

YES NO

EXHIBITS

CASE NO. 22CH11181

DATE: 11-15-22

CASE TYPE: Class Action

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CASE NOTE

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

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DIANE GIELOW, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

PANDORA JEWELRY LLC and PANDORA
ECOMM, LLC

Defendants.

Case No.
2022CH11181

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Diane Gielow (“Plaintiff”) brings this action on behalf of all others similarly situated against Pandora Jewelry LLC and Pandora Ecomm, LLC (collectively, “Pandora” or “Defendant”). Plaintiff makes the following allegations based upon information and belief, except as to allegations specifically pertaining to herself, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action suit brought against Defendants for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* Defendants operates a feature on its website called “Virtual Try-on” that collects biometric information.
2. Defendant Pandora Jewelry is the third-largest retailer of jewelry in the United States. It is a subsidiary of the Danish public company Pandora A/S.
3. Virtual Try-on was added to pandora.net on or about November 2020.
4. Virtual Try-on allows users, through the camera on their smartphone, to model Pandora jewelry on themselves using a mode called “On me.”

5. Virtual Try-on then requires users to upload that photo onto the website, where customers' facial geometry is analyzed and, if the customer is using a laptop or desktop, the image then appears on the website through the user's laptop or desktop computer.

6. Virtual Try-on captures, possesses, and/or retains the biometrics of the subject of the photo, in this case, Plaintiff and members of the Class.

7. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant in collecting, storing, and using their and other similarly situated individuals' biometric identifiers¹ and biometric information² (referred to collectively at times as "biometric data"). Defendant failed to establish a retention and deletion schedule for Plaintiff's biometric data when it was in possession of the same, failed to procure Plaintiff's consent before it collected, captured, or otherwise obtained Plaintiff's biometric data, and failed to procure Plaintiff's consent before it disclosed or otherwise disseminated Plaintiffs' biometric data.

8. The Illinois Legislature has found that "[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information." 740 ILCS 14/5(c). "For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions." *Id.*

9. In recognition of these concerns over the security of individuals' biometrics, the Illinois Legislature enacted BIPA, which provides, *inter alia*, that private entities such as

¹ "Biometric identifier[s]" include fingerprints, voiceprints, iris scans, and face geometry, among other things.

² "Biometric information" is any information captured, converted, stored or shared based on a person's biometric identifier used to identify an individual.

Defendants may not obtain and/or possess an individual's biometrics unless they: (1) inform that person in writing that biometric identifiers or information will be collected or stored; (2) inform that person in writing of the specific purpose and length of term for which such biometric identifiers or biometric information are being collected, stored, and used; and (3) receive a written release from the person for the collection of his or her biometric identifiers or information. *See* 740 ILCS 14/15(b)(1)-(3).

10. Moreover, entities possessing biometric identifiers and biometric information must publish publicly available written retention schedules and guidelines for permanently destroying biometric identifiers and biometric information. *See* 740 ILCS 14/15(a).

11. As alleged below, Defendants' practices of collecting, storing, using, and possessing individuals' biometric identifiers (specifically, voice prints) and associated biometric information violated BIPA §§ 15(a) and 15(b).

12. In direct violation of § 15(b) of BIPA, through the App, Defendants collected, stored, and used—without first obtaining adequate informed written consent—the biometric data of thousands of Illinoisans, including Plaintiffs.

13. Plaintiff is an Illinois resident whose biometric data was uploaded to the website by herself from an Illinois IP address. Through this process, Defendants collected Plaintiff's biometric data, including her facial geometry, facial features, and expressions.

14. Defendants failed to obtain adequate written consent from Plaintiff to collect, capture, or otherwise obtain Plaintiff's biometric data. Plaintiff was not on notice that their biometric data would be collected and provided to third parties, nor did Plaintiff consent to the same. Defendant did not procure a "written release" executed by Plaintiff for the collection of their biometric data.

15. Finally, in violation of BIPA, Defendants failed to keep a written retention schedules and guidelines for permanently destroying biometric identifiers and biometric information. .

16. BIPA confers on Plaintiff and all other similarly situated Illinois residents a right to know of the risks that are inherently presented by the collection and storage of biometric data, and a right to know how long such risks will persist after ceasing using Defendant's website.

17. Yet, Defendants failed to obtain Plaintiff's or the Class's informed written consent before collecting their biometric data, and failed to procure consent to disclose their biometric data.

