

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

JANE DOE, individually and on behalf of)
similarly situated individuals,)

Plaintiff,)

v.)

FENIX INTERNET LLC., a Delaware)
corporation,)

Defendant.)

15497242

No. 2021CH05635

Hon.

Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiff Jane Doe (“Plaintiff”) both individually and on behalf of other similarly situated individuals, brings this Class Action Complaint against Defendant Fenix Internet LLC (“Defendant” or “Fenix”) for its violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(a)-(e) (“BIPA”). Plaintiff alleges the following based on personal knowledge as to Plaintiff’s own acts and experiences, and as to all other matters, upon information and belief, including an investigation conducted by her attorneys.

INTRODUCTION

1. “Biometrics” refers to a “biology-based set[s] of measurements.” *Rivera v. Google Inc.*, 238 F. Supp. 3d 1088, 1094 (N.D. Ill. 2017). Specifically, “biometrics” are “a set of measurements of a specified physical component (eye, finger, voice, hand, face).” *Id.* at 1296.

2. BIPA was enacted in 2008 in order to safeguard individuals’ biometrics as the result of the “very serious need [for] protections for the citizens of Illinois when it [comes to their] biometric information.” Illinois House Transcript, 2008 Reg. Sess. No. 276. BIPA is codified as Act 14 in Chapter 740 of the Illinois Compiled Statutes.

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3. As set forth in BIPA, biologically unique identifiers, such as a person's unique facial geometry, cannot be changed. 740 ILCS 14/5(c). The inalterable nature of biologically unique identifiers presents a heightened risk when an individual's biometrics are not protected in a secure and transparent fashion. 740 ILCS 14/5(d)–(g).

4. As a result of the need for enhanced protection of biometrics, BIPA imposes various requirements on private entities that collect or maintain individuals' biometrics, including facial scans.

5. Among other things, BIPA seeks to regulate "the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." 740 ILCS 14/5(g). BIPA thus applies to entities that interact with two forms of biometric data: biometric "identifiers" and biometric "information." 740 ILCS 14/15(a)–(e).

6. BIPA defines a "biometric identifier" as any personal feature that is unique to an individual, including fingerprints, voiceprints, palm scans and facial geometry. "Biometric identifiers" are physiological, as opposed to behavioral, characteristics. BIPA's text provides a non-exclusive list of protected "biometric identifiers," including "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." 740 ILCS 14/10.

7. "Biometric information" is defined by BIPA as "any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual." *Id.* This definition helps ensure that information based on a biometric identifier that can be used to identify a person is covered by BIPA. Collectively, biometric identifiers and biometric information are known as "biometrics."

8. In BIPA, the Illinois General Assembly identified five distinct activities that may subject private entities to liability:

- a. possessing biometrics without a proper policy publicly available, 740 ILCS 14/15(a);
- b. collecting, capturing, purchasing, receiving, or obtaining biometrics, 740 ILCS 14/15(b);
- c. selling, leasing, trading, or profiting from biometrics, 740 ILCS 14/15(c);
- d. disclosing or disseminating biometrics, 740 ILCS 14/15(d); and
- e. failing to secure biometric data using a reasonable standard of care, 740 ILCS 14/15(e).

9. As the Illinois Supreme Court has held, BIPA “codified that individuals possess a right to privacy in and control over their biometric identifiers and biometric information.” *Rosenbach v. Six Flags Entm’t Corp.*, 2019 IL 123186, ¶ 33, 129 N.E.3d 1197, 1206 (Ill. 2019). The Illinois Supreme Court further held that when a private entity fails to comply with BIPA “that violation constitutes an invasion, impairment, or denial of the statutory rights of any person or customer whose biometric identifier or biometric information is subject to the breach.” *Id.*

PARTIES

10. Defendant Fenix Internet LLC, is a Delaware corporation.
11. Plaintiff Jane Doe is a resident of Cook County, Illinois and a citizen of the state of Illinois.

JURISDICTION AND VENUE

12. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant conducts business within this state and because Plaintiff’s claims arise out of Defendant’s unlawful in-state actions, as Defendant unlawfully collected, possessed and stored Plaintiff’s biometrics as a result of their use of Defendant’s website in Illinois. Because of Onlyfans.com’s popularity and the scope and magnitude of Defendant’s use of biometrics in

connection with Onlyfans.com, Defendant knew that it would store, profit off of, and otherwise come into possession of Illinois residents' biometrics.

