

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

CHRISTOPHER KOLTAS and KYLE)
MORRELL, individually and on behalf of a)
class of similarly situated individuals,)
)
Plaintiffs,)
)
v.)
)
TOKENWORKS, INC., a Delaware)
corporation; and PHARMACANN, LLC., an)
Illinois limited liability company,)
)
Defendants.)

No. 2023CH07268

Hon.

PLAINTIFFS’ CLASS ACTION COMPLAINT

Plaintiffs Christopher Koltas and Kyle Morrell (“Plaintiffs”), individually and on behalf of other similarly situated individuals, bring this Class Action Complaint against Defendants Tokenworks, Inc. (“Tokenworks”) and Pharmacann LLC (“Pharmacann”) (collectively “Defendants”) for violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”) and to obtain redress for all persons injured by Defendants’ conduct. Plaintiffs allege the following based on personal knowledge as to their own acts and experiences, and as to all other matters, upon information and belief, including an investigation conducted by their attorneys.

INTRODUCTION

1. BIPA defines a “biometric identifier” as any personal feature that is unique to an individual, including handprints, fingerprints, facial geometry, and retinal scans. “Biometric information” is any information based on a biometric identifier, regardless of how it is converted or stored. 740 ILCS § 14/10. Collectively, biometric identifiers and biometric information are known as “biometrics.”

2. This case concerns the misuse of individuals' biometrics by Defendant Pharmacann, one of Illinois's top retailers of cannabis products, and Defendant Tokenworks, a leading provider of biometrically-enabled ID scanners and identification software. Using biometrically enabled technology, Defendants are capturing, collecting, storing, disseminating, or otherwise using the biometrics of Plaintiffs and other consumer Class members, without their informed written consent, as required by law, to verify their identity.

3. BIPA provides, *inter alia*, that private entities, such as Defendants, may not obtain and/or possess an individual's biometrics unless they first:

- a. inform the person whose biometrics are to be collected *in writing* that biometric identifiers or biometric information will be collected or stored;
- b. inform the person whose biometrics are to be collected *in writing* of the specific purpose and the length of term for which such biometric identifiers or biometric information is being collected, stored and used;
- c. receive a *written release* from the person whose biometrics are to be collected, allowing the capture and collection of their biometric identifiers or biometric information; and
- d. publish publicly available retention guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a)–(b).

4. Additionally, BIPA provides, *inter alia*, that private entities, such as Defendants, may not profit from a person's or customer's biometrics and also may not disclose or otherwise disseminate a person's or customer's biometrics. 740 ILCS 14/15(c)–(d).

5. Compliance with BIPA is straightforward and may be accomplished through a single, signed sheet of paper. BIPA's requirements, which have been law in Illinois since 2008, bestow a right to privacy in biometrics and a right to make an *informed* decision when electing whether to provide or withhold biometrics.

6. Defendants' biometrically-enabled technology works by extracting biometric facial scans from individuals and subsequently using the same for identity verification purposes.

7. The Illinois Legislature has found that "biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, even sensitive information like Social Security numbers can be changed. Biometrics, however, are biologically unique to each individual and, once compromised, such individual has no recourse, is at a heightened risk for identity theft, and is likely to withdraw from biometric facilitated transactions." 740 ILCS 14/5(c). The risk is compounded when a person's biometrics are also associated with their other personally identifiable information.

8. The deprivation of the statutory rights conferred by BIPA constitutes the actual injuries the Illinois Legislature sought to prevent.

9. Plaintiffs bring this action for statutory damages and other remedies as a result of Defendants' conduct in violating Plaintiffs' state biometric privacy rights.

10. On Plaintiffs' own behalf, and on behalf of the proposed Class and Subclass defined below, Plaintiffs seek an injunction requiring Defendants to comply with BIPA, as well as an award of statutory damages to the Class members, together with costs and reasonable attorneys' fees.

