

**NO**  
**EXHIBITS**

CASE NO. 2018CH08512

DATE: 7/9/2018

CASE TYPE: Class Action

PAGE COUNT: 16

**CASE NOTE**

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12-Person Jury

Chancery Division Civil Cover Sheet - General Chancery Section

(Rev. 11/06/13) CCCH 0623

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

FILED  
7/9/2018 11:53 AM

DOROTHY BROWN  
CIRCUIT CLERK,  
COOK COUNTY, IL  
2018CH08512

RENAUD VIOT, individually and on behalf of classes of similarly situated individuals,  
Plaintiff

v.

PROMETRIC, LLC, a Delaware limited liability company,  
Defendant

No. 2018CH08512

CHANCERY DIVISION CIVIL COVER SHEET  
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

- 0005  Administrative Review
- 0001  Class Action
- 0002  Declaratory Judgment
- 0004  Injunction

- 0007  General Chancery
- 0010  Accounting
- 0011  Arbitration
- 0012  Certiorari
- 0013  Dissolution of Corporation
- 0014  Dissolution of Partnership
- 0015  Equitable Lien
- 0016  Interpleader
- 0017  Mandamus
- 0018  Ne Exeat

- 0019  Partition
- 0020  Quiet Title
- 0021  Quo Warranto
- 0022  Redemption Rights
- 0023  Reformation of a Contract
- 0024  Rescission of a Contract
- 0025  Specific Performance
- 0026  Trust Construction
- Other (specify) \_\_\_\_\_

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RENAUD VIOT, individually and on  
behalf of similarly situated individuals,

*Plaintiff,*

v.

PROMETRIC LLC, a Delaware limited  
liability company,

*Defendant.*

No. 2018CH08512

Hon.

**CLASS ACTION COMPLAINT & JURY DEMAND**

Plaintiff Renaud Viot (“Plaintiff”), individually and on behalf of other similarly situated individuals, brings this Class Action Complaint against Defendant Prometric Inc. (“Prometric”), to stop Defendant’s collection, use, and storage of individuals’ biometric identifiers and/or biometric information in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (the “BIPA”), and to obtain redress for all persons injured by its conduct. Plaintiff alleges as follows based on personal knowledge as to his own acts and experiences, and as to all other matters, upon information and belief, including an investigation conducted by his attorneys.

**INTRODUCTION**

1. This case is about an educational testing center company capturing, storing and using individuals’ biometrics in violation of Illinois law and without their informed written consent. Recognizing the serious harm that can come from unregulated collection and use of biometrics, Illinois passed detailed regulations addressing the collection and use of biometric information by private entities, like Defendant.

2. Choosing to shun more traditional timekeeping methods, Defendant instead implemented an invasive identification program that relied on the collection, storage, and use of individuals' fingerprints, while disregarding the relevant Illinois regulations and the privacy interests they protect.

3. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendant in capturing, collecting, storing, and using Plaintiff's and other similarly situated individuals' biometric identifiers and biometric information without informed written consent, in direct violation of the Illinois BIPA. *See* 740 ILCS § 14/10.

4. Following the 2007 bankruptcy of a company specializing in the collection and use of biometric information, which risked the sale or transfer of millions of fingerprint records to the highest bidder, the Illinois Legislature passed detailed regulations addressing such collection, use and retention of biometric information.

5. The Illinois Legislature has found that "biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. 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 a heightened risk for identity theft in, and is likely to withdraw from biometric facilitated transactions." 740 ILCS 14/5. A "biometric identifier" is any personal feature that is unique to an individual, including fingerprints, iris scans, palm scans, and DNA, among others. "Biometric information" is any information captured, converted, stored, or shared based on a person's biometric identifier which is used to identify an individual. 740 ILCS § 14/10.

6. Additionally, biometrics are no longer quietly relegated to esoteric corners of commerce. Today, many businesses and financial institutions have incorporated biometric applications into their consumer products, including consumer products and services as ubiquitous as checking accounts and cell phones. Indeed, a major cellphone technology corporation has recently announced that it has been sharing the facial geometries of its customers with third-party application providers for months, if not years.<sup>1</sup>

7. In recognition of the concern over the security of individuals' biometrics, the Illinois Legislature enacted BIPA, which provides, *inter alia*, that private entities, such as Defendant, may not obtain and/or possess an individual's biometrics unless they first:

- (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 the length of term for which such biometric identifiers for biometric information is being collected, stored and used;
- (3) receive a written release from the person for the collection of their biometric identifiers or biometric information; and
- (4) if a private entity, such as Defendant, publish a publicly available retention schedule and guidelines for permanently destroying biometric identifiers and biometric information.