13. Venue is proper in Cook County, Illinois pursuant to 735 ILCS 5/2-101, because Defendant conducts business in Cook County, Illinois, and thus resides there under § 2-102, and because the transaction out of which this cause of action arises occurred in Cook County, Illinois.

COMMON ALLEGATIONS OF FACT

14. Defendant operates the website Onlyfans.com which is a social media website that features content created by "Content Creators" for access by "Fans" who subscribe to access creators' content.

15. While content creators can make almost any type of content available for their fan subscribers to access, Onlyfans.com is primarily known for featuring adult content from content creators that visitors to the website can purchase either through a monthly subscription to a specific content creator or by purchasing specific or personally requested content.

16. As of late 2021, Onlyfans.com featured over 2 million content creator accounts and over 130 million user accounts globally, with the vast majority of its website users located in the United States, including in Illinois.

17. Onlyfans.com has recorded massive income from its operations, with over \$1.2 billion in purchases made by visitors from its content creators just in 2020.¹

18. In exchange for hosting its content creators' content and providing a platform for them to sell content to site visitors, Defendant, the United States-based operator of Onlyfans.com, pays a set percentage of the subscription and content purchases made by site visitors to the content

¹ www.businessinsider.com/onlyfans-lockdown-boom-transactions-hit-24b-revenue-up-553-2021-4.

creators.

19. Because of the adult nature of the majority of the content featured on Onlyfans.com, to become a content creator on Onlyfans.com an individual must go through a registration process which includes verification of their age and identity.

20. Specifically, to be approved as a content creator Defendant requires that a potential content creator submit a photo of a government ID, in addition to a selfie of them holding the government ID. After submitting their information and necessary photos, content creators are verified within the next 24 to 48 hours.

21. In addition to Defendant's initial verification process, Defendant also utilizes a "Fast Automated Verification" process for verifying content creators' age and/or identity following the initial verification. This process may be triggered if a content creator's content is flagged for signs of suspicious activity or otherwise as part of Defendant's internal review requirements.

22. When a content creator uses Defendant's automated verification process they are forwarded to a web portal within the Onlyfans.com website that asks them to submit a selfie of their face. They are then asked to submit a picture of the front and back of a valid government identification document that features their face.

23. Defendant's automated verification process works by extracting the facial biometrics of the user to create a geometric profile of their face and comparing it to the biometric profile that it extracts from the user's ID document to see if they match. As such, through its automated verification process, Defendant has collected the facial biometrics of thousands of individuals, including Illinois residents.

24. During the summer of 2021, after receiving complaints globally about a lack of

sufficient efforts to ensure that content creators were not minors, Onlyfans.com undertook a mass age/identity verification campaign that required many of its content creators that were selling paid content on its Onlyfans.com platform to re-verify their age and identity through its automated biometric identity verification process. Content creators had to undergo the verification process before they could sell any more content or even withdraw any fund balances on their Onlyfans.com account.

25. However, while thousands of content creators located in Illinois, including Plaintiff and the other members of the Class, had to undergo Defendant's facial biometric verification process, Defendant failed to make publicly available a valid written policy as to its retention and deletion practices regarding the biometrics it gathered.

26. Furthermore, as the entity that collects funds from purchases made on its website and distributes earnings to its content creators, Defendant unlawfully profited from the facial biometrics it obtained from Plaintiff and the other members of the Class since due to the nature of the content that Defendant was hosting on its website Defendant necessarily relied on obtaining Plaintiff's and the other Class members' biometrics in order to operate and obtain its revenue.

27. Critically, Defendant also failed to adequately secure this sensitive biometric data as Defendant's employees had access to content creator's personal data and profiles, including after they were no longer employees.²

FACTS SPECIFIC TO PLAINTIFF JANE DOE

28. Plaintiff Jane Doe completed the registration and identity verification process to become a content creator on Onlyfans.com in summer 2019.