PARTIES

11. At all relevant times, Plaintiff Christopher Koltas has been a resident and citizen of the state of Illinois.

12. At all relevant times, Plaintiff Kyle Morrell has been a resident and citizen of the state of Illinois.

13. Defendant Pharmacann is a national supplier of cannabis products, organized under the laws of Illinois, that conducts substantial business throughout this country, including in Illinois, and is registered with and authorized by the Illinois Secretary of State to transact business in the state of Illinois.

14. Defendant Tokenworks is a leading provider of ID scanner and identification verification products, organized under the laws of Delaware, that conducts substantial business throughout this country, including in Illinois.

JURISDICTION AND VENUE

15. This Court may assert personal jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States, because Defendants are knowingly doing business within this State such that they have sufficient minimum contacts with Illinois and have purposely availed themselves of Illinois markets to make it reasonable for this Court to exercise jurisdiction over Defendants, and because Plaintiffs' claims arise out of or relate to Defendants' conduct in Illinois, as Defendants captured, collected, stored, possessed, and disseminated Plaintiffs' and the other putative Class members' biometric identifiers and/or biometric information in this State. Further, Defendant Pharmacann is a corporation organized under the laws of Illinois who owns, uses, and possesses real estate situated in Illinois. Defendant Tokenworks provides its biometrically-enabled products to Pharmacann, which is domiciled in Illinois, thus, knowingly transacting business and capturing the biometrics of Illinois residents within this State.

16. Venue is proper in Cook County, Illinois pursuant to 735 ILCS 5/2-101 because Defendants conduct business in Cook County and thus reside there under § 2-102.

FACTUAL ALLEGATIONS

17. Defendant Tokenworks offers a range of ID scanning products under its brand IDScanner which integrate biometric technology in order to provide identity verification capabilities to its customers.

18. For example, two of Tokenworks' products, IDentiFake and IDentiFake Plus (collectively "IDentiFake"), are biometrically-enabled devices used to verify a customer's age and identity after scanning an individual's ID.

19. IDentiFake is powered by third party identity verification platforms which quickly perform dozens of forensic checks and detect microprint, holographic and other security features in ID's provided by consumers visiting a business, including but not limited to driver's licenses. Critically, Tokenwork's IDentiFake devices extract biometric data from provided ID documents to authenticate them by scanning any pictures of the individual featured on the ID document.

20. Further, IDentiFake is cloud compatible with the ability to network multiple ID scanners to one central database. Thus, when the IDentiFake device extracts facial biometrics from an individual's ID, the system transmits the collected biometrics to networks, servers, and hosted environments.

21. Additionally, certain versions of the IDentiFake device require customers to also take a photo of their face using a camera attached to the IDentiFake device. On information and belief, this photo is used to extract the biometric features of the customer's face, and compare those with the biometrics extracted from the customer's ID.

22. Tokenworks supplies its IDentiFake product to a variety of brick-and-mortar retail establishments that require age verification such as casinos, banks, liquor stores, bars nightclubs, and cannabis dispensaries, such as Pharmacann.

23. Defendant Pharmacann is a national supplier of cannabis products. Pharmacann owns dispensaries across the country, including its branded “Verilife” dispensaries which are located throughout the state of Illinois. Pharmacann uses Tokenworks’ IDentiFake device in its Verilife dispensaries in order to verify the identities of its customers.

24. Prior to purchasing cannabis products at brick-and-mortar Verilife locations, customers are required to present their personal ID, such as a driver’s license, to an employee.

25. Pharmacann’s employee then scans the ID through the IDentiFake device in order for the customer’s identity to be verified.

26. Upon being scanned, Tokenworks’ IDentiFake device extracts the customer’s biometric information from any picture of their face featured on the ID as part of its identity verification process.

27. Thus, by obtaining customers’ biometrics through the IDentiFake device, Defendants collect, capture, and store biometric data.

28. However, Defendants fail to inform customers that their biometrically- enabled products are collecting, capturing, storing, and/or using their unique biometrics, nor are they informing customers the extent of the purposes for which their biometrics are being collected, captured, stored, and/or used.

