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COMES NOW Plaintiff Madisyn Stauffer, and for her Complaint against Defendant Innovative Heights Fairview Heights, LLC (“Innovative Heights”), alleges upon personal knowledge as to her own acts, and upon information and belief (based on the investigation of counsel) as follows:

INTRODUCTION

1. Plaintiff brings this action individually and on behalf of a Class of similarly situated individuals who were employed by Innovative Heights and worked at its Sky Zone facility located at 10850 Lincoln Trail, Fairview Heights, IL 62208 (“Sky Zone Fairview Heights”), and were required to give their fingerprints to Innovative Heights at the commencement of their employment and scan their fingerprints for timekeeping and other purposes as specified below, in violation of the Illinois Biometric Information Privacy Act (“IBIPA”), 740 ILCS 14/1, *et seq.*

2. Sky Zone Fairview Heights is owned by Innovative Heights. Innovative Heights was the employer of Plaintiff and Class Members during all times that they worked at Sky Zone Fairview Heights.

3. Sky Zone Fairview Heights is a recreational facility that markets, advertises, and offers certain attractions and programs to the public, including attractions it describes as Freestyle Jump, SkySlam, Ultimate Dodgeball, SkyHoops, SkyJoust, SkyLadder, Warped Wall, FreeClimb, Foam Zone, Ninja Warrior Course, Laser Tag, and Drop Zone.¹

4. Sky Zone Fairview Heights holds itself out as a place where members of the public can hold parties and events in Fairview Heights, Illinois.²

¹ <https://www.skyzone.com/fairviewheights/attractions-and-programs> (accessed 04/08/2019).

² <https://www.skyzone.com/fairviewheights/parties-and-events> (accessed 04/08/2019).

5. At the beginning of their employment, employees at Innovative Heights' Sky Zone Fairview Heights facility are required to provide their private biometric identifiers in the form of their fingerprints, which they then must scan into Innovative Heights' system any time that they "clock in" or "clock out" of a shift throughout their employment. Employees must also scan their fingerprints into Innovative Heights' system at certain times in connection with their use of the cash registry, in the event it has "timed-out."

6. Even though it requires its employees to provide and use their fingerprints in connection with their employment, Innovative Heights fails to comply with the requirements set forth in IBIPA before collecting, capturing, and otherwise obtaining such fingerprints.

7. Innovative Heights' failure to comply with IBIPA means that its employees do not receive the important protections set forth in the statute, which is designed to allow employees and individuals to make informed decisions in connection with a private entity's collection, use, and retention of their private biometric identifiers, and to ensure that biometric identifiers are not obtained or used without the consent of the individual.

8. By collecting, capturing, or otherwise obtaining Plaintiff's and Class Members' fingerprints without making publicly available a proper policy; by not informing Plaintiff and Class Members in writing that their fingerprints were being collected and the purpose therefore or the length of time that they were being held; and by not receiving a written release from Plaintiff and Class Members, Innovative Heights has violated IBIPA, specifically 740 ILCS 14/15(a) and (b)(1)-(3).

9. Based on Innovative Heights' violations of IBIPA, Plaintiff and Class Members seek to recover statutory and other damages and relief allowed under IBIPA.

PARTIES

10. Plaintiff Madisyn Stauffer is a resident of Madison County, Illinois. She was employed by Innovative Heights and worked at the Sky Zone Fairview Heights facility from January of 2018 through May of 2018.

11. Plaintiff had her fingerprints collected, captured, and otherwise obtained by Innovative Heights at the beginning of her employment with Innovative Heights, and on each occasion that she “clocked in” or “clocked out” throughout her employment. She also had her fingerprints collected, captured, and otherwise obtained by Innovative Heights during certain times that she used the cash registry.

12. Defendant Innovative Heights is an Illinois Limited Liability Company, with its principal office located at 10850 Lincoln Trail, #12A, Fairview Heights, Illinois 62208. Its registered agent in Illinois is Bron Launsby, 10850 Lincoln Trail, #12A, Fairview Heights, Illinois 62208.

13. Innovative Heights conducts business in St. Clair County, Illinois, and transactions and conduct giving rise to the claims set forth in this Complaint occurred in St. Clair County, Illinois. Specifically, the location of Sky Zone Fairview Heights where Plaintiff and Class Members worked is in St. Clair County, Illinois.

JURISDICTION AND VENUE

14. This is a class action filed pursuant to 735 ILCS 5/2-801.

15. This Court has jurisdiction over this action pursuant to 735 ILCS 5/2-209(a)(1) and 735 ILCS 5/2-209(b)(4).

16. This Court has personal jurisdiction over Innovative Heights because it is registered to do business in Illinois and because it regularly conducts business in Illinois.

17. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 and 735 ILCS 5/2-102 because Innovative Heights is doing business in St. Clair County and because the transactions or conduct at issue or some part thereof occurred in St. Clair County.

JURY DEMAND

18. For each Count in this Complaint, Plaintiff demands a jury trial to the extent it is allowed by law.

THE ILLINOIS BIOMETRIC INFORMATION PRIVACY ACT

19. The State of Illinois passed IBIPA in 2008 to serve the public welfare, based on concerns, both known and unknown, associated with the growing collection and use of biometrics by companies and other entities. 740 ILCS 14/5.

20. The Illinois General Assembly found that while the use of biometrics has been growing, “[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information” in that unlike social security numbers or other identifiers that can be changed when compromised, biometrics are “biologically unique to the individual; therefore, once compromised, the individual has no recourse...” 740 ILCS 14/5(a)-(c).