² See www.vice.com/en/article/4avjvq/former-onlyfans-employees-user-personal-data-security-risk; <https://nypost.com/2021/09/30/ex-onlyfans-employees-can-access-users-and-models-personal-info/>.

29. Plaintiff has posted paid content available for purchase on Onlyfans.com for the past two years, and would regularly request disbursements of the funds she earned from Onlyfans.com. Plaintiff's pay stubs and 1099 tax forms featured Defendant's name, Fenix Internet, LLC and were sent to her Illinois address during the relevant time period.

30. Sometime in Summer 2021, Defendant required Plaintiff to re-verify her age/identity through Defendant's automated verification process and was forwarded to a portal within the Onlyfans.com website where she was asked to provide a selfie of her face, along with a picture of her driver's license featuring a photo of her face.

31. Even though Plaintiff did not wish to submit to Defendant's automated verification process, and kept her profile anonymous as she did not want her personal identity revealed, like many other content creators she was forced to do so if she wished to withdraw any funds that she had earned or to post any additional content for sale.

32. After Plaintiff submitted a selfie of her face and a picture of her driver's license, Defendant's verification technology verified Plaintiff's identity by extracting her facial biometrics from her selfie, and comparing them to the facial biometrics that it extracted from her driver's license.

33. Even though Defendant was aware that Plaintiff, like thousands of other members of the Class, was an Illinois residents and subject to the protections of BIPA, Defendant failed to make publicly available a valid written policy as to its retention and deletion practices regarding the biometrics in its possession in violation of Section 15(a).

34. Furthermore, as the entity that profited from the collection of Plaintiff's biometrics and was only able to continue to legally operate its website by collecting Plaintiff's and the other Illinois Class members' biometrics, Defendant's practices were in violation of Section 15(c) of

BIPA.

35. Finally, Defendant violated Section 15(e) of BIPA by having a substandard level of care compared to other entities that store highly sensitive information because it failed to prevent ex-employees from gaining access to the personal data it collected, including, upon information and belief, Plaintiff's biometric information.

36. Plaintiff, on behalf of herself and the proposed Class defined below, seeks an injunction requiring Defendant to comply with BIPA's statutory requirements, as well as an award of statutory damages to the Class, together with costs and reasonable attorneys' fees.

CLASS ALLEGATIONS

37. Plaintiff brings this action on her own behalf and on behalf of a class of similarly situated individuals pursuant to 735 ILCS § 5/2-801 as defined below:

Class: All individuals whose biometric identifiers or biometric information were collected, captured, stored, transmitted, disseminated, profited from, or otherwise used by or on behalf of Defendant within the state of Illinois any time within the applicable limitations period.

38. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officer or director.

39. There are thousands of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of members of the Class is currently unknown to Plaintiff, the members can be easily identified through Defendant's records.

40. Plaintiff's claims are typical of the claims of the Class she seeks to represent because the bases of Defendant's liability to Plaintiff and the Class is substantially the same, and because Defendant's conduct has resulted in similar injuries to Plaintiff and to the Class.

41. 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 limited to, the following:

- a. Whether Defendant collects, captures, or otherwise obtains facial biometric identifiers or biometric information from Illinois residents;
- b. Whether Defendant has a publicly available policy regarding its storage, retention, and deletion policies of biometrics;
- c. Whether Defendant profits from biometrics obtained from members of the Class;
- d. Whether Defendant exercised a reasonable standard of care in regards to the biometric information that it collected, captured, stored, disseminated, transmitted or otherwise used;
- e. Whether Defendant's conduct violates BIPA;
- f. Whether Defendant's BIPA violations are willful or reckless; and
- g. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

42. Absent a class action, most members of the Class 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 or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

43. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class she seeks to represent. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and

have the financial resources to do so. Neither Plaintiff nor her counsel have any interest adverse to those of the other members of the Class.

44. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court’s imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

COUNT I
Violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(a)
(On behalf of Plaintiff and the Class)

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

46. Defendant is a private entity under BIPA.

47. As discussed above Plaintiff and the other Class members have had their “biometric identifiers,” namely their facial biometrics, collected, captured, stored, disseminated, transmitted or otherwise used by Defendant as a result of interacting with Onlyfans.com’s biometric identity verification process.

