

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

ERIC ZEPEDA, individually and on)	
behalf of similarly situated individuals,)	
)	
<i>Plaintiff,</i>)	No.
)	
v.)	Hon.
)	
INTERCONTINENTAL HOTELS)	
GROUP, INC., a Delaware corporation,)	
and KIMPTON HOTEL &)	
RESTAURANT GROUP, LLC, a)	
Delaware limited liability company,)	
)	
<i>Defendants.</i>)	
_____)	

CLASS ACTION COMPLAINT & JURY DEMAND

Plaintiff Eric Zepeda (“Plaintiff”), individually and on behalf of other similarly situated individuals, brings this Class Action Complaint against Defendants, Intercontinental Hotels Group, Inc. (“IHG”) and Kimpton Hotel & Restaurant Group, LLC (“Kimpton”) (collectively, “Defendants”), to stop Defendants’ collection, use, and storage of individuals’ biometric data 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 their 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 a national hotel chain capturing, storing and using its workers’ fingerprints 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, use and retention of biometric information by private entities, like Defendants. Choosing to shun more traditional timekeeping methods, Defendants instead implemented an invasive time tracking program that relied on the collection, storage, and use of workers' fingerprints and biometric information, while disregarding the relevant Illinois regulations and the privacy interests they protect.

2. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Defendants in 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. 740 ILCS § 14/10.

3. A "biometric identifier" is any personal feature that is unique to an individual and includes 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.

4. 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.

5. In recognition of the concern over the security of individuals' biometrics, the Illinois Legislature enacted the BIPA, which provides, *inter alia*, that private entities such as Defendants may not obtain and/or possess an individual's biometrics unless it first: (1) informs that person in writing that biometric identifiers or information will be collected or stored; (2)

informs 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) received a written release from the person for the collection of her or her biometric identifiers information. Private entities are also required to publish publicly available written retention schedules and guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15.

6. In direct violation of the foregoing provisions, Defendants actively capture, collect, store, and use, without obtaining informed written consent or publishing their data retention and deletion policies, the biometrics of hundreds of their workers throughout the State of Illinois whose fingerprints are captured and stored for timekeeping and other purposes.

7. The workers' fingerprints are unique to each such worker, and Defendants' collection and use of the biometric data and information violates workers' substantive privacy rights protected under the BIPA and exposes workers to serious and irreversible privacy risks—risks that the BIPA was designed to avoid—including the ever-present risk of a data breach of Defendants' systems exposing Defendants' workers' biometrics to hackers and others wrongdoers worldwide.

8. Defendants' practice of collecting fingerprints from all of their workers, regardless of their employment record is unlawful and a serious invasion of their workers' right to privacy in their biometric information. Defendants failed to provide the required disclosures to inform their workers that they were collecting their biometric identifiers and failed to inform them of how long they intended to keep this highly sensitive information. To the extent Defendants are still retaining Plaintiff's biometric information, such retention is unlawful and a continuing infringement of his right to privacy in his biometric identifiers and biometric

information. Unlike a social security number, which can be changed, no amount of time or money can compensate Plaintiff if his fingerprints are compromised by the lax procedures through which Defendants capture, collect, store and use their workers' biometrics.

9. On behalf of himself and the proposed Class defined below, Plaintiff seeks an injunction requiring Defendants to cease all unlawful activity related to their collection, storage and use of biometrics and an award of statutory damages to the Class members, together with costs and reasonable attorneys' fees.

PARTIES

10. Defendant IHG is a Delaware corporation that conducts, and is licensed to conduct, business in Illinois. IHG is headquartered in Georgia and operates over a dozen hotel chains throughout the country, including the hotels of its subsidiary, Defendant Kimpton.

11. Defendant Kimpton is a Delaware limited liability company and subsidiary of IHG that conducts, and is licensed to conduct, business in Illinois. Kimpton is headquartered in California and owns and operates multiple hotels in the Chicago area.

12. Plaintiff Zepeda is, and has been at all relevant times, a resident and citizen of the state of Illinois and has worked at one of Defendants' hotels in the Chicago area.

JURISDICTION AND VENUE

13. 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 doing business within this State and because Plaintiff's claims arise out of Defendants' unlawful in-state actions, as Defendants captured Plaintiff's biometric identifiers and/or biometric information in this State.

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14. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, because Defendants are doing business in Cook County and thus reside there under § 2-102, and because the transaction out of which this cause of action arises occurred in Cook County, as Defendants and/or their agents captured Plaintiff's biometric data and/or biometric information in Cook County.

BACKGROUND

15. Illinois enacted the BIPA to regulate entities that collect and store biometric information, such as fingerprints, iris scans, and handprints.

16. Under the 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).

17. Section 15(a) of the 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).

18. IHG and Kimpton are each a “private entity” as that term is defined under the BIPA. *See* 740 ILCS 14/10.

19. Kimpton is a wholly-owned subsidiary of IHG that controls all aspects of Kimpton hotels, including collection of worker biometrics. IHG is constructively, if not actually, in possession of its workers’ biometrics.

20. While most businesses track workers’ time using traditional methods, such as punch clocks, Defendants’ workers are expected to use their fingerprints to track their time. Defendants accomplish this through the use of biometric timekeeping devices, which capture, store and use workers’ fingerprints. These fingerprints 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. This violates workers’ substantive privacy rights protected under the BIPA and exposes Plaintiff and Defendants’ other workers to serious and irreversible privacy risks.