740 ILCS 14/5.

8. In direct violation of the foregoing provisions, Defendant actively captures, collects, stores, and uses, without obtaining informed written consent or publishing their data

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<sup>1</sup> See <http://www.chicagotribune.com/bluesky/technology/ct-apple-facial-recognition-privacy-20171202-story.htm>.

retention and deletion policies, the biometrics of hundreds of their test takers throughout the State of Illinois whose fingerprints are captured and stored for timekeeping and other purposes.

9. The individuals' fingerprints are unique to each such person, and Defendant's collection and use of those biometric identifiers and biometric information violates individuals' substantive privacy rights protected under BIPA and exposes individuals to serious and irreversible privacy risks—risks that BIPA was designed to avoid—including the ever-present risk of a data breach of Defendant's systems exposing Defendant's biometric data to hackers and other wrongdoers worldwide.

10. Defendant's practice of collecting fingerprints from all of the test takers is unlawful, and a serious invasion of individuals' right to privacy regarding their biometric information. Defendant failed to provide the required disclosures to inform individuals that it was collecting their biometric identifiers and failed to inform them of how long it intended to keep this highly sensitive information. To the extent Defendant is still retaining Plaintiff's biometric information, such retention is unlawful and a continuing infringement of him right to privacy regarding him biometric identifiers and biometric information. Unlike a social security number, which can be changed, no amount of time or money can compensate Plaintiff if him finger scan is compromised by the lax procedures through which Defendant captures, collects, stores and uses individuals' biometrics, and Plaintiff would not have provided him finger scan to Defendant had she known that Defendant would retain such information for an indefinite period without him consent.

11. On behalf of himself and the proposed Class defined below, Plaintiff seeks an injunction requiring Defendant to destroy him biometrics in its possession, to cease all

unlawful activity related to the capture, collection, storage, and use of biometrics and an award of statutory damages to the Class members, together with costs and reasonable attorneys' fees.

### **PARTIES**

12. Defendant is a Delaware limited liability company corporation that conducts business in Illinois. Defendant operates testing center locations at multiple establishments located throughout Illinois.

13. At all relevant times, Plaintiff has been a resident of the state of Illinois and tested at one of Defendant's testing center facilities in Illinois.

### **JURISDICTION AND VENUE**

14. 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 is doing business within this State and because Plaintiff's claims arise out of Defendant's unlawful in-state actions, as Defendant captured, collected, stored, and used Plaintiff's biometric identifiers and/or biometric information in this State.

15. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, because Defendant is doing business in Cook County and thus resides there under § 2-102.

### **BACKGROUND**

16. Illinois enacted BIPA to regulate entities that capture, collect, store, and use biometric information, such as finger and palm vein scans, fingerprints, iris scans, and handprints.

17. Under BIPA, a private entity may not collect, capture, purchase, receive through trade, or otherwise obtain a person's biometric identifier or biometric information unless it first:

(1) Informs the person in writing that a biometric identifier or biometric information is being collected;

(2) Informs the person in writing of the specific purpose and length of time for which a person's biometric identifier or biometric information is being collected, stored and used; and

(3) Receives a written release executed by the subject of the biometric identifier or biometric information.

740 ILCS 14/15(b).

18. Section 15(a) of BIPA also requires that a private entity in possession of biometric identifiers or biometric information develop:

- a. A written policy;
- b. Available to the public;
- c. Which establishes a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information;
- d. Within three years of the individual's last interaction with the private entity, or when the initial purpose of for collecting or obtaining biometric identifiers and biometric information has been satisfied.

740 ILCS 14/15(a).

19. Defendant is a "private entity" as that term is defined under BIPA. *See* 740 ILCS 14/10.

20. While most businesses identify individuals using traditional methods, such as checking identification cards, Defendant requires all test takers to submit to fingerprint scans to verify their identity. Defendant accomplishes this through the use of biometric identification



devices, which capture, collect, store, and use individuals' fingerprints. These fingerprints are distinctive identifiers of each individual and constitute biometric identifiers and biometric information.