48. Section 15(a) of BIPA requires any entity in possession of biometric identifiers or biometric information to “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.” 740 ILCS 14/15(a).

49. Though Defendant has come into possession of Plaintiff’s and other Class members’ facial biometric identifiers and/or information, it has failed to make publicly available any policy addressing its biometric retention and destruction practices.

50. As a result, Defendant has violated Section 15(a) of BIPA.

51. Defendant, an entity that was headquartered in Illinois, knew, or was reckless in not knowing, that its utilization of a biometric identity verification process which Plaintiff and thousands of Illinois residents interacted with would be subject to 15(a) of BIPA, a statutory provision passed in 2008, yet failed to comply with the statute.

52. 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).

53. Defendant's violations of Section 15(a) 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 negligently failed to comply with Section 15(a) of BIPA.

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

- a. Certifying the Class as defined above, appointing Plaintiff as class representative, and the undersigned as class counsel;
- b. Declaring that Defendant's actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of the BIPA, pursuant to 740 ILCS 14/20(2);
- e. Awarding statutory damages of \$1,000 for each negligent violation of the 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(c)
(On behalf of Plaintiff and the Class)**

- 54. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
- 55. Defendant is a private entity under BIPA.
- 56. As discussed above Plaintiff and the other Class members have had their “biometric identifiers,” namely their facial biometrics, collected, captured, stored, disseminated, transmitted or otherwise used by Defendant as a result of interacting with Onlyfans.com’s biometric identity verification process.
 - 57. Section 15(c) of BIPA prohibits any private entity in possession of biometrics, such as Defendant, from selling, leasing, trading, or otherwise profiting from such biometrics. 740 ILCS 14/15(c).
 - 58. As alleged herein, Defendant profited from the facial biometrics it obtained from members of the Class, including Plaintiff, as Defendant obtained Plaintiff’s and the other Class members’ facial biometric for the sole purpose of being able to feature paid content and distribute funds to content creators like Plaintiff.
 - 59. Accordingly, Defendant has violated Section 15(c) of BIPA.
 - 60. Defendant knew, or was reckless in not knowing, that its biometric identity verification process would be subject to the provisions of Section 15(c) of BIPA, a statutory provision in effect since 2008, yet failed to comply with the statute.

61. 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).

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

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

- a. Certifying the Class as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendant's actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of the BIPA, pursuant to 740 ILCS 14/20(2);
- e. Awarding statutory damages of \$1,000 for each negligent violation of the 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 III
Violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/15(e)
(On behalf of Plaintiff and the Class)

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

64. Defendant is a private entity under BIPA.

65. As discussed above Plaintiff and the other Class members have had their “biometric identifiers,” namely their facial biometrics, collected, captured, stored, disseminated, transmitted or otherwise used by Defendant as a result of interacting with Onlyfans.com’s biometric identity verification process.

66. Section 15(e) of BIPA requires that any private entity in possession of biometrics, such as Defendant, maintain a reasonable standard of care for storing, transmitting, and protecting such sensitive information from disclosure. 740 ILCS 14/15(c).

67. As alleged herein, Defendant failed to maintain a reasonable standard of care with regards to the biometrics it obtained from Plaintiff and the other members of the Class as Defendant permitted former employees to maintain access to their employee accounts and the ability to access content creators’ data, including Plaintiff’s and the Class’ biometric information.

68. Accordingly, Defendant has violated Section 15(e) of BIPA.

69. Defendant knew, or was reckless in not knowing, that its biometric identity verification process would be subject to the provisions of Section 15(e) of BIPA, a statutory provision in effect since 2008, yet failed to comply with the statute.

70. 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).

71. Defendant’s violations of Section 15(e) of BIPA, a statutory provision that has been

in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with Section 15(e) of BIPA.

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

- a. Certifying the Class as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendant’s actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of the BIPA, pursuant to 740 ILCS 14/20(2);
- e. Awarding statutory damages of \$1,000 for each negligent violation of the 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

Plaintiff requests a trial by jury of all claims that can be so tried.

Dated: November 5, 2021

Respectfully submitted,

JANE DOE, individually and on behalf of similarly situated individuals

By: /s/ Eugene Y. Turin
One of Plaintiff’s Attorneys

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