18. Plaintiff brings this action to prevent Defendant from further violating the privacy rights of Illinois residents and to recover statutory damages for Defendants' improper collection, storage, and disclosure of these individuals' biometric data in violation of BIPA.

PARTIES

19. Plaintiff Diane Gielow is, and has been at all relevant times, a resident Des Plaines, Illinois and has an intent to remain there, and is therefore a domiciliary and citizen of Illinois.

20. Defendant Pandora Jewelers, LLC is a Maryland limited liability corporation with its principal place of business in Baltimore, Maryland. It is a wholly-owned subsidiary of the Danish public company Pandora A/S. Pandora operates Virtual Try-On on its website, which is used throughout Illinois.

21. Defendant Pandora Ecomm LLC is a Maryland limited liability corporation with its principal place of business in Baltimore, Maryland. It is a wholly-owned subsidiary of the Danish public company Pandora A/S. Pandora Ecomm LLC operates Pandora's website and, as a result, operates Virtual Try-On on its website.

JURISDICTION AND VENUE

22. This Court has personal jurisdiction over Defendants because (1) Defendants marketed Virtual Try-On in Illinois, (2) Defendants do business in Illinois, both online and in stores throughout the State, (3) the biometric data collected and which give rise to this lawsuit belonged to Illinois residents, and (4) the biometric data was collected and possessed by Defendants in Illinois or from consumers using the website in Illinois, and (5) Plaintiffs and the Class had their privacy invaded and lost control over their biometric data in Illinois.

23. Venue is proper in this County because Defendant conducts its usual and customary business in this County. 735 ILCS 5/2-101; 735 ILCS 5/2-102(b).

FACTUAL ALLEGATIONS

I. Illinois' Biometric Information Privacy Act

24. The use of a biometric scanning system entails serious risks. Unlike other methods of identification, facial geometry is a permanent, unique biometric identifier associated with an individual. This exposes individuals to serious and irreversible privacy risks. For example, if a device or database containing individuals' facial geometry data is hacked, breached, or otherwise exposed, individuals have no means by which to prevent identity theft and unauthorized tracking.

25. Recognizing the need to protect citizens from these risks, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA") in 2008, to regulate companies that collect and store biometric information, such as facial geometry. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276.

26. BIPA is an informed consent statute which achieves its goal 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*:

informs the subject ... in writing that a biometric identifier or biometric information is being collected or stored ... and [] receives a written

release executed by the subject of the biometric identifier or biometric information.

740 ILCS 14/15(b)(1), (3).

27. Further, “[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 the subject of the biometric identifier or biometric information ... consents to the disclosure or redisclosure.” 740 ILCS 14/15(d)(1).

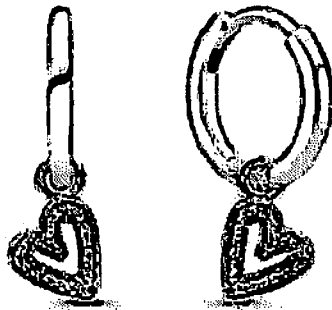
28. As alleged below, Defendants violated § 15(b) of BIPA by failing to obtain a written release from the individuals authorizing the collection of their biometric data, and violated § 15(d) of BIPA by failing to procure the consent of individuals to disclose or otherwise disseminate their biometric data.

II. Defendants Violate BIPA

29. Defendants operate Virtual Try-On on its website pandora.net. Via Defendants’ website, if a potential customer sees a piece of jewelry that they wish to see an image of themselves wearing, they can take a photo of themselves, upload it to Defendant’s website, and see that photo showing a picture of the jewelry in question.

30. The Virtual Try-On feature can also be used to model jewelry such as rings on hands. However, only potential customers and customers who used Virtual Try-On to model jewelry that used photos which captured facial geometry are the subject of this lawsuit.

31. When looking at jewelry on Defendant’s websites, some jewelry includes a tag that says, “Try It On”:



TRY IT ON

32. When a user clicks the “Try It On” hyperlink, they are given the option of seeing it “On Me”, in which case (if on a computer) they are given a QR code to scan on their smartphone which will take them to a website owned by yRuler, Inc.: tangiblee.com.

33. If already on their smartphone, they will, after granting tangiblee.com access to their camera, be prompted on this site to take a photo of their face.

34. The Virtual Try-On feature then captures their facial geometry in order to determine how best to place jewelry objects such as necklaces and earrings.

35. If the initial search and selection of jewelry was done on a computer, Defendant’s websites automatically transfers the photo taken on their smartphone to their computer.