22. Defendants’ practices of collecting, obtaining, capturing, storing and using Illinois residents’ biometric data are unlawful under the BIPA because such practices fail to satisfy each

of the enumerated requirements described above, and therefore severely infringe on their workers' right to privacy with regard to their biometric identifiers and biometric information.

FACTS SPECIFIC TO PLAINTIFF

23. During the relevant period, Plaintiff worked at a hotel owned and operated by Defendants and located in Chicago, beginning in or about March 2010. For several years, Defendants used various traditional methods to keep track of the time Plaintiff and other individuals worked, such as having workers scan ID cards and requiring that they enter a four-digit code into a machine at the beginning and end of each work shift.

24. However, in or about 2014, Defendants changed their time keeping practices from the more traditional time tracking systems to a system which relies on biometric information and biometric data in the form of fingerprints to track their workers' time.

25. Defendants acquired and installed several biometric timekeeping devices at their hotels and required their workers, including Plaintiff, to be fingerprinted by their biometric timekeeping devices, which captured, stored, and used their fingerprints. The workers' biometric information was associated with their identities and used by Defendants to identify and track their work time.

26. After workers' biometrics are obtained and captured by the Defendants, Defendants require such workers to scan their fingers into one of Defendants' biometric timekeeping devices each time they "clock-in" and "clock-out." Defendants' new system ensures that workers can only verify their attendance and timeliness through scanning their fingerprints.

27. In addition to the occasion when workers' fingerprints are initially captured, on each occasion that Defendants' workers in Illinois scan a finger through Defendants' biometric timekeeping devices, Defendants are capturing workers' biometrics without regard to Illinois' statutory requirements under the BIPA.

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

29. Prior to taking Plaintiff's biometric data and/or information Defendants did not inform Plaintiff in writing of the specific purpose and length of term for which his biometric information was being collected, stored and used, nor did Defendants detail how and when they intended to dispose of Plaintiff's information.

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

31. Additionally, Defendants did not obtain consent for any transmission to third parties of Plaintiff's and other workers' biometrics. To the extent Defendants utilize out of state vendors to operate their biometrics program in conformance with biometric industry practice, Defendants have also violated the BIPA on each occasion they transmit such information to third parties.

32. To this day, Plaintiff is unaware of the status of his biometric data and biometric information that was obtained by Defendants. Defendants have not informed Plaintiff whether

they still retain his information, and if they do, for how long they intend to retain it without his consent.

33. On information and belief, Defendants do not have a policy of informing their workers in any way what happens to their biometric data or 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 data and information if an individual discontinues working for Defendants, if a hotel were to close, or if Defendants themselves were to be acquired, sold, or file for bankruptcy.

34. By knowingly and willfully failing to comply with the BIPA's mandatory notice, release, and policy publication requirements, Defendants have violated workers' substantive privacy rights protected under the BIPA, and as a result, Plaintiff and the other members of the Class have continuously been exposed to substantial privacy risks, with such constant and ongoing exposure constituting a severe harm and violation of their rights.

CLASS ALLEGATIONS

35. 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 and Subclass defined as follows:

The Class: All individuals whose biometrics were captured, obtained, stored or used by IHG within the state of Illinois any time within the applicable limitations period.

The Subclass: All individuals whose biometrics were captured, obtained, stored or used by Kimpton within the state of Illinois at any time within the applicable limitations period.

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36. Excluded from the Class 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 officer or director.

37. Upon information and belief, there are 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 Plaintiff, the members can be easily identified through Defendants' personnel records.

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

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

- a. Whether Defendants collect, capture, store or use the biometrics of Class and Subclass members;
- b. Whether Defendants develop and make 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 Defendants obtain a written release from Class and Subclass members before capturing, collecting, or otherwise obtaining workers' biometrics;
- d. Whether Defendants provide a written disclosure to their workers that explains the specific purposes, and the length of time, for which their biometrics are being collected, stored and used before taking their biometrics;
- e. Whether Defendants' conduct violates the BIPA;
- f. Whether Defendants' violations of the BIPA are willful and reckless; and
- g. Whether Plaintiff and the Class and Subclass members are entitled to damages and injunctive relief.

40. 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 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.

41. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class and Subclass he 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 Subclass 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 and Subclass.

42. Defendants have acted and failed to act on grounds generally applicable to the Plaintiff 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

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

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

44. Illinois' BIPA requires companies to obtain informed written consent from individuals before acquiring their biometric data. Specifically, the 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).

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

46. Defendants are private entities under the BIPA.

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

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

49. Defendants’ practices with respect to capturing, collecting, storing and using biometric identifiers and information fail to comply with applicable BIPA requirements. Specifically, with respect to Plaintiff and the other Class and Subclass members, Defendants failed to:

- a. Obtain the written release required by 740 ILCS 14/15(b)(3);
- b. Inform Plaintiff and the Class in writing that their biometric identifiers or biometric information were being collected and stored, 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 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 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 or guidelines for permanently destroying the biometric information it stores, as required by 740 ILCS 14/15(a).

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

51. 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).

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

PRAYER FOR RELIEF

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

- a. Certifying the Class and Subclass as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendants' 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 and Subclass by requiring Defendants to comply with the BIPA requirements for the collection, storage, and use of biometric identifiers and biometric information;

- 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: February 16, 2018

Respectfully Submitted,

ERIC ZEPEDA, individually and on
behalf of a class of similarly situated individuals

By: /s/ David L. Gerbie
One of His Attorneys

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