21. Unlike ID cards or key codes—which can be changed or replaced if stolen or compromised—fingerprints are unique, permanent biometric identifiers associated with the individual. Defendant's actions violate individuals' substantive privacy rights protected under BIPA and exposes Plaintiff and Defendant's other test takers to serious and irreversible privacy risks.

22. Defendant's practice of collecting, capturing, storing and using individuals' biometric identifiers and/ or biometric information is unlawful under BIPA because such practices fail to satisfy each of the enumerated requirements described above, and therefore severely infringe on the individuals' right to privacy with regard to their biometric identifiers and biometric information.

#### **FACTS SPECIFIC TO PLAINTIFF**

23. During the relevant time period, Plaintiff tested at a facility owned and operated by Defendant and located in Illinois.

24. During the last several years, Defendant's identification practice has relied on a biometric information device which scan individuals' fingerprints to identify the individual prior to taking a test.

25. Defendant acquired and installed several biometric identification devices at their facilities which required individuals, including Plaintiff, to have their fingerprints scanned by the biometric devices, which captured, collected, and stored said fingerprints. The individuals'

biometric information is associated with their identities and used by Defendant to identify them prior to and during the taking of a test.

26. After individuals' biometrics are initially captured and collected by the Defendant, Defendant requires said individual to scan their fingerprints into one of Defendant's biometric identification devices each time they take a test and after each break during the test. Defendant's system ensures that individuals can only verify their attendance through scanning such information.

27. In addition to the occasion when individuals' fingerprints are initially captured, on each occasion that individuals' in Illinois scan a finger or hand through Defendant's biometric devices, Defendant is capturing individuals' biometrics without regard to Illinois' statutory requirements under BIPA.

28. Prior to taking Plaintiff's biometric identifiers and/or information, Defendant did not inform Plaintiff in writing that a biometric identifier or biometric information was being collected, stored, or used, nor did Defendant make its policy about collection, retention, and use of such information publicly available as required by BIPA.

29. Prior to taking Plaintiff's biometric identifiers and/or information Defendant did not make a written policy available to test taking individuals or the other members of the public that establishes a lawful retention schedule and guidelines for permanently destroying the biometric identifiers and biometric information that it collects, as required by BIPA. 740 ILCS 14/15(a).

30. Additionally, Defendant did not obtain consent for any transmission to third parties of Plaintiff's and test taking individuals' biometrics. To the extent Defendant utilizes out of state vendors to operate its biometrics program in conformance with biometric industry

practice or for any other purpose, Defendant has also violated BIPA on each occasion it transmits such information to third parties.

31. To this day, Plaintiff is unaware of the status of his biometric identifiers and biometric information that was obtained by Defendant. Defendant has not informed Plaintiff whether it still retains his information, and if it does, for how long it intends to retain said biometric information without his consent. Plaintiffs' biometric information is economically valuable and such value will increase as the commercialization of biometrics continues to grow.

32. On information and belief, Defendant does not have a policy of informing individuals in any way what happens to their biometric information after it is collected and obtained, whether the information is transmitted to a third party and, if so, which third party, and what would happen to the information if an individual discontinues testing with Defendant, if a facility were to close, or if Defendant were to be acquired, sold, or file for bankruptcy.

33. By knowingly and willfully failing to comply with BIPA's mandatory notice, release, and policy publication requirements, Defendant has violated individuals' substantive privacy rights protected under BIPA, and as a result, Plaintiff and the other members of the Class have continuously been exposed to substantial and irreversible loss of privacy by Defendant's retention of Plaintiff's biometric information without his consent, with such constant and ongoing exposure constituting a severe harm and violation of their rights.

**CLASS ALLEGATIONS**

34. Plaintiff brings this action on behalf of himself and similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent a Class defined as follows:

**The Class:** All individuals whose biometrics were captured, obtained, stored or used by Defendant within the state of Illinois any time within the applicable

limitations period.

35. 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.

36. Upon information and belief, there are hundreds, if not 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 personnel records.

37. Plaintiff's claims are typical of the claims of the Class members she seeks to represent, because the factual and legal bases of Defendant's liability to Plaintiff and the other Class members are the same, and because Defendant's conduct has resulted in similar injuries to Plaintiff and to all of the other members of the Class. As alleged herein, Plaintiff and the other putative Class members have all suffered damages as a result of Defendant's BIPA violations.