36. In a press release from 2021, yRuler acknowledged that it stored this data “for a short period of time”³ without further specifying the retention duration of these photos.

37. Pandora does not seek the informed consent of potential customers before taking the facial geometry of its users, nor does it publish any sort of retention schedule for the retention of these photos.

38. Further, it does not require users to agree to any terms and conditions prior to using the Virtual Try-On function.

39. Tellingly, at some point prior to the filing of this complaint, Defendants removed Virtual Try-On capability from computers and smartphones its websites recognize as located in Illinois while maintaining it throughout the rest of the United States.

40. In its Privacy Policy, Defendant Pandora Jewelry makes no mention of the fact that it collects biometric information via its website. Neither does it publish a retention schedule.⁴

41. BIPA covers technology that captures, collects, or possesses “a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry” and technology based on these identifiers that is “used to identify an individual.” 740 ILCS 14/10.

42. When users use Defendant’s website, they are never asked to agree to Defendant’s Privacy Policy. Thus, users never consent to Defendants’ Privacy Policy, including Defendant’s collection of biometric data.

43. Accordingly, Defendant violated BIPA § 15(b) by (i) failing to inform users that their biometric data is being collected, stored, and used, and (ii) failing to procure a prior “written release” (*i.e.*, prior consent) from users for the collection of their biometric data.

³ <https://www.retaildive.com/press-release/20210318-tangible-is-gdpr-compliant-with-new-eu-based-servers/> (last accessed October 18, 2022).

⁴ See https://help.pandora.net/s/privacy-policy?language=en_US (last accessed October 21, 2022)

44. Defendants' failure to comply with BIPA's basic consent and disclosure requirements was reckless.

III. Experiences of Plaintiff

45. Plaintiff is an Illinois domiciliary and resident.

46. Plaintiff used Virtual Try-On on Defendant's website numerous times, most recently in late 2021. Plaintiff used Defendant's website to model earrings and necklaces.

CLASS ALLEGATIONS

47. **Class Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801 on behalf of a class of similarly situated individuals, defined as all Illinois residents whose biometric data was captured, collected, received, or otherwise obtained and/or stored by Defendants through the App during the applicable statute of limitations period (the "Class").

48. Subject to additional information obtained through further investigation and discovery, the above-described Class may be modified or narrowed as appropriate, including through the use of multi-state subclasses.

49. **Numerosity:** Pursuant to 735 ILCS 5/2-801(1), the number of persons within the Class is substantial, believed to amount to tens of thousands of persons. It is, therefore, impractical to join each member of the Class as a named plaintiff. Further, the size and relatively modest value of the claims of the individual members of the Class renders joinder impractical. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation. Moreover, the Class is ascertainable and identifiable from Defendants' records.

50. **Commonality and Predominance:** Pursuant to 735 ILCS 5/2-801(2), there are well-defined common questions of fact and law that exist as to all members of the Class and that predominate over any questions affecting only individual members of the Class. These common

legal and factual questions, which do not vary between each member of the Class, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

- (a) whether Defendants collected or otherwise obtained Plaintiff's and the Class's biometric identifiers and/or biometric information;
- (b) whether Defendants disclosed or otherwise disseminated Plaintiff's and the Class's biometric identifiers and/or biometric information;
- (c) whether Defendants procured the consent of Plaintiff's and members of the Class to collect and/or disclosure their biometric data; and
- (d) whether Defendants' violations of BIPA were committed intentionally, recklessly, or negligently.

51. **Adequate Representation:** Pursuant to 735 ILCS 5/2-801(3), Plaintiff has retained and are represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiff and her counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiff is able to fairly and adequately represent and protect the interests of the Class. Neither Plaintiff nor their counsel have any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiff has raised viable statutory claims of the type reasonably expected to be raised by members of the Class, and will vigorously pursue those claims. If necessary, Plaintiff may seek leave of this Court to amend this Class Action Complaint to include additional representatives to represent the Class, to include additional claims as may be appropriate, or to amend the definition of the Class to address any steps that Defendant took.

52. **Propriety of Class Treatment:** Pursuant to 735 ILCS 5/2-801(4), a class action is an appropriate method for the fair and efficient adjudication of this controversy because individual litigation of the claims of all members of the Class is impracticable. Even if every member of the Class could afford to pursue individual litigation, the Court system could not. It

would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Class. Plaintiff anticipates no difficulty in the management of this action as a class action. Class-wide relief is essential to compliance with BIPA.

