific purpose for which their biometrics were being captured, collected, stored, and used. 740 ILCS 14/15(b)(2).

56. Prior to capturing and collecting Plaintiff's and the Fox Lake Subclass's biometric identifiers and information, Charter Fox Lake did not inform Plaintiff and the Fox Lake Subclass of the length of time that their biometrics would be maintained. 740 ILCS 14/15(b)(2).

57. Prior to capturing and collecting Plaintiff's and the Fox Lake Subclass's biometric identifiers and information, Charter Fox Lake did not obtain a written release authorizing such collection. 740 ILCS 14/15(b)(3).

58. While Charter Fox Lake was in possession of Plaintiff's and the Fox Lake Subclass's biometric identifiers and information, Charter Fox Lake failed to provide a publicly available retention schedule detailing the length of time it would maintain Plaintiff's and the Fox Lake Subclass's biometrics and guidelines for permanently destroying the same. 740 ILCS 14/15(a).

COUNT III
Violation of 740 ILCS 14/15
On behalf of Plaintiff and the Class, Against Charter Vernon Hills

59. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

60. Charter Vernon Hills is a limited liability company and is therefore a private entity.

61. By capturing and collecting scans of Plaintiff's and the Vernon Hills Subclass's face geometry through the Vernon Hills Biometric System, Charter Vernon Hills collected Plaintiff's and the Vernon Hills Subclass's biometric identifiers. 740 ILCS 14/10.

62. By capturing, collecting, and maintaining reference templates and associated timekeeping information, Charter Vernon Hills captured and collected Plaintiff's and the Vernon Hills Subclass's biometric information. 740 ILCS 14/10.

63. While in possession of Plaintiff's and the Classes' biometric identifiers and biometric information, Charter Vernon Hills did not establish a publicly available, written policy outlining its retention schedule or guidelines for destroying biometric data. 740 ILCS 14/15(a).

64. Prior to capturing and collecting Plaintiff's and the Vernon Hills Subclass's biometric identifiers and information, Charter Vernon Hills did not inform Plaintiff and the Vernon Hills Subclass in writing that their biometrics were being captured, collected, stored, and used. 740 ILCS 14/15(b)(1).

65. Prior to capturing and collecting Plaintiff's and the Vernon Hills Subclass's biometric identifiers and information, Charter Vernon Hills did not inform Plaintiff and the Vernon Hills Subclass of the specific purpose for which their biometrics were being captured, collected, stored, and used. 740 ILCS 14/15(b)(2).

66. Prior to capturing and collecting Plaintiff's and the Vernon Hills Subclass's biometric identifiers and information, Charter Vernon Hills did not inform Plaintiff and the Vernon Hills Subclass of the length of time that their biometrics would be maintained. 740 ILCS 14/15(b)(2).

67. Prior to capturing and collecting Plaintiff's and the Vernon Hills Subclass's biometric identifiers and information, Charter Vernon Hills did not obtain a written release authorizing such collection. 740 ILCS 14/15(b)(3).

68. While Vernon Hills was in possession of Plaintiff's and the Vernon Hills Subclass's biometric identifiers and information, Charter Vernon Hills failed to provide a publicly available retention schedule detailing the length of time it would maintain Plaintiff's and the Vernon Hills Subclass's biometrics and guidelines for permanently destroying the same. 740 ILCS 14/15(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, respectfully requests that this Court enter an Order:

- a. Certifying the Class and Subclasses as defined above, appointing Plaintiff as class representative, and appointing Plaintiff's counsel as class counsel;

- b. Declaring that Defendants' actions as set forth herein violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the Class;
- d. Finding Defendants' conduct intentional or reckless and awarding \$5,000 in damages per violation, per Defendant, per Class and Subclass member under 740 ILCS 14/20(2), or, if Defendants' conduct does not rise to that standard, \$1,000 per violation, per Defendant, per Class member under 740 ILCS 14/20(1);
- e. Awarding Plaintiff and the Class their reasonable attorneys' fees, costs, and other litigation expenses under 740 ILCS 14/20(3);
- f. Awarding Plaintiff and the Class pre- and post-judgment interest; and
- g. Awarding such other and further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: February 10, 2023

ANNA KACSO, individually and on behalf
of all others similarly situated,

s/ Randall K. Pulliam
One of Plaintiff's Attorneys

Randall K. Pulliam
Samuel R. Jackson
CARNEY BATES & PULLIAM, PLLC
519 W. 7th Street
Little Rock, AR 72201
T: 501.312.8500
F: 501.312.8505
rpulliam@cbplaw.com
ARDC #6343456
sjackson@cbplaw.com
ARDC #6341711

J. Dominick Larry
NICK LARRY LAW LLC
1720 W. Division St.
Chicago, IL 60622
T: 773.694.4669
F: 773.694.4691
nick@nicklarry.law
ARDC # 6309519

Attorneys for Plaintiff and the Class