29. Defendants also failed to seek or obtain written consent to collect biometrics prior to doing so.

30. Furthermore, Defendant Tokenworks unlawfully profited from the facial biometrics it obtained from Verilife customers, including Plaintiffs and other Class members, as Defendant Tokenworks is paid by Pharmacann for its use of the IDentiFake device and software to verify its customers’ facial biometrics. On information and belief, Tokenworks offers its

advanced identification verification as a service, where clients, like Pharmacann, are continually charged for the operation of its biometric device.

31. Defendants knew, or should have known, that by obtaining Illinois citizens' biometric data would subject them to the requirements of BIPA but Defendants nonetheless failed to comply with BIPA's requirements.

FACTS SPECIFIC TO PLAINTIFFS

32. From approximately January 1, 2021 through January 2023, Plaintiff Koltas made several visits to the Verilife location in Romeoville, Illinois to purchase various products. Plaintiff Morrell similarly visited the Romeoville location from approximately May 2020 through May 2021.

33. In order to enter Verilife's store, Plaintiffs, like all other customers who enter a Verilife location, had to provide their IDs to Verilife's security employees. The employees then scanned both sides of Plaintiffs' IDs through an IDentiFake device in order to verify their ID and age.

34. The IDentiFake device then extracted Plaintiffs' biometric information and utilized the same to verify their ID and age.

35. Before being allowed to purchase their products at check out, Plaintiffs were once again required to scan their IDs through an IDentiFake device to confirm their identity.

36. Prior to taking Plaintiffs' biometrics, Defendants did not inform Plaintiffs in writing that their biometrics were being captured, collected, stored, and/or used.

37. Defendants also failed to make publicly available any written policy addressing their biometric retention and destruction schedules.

38. By failing to comply with BIPA, Defendants have violated Plaintiffs' substantive state rights to biometric privacy.

CLASS ALLEGATIONS

39. Plaintiffs bring this action individually and on behalf of all similarly situated individuals pursuant to 735 ILCS 5/2-801. Plaintiffs seek to represent a Class and Subclass (collectively the "Class") defined as follows:

Class: All Illinois residents whose biometrics were captured, collected, stored, disseminated, or otherwise used by, or on behalf of Defendant Tokenworks at any time during the applicable limitations period.

Subclass: All Illinois residents whose biometrics were captured, collected, stored, disseminated, or otherwise used by, or on behalf of Defendant Pharmacann at any time during the applicable limitations period.

40. Excluded from the Class and Subclass are any members of the judiciary assigned to preside over this matter; any officer or director of Defendants; and any immediate family member of such officers or directors.

41. Upon information and belief, there are at least hundreds, if not thousands, of members of the Class and Subclass, making the members of the Class and Subclass so numerous that joinder of all members is impracticable. Although the exact number of members of the Class and Subclass is currently unknown to Plaintiffs, the members can be easily identified through Defendants' records.

42. Plaintiffs' claims are typical of the claims of the members of the Class and Subclass Plaintiffs seek to represent, because the factual and legal bases of Defendants' liability to Plaintiffs and the other members are the same, and because Defendants' conduct has resulted in similar injuries to Plaintiffs and to the Class and Subclass. As alleged herein, Plaintiffs and the Class and Subclass have all suffered damages as a result of Defendants' BIPA violations.

43. There are many questions of law and fact common to the claims of Plaintiffs, the Class, and Subclass, and those questions predominate over any questions that may affect individual members. Common questions for the Class and Subclass include, but are not limited to, the following:

- a. Whether Defendants' conduct violates BIPA;
- b. Whether Defendants made available to the public a written policy that establishes a retention schedule and guidelines for destroying biometrics;
- c. Whether Defendants obtained a written release from Plaintiffs, Class members, or Subclass members before capturing, collecting, or otherwise obtaining their biometrics;
- d. Whether Defendants provided a written disclosure to Plaintiffs, Class members, or Subclass members that explains the specific purposes, and the length of time, for which biometrics were being collected, stored, and used before taking such biometrics;
- e. Whether Defendants' violations of the BIPA are willful or reckless; and
- f. Whether Plaintiffs, the Class, and Subclass are entitled to damages and injunctive relief.