38. There are many questions of law and fact common to the claims of Plaintiff and the other Class members, 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, stores or uses the biometrics of Class members;
- b. Whether Defendant developed and made available to the public a written policy which establishes a retention schedule and guidelines for permanently destroying biometric identifiers and information as required by the BIPA;

- c. Whether Defendant obtained a written release from Class members before capturing, collecting, or otherwise obtaining individuals' biometrics;
- d. Whether Defendant provided a written disclosure to individuals that explains the specific purposes, and the length of time, for which their biometrics were being collected, stored and used before taking their biometrics;
- e. Whether Defendant's conduct violates BIPA;
- f. Whether Defendant's violations of BIPA are willful and reckless; and
- g. Whether Plaintiff and the Class members are entitled to damages and injunctive relief.

39. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive, and would 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.

40. 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 his 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 his counsel has any interest adverse to those of the other members of the Class.

41. Defendant has acted and failed to act on grounds generally applicable to the 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

#### **Violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*, (on behalf of Plaintiff and the Class)**

42. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

43. Illinois' BIPA requires companies to obtain informed written consent from individuals before acquiring their 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 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).

44. Illinois' BIPA also requires that companies in possession of biometric identifiers and/or biometric information establish and maintain a publicly available retention policy. Companies which possess biometric identifiers or information must (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric information (companies may not retain biometric information longer than three years after the companies last interaction with the customer); and (ii) must adhere to the publicly posted retention and deletion schedule.

45. Defendant is a “private entity” as that term is defined under BIPA. *See* 740 ILCS 14/10.

46. Plaintiff and the other Class members had their “biometric identifiers,” including fingerprints, collected, captured, received or otherwise obtained by Defendant. Plaintiff and the other Class members’ biometric identifiers were also used to identify them, and therefore constitute “biometric information” as defined by the BIPA. 740 ILCS 14/10.

47. Each instance when Plaintiff and the other Class members scanned their fingerprints into Defendant’s identification devices, Defendant captured, collected, stored, and/or used Plaintiff’s and the Class members’ biometric identifiers and/or biometric information without valid consent and without complying with BIPA.

48. Defendant’s practices with respect to capturing, collecting, storing, and using biometric identifiers and information fails to comply with applicable BIPA requirements. Specifically, with respect to Plaintiff and the other Class members, Defendant failed to:

- a. Obtain the written release required by 740 ILCS 14/15(b)(3);
- b. Inform Plaintiff and the Class members in writing that their biometric identifiers or biometric information were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(1);
- c. Inform Plaintiff and the Class in writing of the specific purpose for which their biometric information or biometric identifiers was being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- d. Inform Plaintiff and the Class in writing of the specific length of term their biometric information or biometric identifiers were being captured, collected, stored and used, as required by 740 ILCS 14/15(b)(2); and

- e. Provide a publicly available retention schedule detailing the length of time biometric information is stored and guidelines for permanently destroying the biometric information it stores, as required by 740 ILCS 14/15(a).

49. By capturing, collecting, storing, and using Plaintiff's and the other Class members' biometric identifiers and biometric information as described herein, Defendant violated Plaintiff's and the other Class members' respective rights to privacy of their biometric identifiers or biometric information as set forth in the **BIPA**. 740 ILCS 14/15(a).

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

51. Defendant's violations of the BIPA, as set forth herein, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with BIPA disclosure, consent, and policy posting requirements.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself 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 the BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with the BIPA requirements for the capture, collection, storage, and use of biometric identifiers and biometric information, including an injunction requiring Defendant to



permanently destroy all biometric information of Plaintiff and of Class members in their possession;

- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of the BIPA, pursuant to 740 ILCS 14/20(1);
- e. Awarding statutory damages of \$1,000 for each negligent violation of the BIPA, pursuant to 740 ILCS 14/20(3);
- 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.

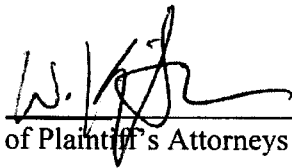
**JURY DEMAND**

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

Dated: July 9, 2018

Respectfully Submitted,

RENAUD VIOT, individually and on behalf of a class of similarly situated individuals

By:   
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