FIRST CLAIM FOR RELIEF
FOR DAMAGES AGAINST DEFENDANTS
VIOLATION OF 740 ILCS 14/15(A)
(By Plaintiff Individually and on Behalf of the Class)

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

54. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendants.

55. BIPA 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 (at most three years after the company’s last interaction with the individual); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

56. Defendants failed to comply with these BIPA mandates.

57. Defendants are a corporations and do business in Illinois and thus both qualify as a “private entity” under BIPA. *See* 740 ILCS 14/10.

58. Plaintiff is an individual whose “biometric identifiers” were uploaded to Defendants’ website in Illinois and possessed by Defendant, as explained in detail in above. *See* 740 ILCS 14/10.

59. Plaintiff’s biometric identifiers were used to identify Plaintiff and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

60. Defendants failed to publish a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified by BIPA. *See* 740 ILCS 14/15(a).

61. Defendants lacked retention schedules and guidelines for permanently destroying Plaintiff’s and the Class’s biometrics. As such, the only reasonable conclusion is that Defendants have not, and will not, destroy Plaintiff’s and the Class’s biometrics when the initial purpose for collecting or obtaining such data has been satisfied.

62. On behalf of themselves and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Classes by requiring Defendants to comply with BIPA’s requirements for the possession of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys’ fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of herself and the proposed Class, respectfully request that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as a representative of the Class, and appointing their counsel as Class Counsel;
- B. Declaring that Defendants' actions, as set out above, violate BIPA, 740 ILCS 14/15(a), *et seq.*;
- C. Awarding statutory damages of \$5,000.00 for each and every intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or alternatively, statutory damages of \$1,000.00 for each and every violation pursuant to 740 ILCS 14/20(1) if the Court finds that Defendants' violations were negligent;
- D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an Order requiring Defendants' to possess biometric identifiers and/or biometric information in compliance with BIPA § 15(a);
- E. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- F. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- G. Awarding such other and further relief as equity and justice may require.

SECOND CLAIM FOR RELIEF
FOR DAMAGES AGAINST DEFENDANTS
VIOLATION OF 740 ILCS 14/15(B)
(By Plaintiff Individually and on Behalf of the Class)

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

64. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendants.

65. BIPA requires companies to obtain informed written consent from individuals before acquiring their biometric data. Specifically, 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 ... *and*

(3) receives a written release executed by the subject of the biometric identifier or biometric information.” 740 ILCS 14/15(b) (emphasis added).

66. Defendants failed to comply with these BIPA mandates.

67. Defendants are corporations and do business in Illinois and thus both qualify as a “private entity” under BIPA. *See* 740 ILCS 14/10.

68. Plaintiff and the Class are individuals who have had their “biometric identifiers” collected and/or captured by Defendant, as explained in detail above. *See* 740 ILCS 14/10.

69. Plaintiff’s and the Class’s biometric identifiers were used to identify them and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

70. Defendants systematically and automatically collected, captured, used, and stored Plaintiff’s and the Class’s biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS 14/15(b)(3).

71. Defendants failed to inform Plaintiff and the Class in writing that their biometric identifiers and/or biometric information were being collected and stored in violation of 740 ILCS 14/15(b)(1).

72. By collecting, capturing, storing, and/or using Plaintiff’s and the Class’s biometric identifiers and biometric information as described herein, Defendants violated Plaintiff’s and the Class’s rights to privacy in their biometric identifiers and/or biometric information as set forth in BIPA. *See* 740 ILCS 14/1, *et seq.*

73. On behalf of themselves and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with BIPA’s requirements for the collection, captures, storage, and use of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS

14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

PRAYER FOR RELIEF

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

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as the representative of the Class, and appointing their counsel as Class Counsel;
- B. Declaring that Defendant's actions, as set out above, violate BIPA § 15(b), 740 ILCS 14/15(b);
- C. Awarding statutory damages of \$5,000.00 for each and every intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or alternatively, statutory damages of \$1,000.00 for each and every violation pursuant to 740 ILCS 14/20(1) if the Court finds that Defendant's violations were negligent;
- D. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia*, an Order requiring Defendants to collect, store, and use biometric identifiers and/or biometric information in compliance with BIPA;
- E. Awarding Plaintiffs and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- F. Awarding Plaintiffs and the Class pre- and post-judgment interest, to the extent allowable; and
- G. Awarding such other and further relief as equity and justice may require.

JURY TRIAL DEMANDED

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

Dated: November 15, 2022

Respectfully submitted,

/s/ Carl V. Malmstrom
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