44. Absent a class action, most members of the Class and Subclass would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions in that it conserves the resources of the courts and the litigants and promotes consistency of adjudication.

45. Plaintiffs will adequately represent and protect the interests of the members of the Class and Subclass. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiffs and Plaintiffs' counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and Subclass and have the financial resources to do so. Neither Plaintiffs nor Plaintiffs' counsel have any interest adverse to those of the other members of the Class and Subclass.

46. Defendants have acted and failed to act on grounds generally applicable to Plaintiffs and the other members of the Class and Subclass, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and Subclass and making injunctive or corresponding declaratory relief appropriate for the Class and Subclass as a whole.

COUNT I

Violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(a), 15(b), and 15(c)

(On behalf of the Plaintiffs and the Class and Subclass against Defendant Tokenworks)

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

48. Defendant Tokenworks is a private entity under BIPA.

49. BIPA requires private entities, such as Defendant Tokenworks, to obtain informed written consent from individuals before acquiring their biometric identifiers or biometric information. Specifically, BIPA makes it unlawful to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or 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 for which a biometric identifier or biometric information is being captured,

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).

50. BIPA also requires any entity in possession of biometric identifiers and/or biometric information to make publicly available a written biometric retention and destruction policy. 740 ILCS 14/15(a).

51. Plaintiffs and the other Class and Subclass members have had their “biometric identifiers,” i.e. facial biometrics extracted from their IDs, or information derived therefrom, i.e. “biometric information,” collected, captured, stored, and/or otherwise obtained by Defendant Tokenworks when they visited a retail establishment utilizing its ID verification device within Illinois.

52. Each instance Plaintiffs and the other Class and Subclass members were required to scan their ID, Defendant Tokenworks captured, collected, stored, and/or otherwise obtained Plaintiffs’ and the other Class and Subclass members’ biometric identifiers or biometric information without valid consent and without complying with BIPA.

53. Defendant Tokenworks’ practice with respect to capturing, collecting, storing, and using biometrics fails to comply with applicable BIPA requirements:

- a. Defendant failed to inform Plaintiffs and the members of the Class and Subclass in writing that their biometrics were being collected and stored, prior to such collection or storage, as required by 740 ILCS 14/15(b)(1);
- b. Defendant failed to inform Plaintiffs, the Class, and Subclass in writing of the specific purpose for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);

- c. Defendant failed to inform Plaintiffs, the Class, and Subclass in writing the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2); and
- d. Defendant failed to obtain a written release from Plaintiffs and the other Class and Subclass members, as required by 740 ILCS 14/15(b)(3).

54. As a result, Defendant Tokenworks has violated Section 15(b) of BIPA.

55. Further, despite coming into possession of Plaintiffs' and the Class and Subclass members' biometrics, Defendant Tokenworks has failed to make publicly available a written policy detailing its retention and destruction schedules in violation of Section 15(a) of BIPA.

56. Section 15(c) of BIPA also prohibits any private entity in possession of biometrics, such as Defendant Tokenworks, from selling, leasing, trading, or otherwise profiting from such biometrics. 740 ILCS 14/15(c).

57. As alleged herein, Defendant Tokenworks unlawfully profited from the facial biometrics it obtained from Verilife customers, including Plaintiffs and other Class and Subclass members, as Defendant Tokenworks was paid by Pharmacann for its use of the IDentiFake device to verify its customers' facial biometrics. On information and belief, Tokenworks offers its advanced identification verification as a service, where clients, like Pharmacann, are continually charged for the operation of its biometric device and cloud compatible network services.

58. Thus, Defendant Tokenworks has violated Section 15(c) of BIPA.

59. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1)–(2).

60. Defendant Tokenworks' violations of Section 15(a), (b), and (c) of BIPA, which has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant Tokenworks negligently failed to comply with Sections 15(a), (b), and (c) of BIPA.

61. Accordingly, with respect to Count I, Plaintiffs, individually and on behalf of the proposed Class and Subclass, pray for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class and Subclass, respectfully requests that this Court enter an Order:

- a. Certifying the Class and Subclass as defined above, appointing Plaintiffs as class representatives and the undersigned as class counsel;
- b. Declaring that Defendant Tokenworks' actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiffs and the Class and Subclass by requiring Defendant Tokenworks to comply with BIPA;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(2);
- e. Awarding statutory damages of \$1,000 for each negligent violation of BIPA, pursuant to 740 ILCS 14/20(1);
- f. Awarding reasonable attorneys' fees, costs, and other litigation expenses, pursuant to 740 ILCS 14/20(3);
- g. Awarding pre- and post-judgment interest, as allowable by law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

COUNT II

Violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(a) and 15(b)

(On behalf of the Plaintiffs and the Subclass against Defendant Pharmacann)

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

63. Defendant Pharmacann is a private entity under BIPA.

64. BIPA requires private entities, such as Defendant Pharmacann, to obtain informed written consent from individuals before acquiring their biometric identifiers or biometric information. Specifically, BIPA makes it unlawful to “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or 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 for which a biometric identifier or biometric information is being captured, 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).

65. BIPA also requires any entity in possession of biometric identifiers and/or biometric information to make publicly available a written biometric retention and destruction policy. 740 ILCS 14/15(a).

66. Plaintiffs and the other Subclass members have had their “biometric identifiers,” i.e. facial biometrics extracted from their IDs, or information derived therefrom, i.e. “biometric information,” collected, captured, stored, and/or otherwise obtained by Defendant Pharmacann when they visited one of its retail establishments within Illinois and had to have their identity verified to enter the location and/or make a purchase.

67. Each instance Plaintiffs and the other Subclass members were required to scan their ID, Defendant Pharmacann captured, collected, stored, and/or otherwise obtained Plaintiffs’ and

the other Subclass members' biometric identifiers or biometric information without valid consent and without complying with BIPA.

68. Defendant Pharmacann's practice with respect to capturing, collecting, storing, and using biometrics fails to comply with applicable BIPA requirements:

- a. Defendant failed to inform Plaintiffs and the members of the Subclass in writing that their biometrics were being collected and stored, prior to such collection or storage, as required by 740 ILCS 14/15(b)(1);
- b. Defendant failed to inform Plaintiffs and the members of the Subclass in writing of the specific purpose for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- c. Defendant failed to inform Plaintiffs and the members of the Subclass in writing the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2); and
- d. Defendant failed to obtain a written release from Plaintiffs and the other Subclass members, as required by 740 ILCS 14/15(b)(3).

69. As a result, Defendant Pharmacann has violated Section 15(b) of BIPA.

70. Further, despite coming into possession of Plaintiffs' and the Subclass members' biometrics, Defendant Pharmacann has failed to make publicly available a written policy detailing its retention and destruction schedules in violation of Section 15(a) of BIPA.

71. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA. 740 ILCS 14/20(1)–(2).

72. Defendant Pharmacann's violations of Section 15(a) and (b) of BIPA, which has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant Pharmacann negligently failed to comply with Sections 15(a) and (b) of BIPA.

73. Accordingly, with respect to Count II, Plaintiffs, individually and on behalf of the proposed Subclass, pray for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Subclass, respectfully requests that this Court enter an Order:

- a. Certifying the Subclass as defined above, appointing Plaintiffs as class representatives and the undersigned as class counsel;
- b. Declaring that Defendant Pharmacann's actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiffs and the Subclass by requiring Defendant Pharmacann to comply with BIPA;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(2);
- e. Awarding statutory damages of \$1,000 for each negligent violation of BIPA, pursuant to 740 ILCS 14/20(1);
- f. Awarding reasonable attorneys' fees, costs, and other litigation expenses, pursuant to 740 ILCS 14/20(3);
- g. Awarding pre- and post-judgment interest, as allowable by law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiffs request trial by jury of all claims that can be so tried.

Dated: August 9, 2023

Respectfully submitted,

CHRISTOPHER KOLTAS and KYLE
MORRELL, individually and on behalf of a
class of similarly situated individuals

By: /s/ Colin P. Buscarini
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