21. Furthermore, the Illinois General Assembly stated that “[t]he full ramifications of biometric technology are not fully known,” and that “[t]he public welfare, security, and safety will be served by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information.” 740 ILCS 14/5(f)-(g).

22. Under IBIPA, a “biometric identifier” includes an individual’s fingerprints, and the term “biometric information” “means any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s biometric identifier used to identify an individual.” 740 ILCS 14/10.

23. IBIPA provides that a private entity (which includes an LLC such as Innovative Heights) that is in possession of biometric identifiers or biometric information “must 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).

24. IBIPA also provides that a private entity may not “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifier or biometric information” unless it first informs that person in writing that such an identifier or information is being collected or stored; informs that person in writing of the “specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used”; and receives a written release executed by the person who is the subject of the biometric identifier or information. 740 ILCS/14/15(b)(1)-(3).

25. The statute defines “written release” as “informed written consent or, in the context of employment, a release executed by an employee as a condition of employment.” 740 ILCS 14/10. As shown by this definition, IBIPA applies to employers and protects employees working in Illinois.

26. Thus, while IBIPA does not prohibit an Illinois employer from using biometric identifiers of its employees for timekeeping or other purposes, it does require that an employer who wishes to do so must first comply with the safeguards set forth in the statute and obtain its employees’ informed consent.

FACTUAL ALLEGATIONS REGARDING DEFENDANT'S LIABILITY

Plaintiff's Experience

27. Plaintiff began her employment with Innovative Heights in January of 2018 and worked for Innovative Heights as a Cashier, Event Host, and Event Planner at its Sky Zone Fairview Heights facility. She continued to work for Innovative Heights at its Sky Zone Fairview Heights facility until May of 2018.

28. When Plaintiff began her employment with Innovative Heights, she was required to have her fingerprints taken, and she provided her fingerprints to Innovative Heights as required.

29. Plaintiff's fingerprints were then used in lieu of a more traditional time clock, in that she was required to scan her fingerprints into Innovative Heights's system each time she "clocked in" or "clocked out" of work throughout her employment.

30. Plaintiff also was required to scan her fingerprints at additional times throughout her employment in connection with her use of the cash register. Specifically, if she had not recently been helping a customer and the cash register had timed out and needed to be "woken up," she had to do so by scanning her fingerprints.

31. Plaintiff is currently unaware if and when Innovative Heights has destroyed her fingerprints, or how much longer they may be held by Innovative Heights.

Innovative Heights' Actions Violated IBIPA

32. Innovative Heights collected, captured, obtained, and possessed Plaintiff's and Class Members' fingerprints at the beginning of their employment with Innovative Heights and each time thereafter when Plaintiff and Class Members scanned their fingerprints to "clock in" or "clock out" or to awaken the cash register, yet Innovative Heights did not make available to the

public a written policy establishing a retention schedule and guidelines for permanently destroying its employees' fingerprints when the initial purpose for collecting such fingerprints has been satisfied.

33. Its failure to publish such a policy means that when Plaintiff and Class Members leave the employment of Innovative Heights, they are left unaware if and when their biometric identifiers will be destroyed. Furthermore, if Innovative Heights were to be sold or go out of business, Plaintiffs and Class Members would be left unaware as to who is in possession of their highly confidential and private biometric identifiers.

34. Innovative Heights also failed to notify Plaintiff and Class Members in writing that their fingerprints were being collected, stored, and used, even though their fingerprints were collected and stored by Innovative Heights when they began their employment. Furthermore, Innovative Heights required Plaintiff and Class Members to scan their fingerprints many times during every day that they reported to work at its Sky Zone Fairview Heights facility.

35. Innovative Heights also collected or captured Plaintiff's and Class Members' fingerprints without informing them in writing for what purpose their fingerprints were being collected, stored, or used, or for how long their fingerprints were being collected, stored, or used.

36. Innovative Heights also failed to obtain a written release from Plaintiff and Class Members before collecting their fingerprints.

37. Innovative Heights' actions have prevented Plaintiff and Class Members from giving their informed consent and having access to important information regarding how their sensitive biometric identifiers are stored and kept.

CLASS ACTION ALLEGATIONS

38. Plaintiff brings this action on her own behalf and as a class action on behalf of all similarly situated employees of Innovative Heights who worked at its Sky Zone Fairview Heights facility and were injured by Innovative Heights' failure to comply with IBIPA.

39. Specifically, pursuant to 735 ILCS 5/2-801, Plaintiff seeks certification of the following Class, defined as follows:

All persons from whom Innovative Heights collected, captured, received, or otherwise obtained biometric identifiers or biometric information, including fingerprints, during the applicable statutory period prior to: (1) receiving a written release; and/or (2) providing written information that their biometric identifier or biometric information was being collected or stored and the purpose and length thereof. Excluded from the Class is any person who has or had a controlling interest in Innovative Heights.

40. **Numerosity.** The exact size of the Class is currently unknown to Plaintiff, but on information and belief the total number of Class Members is in the hundreds, and the Class is so numerous that joinder of all Class Members would be impracticable.

41. **Commonality.** There is a well-defined community of interest in the questions of law and fact affecting Class Members, and questions of law and fact common to the Class predominate over any questions affecting only individual members. Among the numerous questions of law or fact common to the Class are the following:

- a. Whether Innovative Heights developed and made available to the public a policy in compliance with 740 ILCS 14/15(a), before it obtained Plaintiff's and Class Members' biometric identifiers;
- b. Whether Innovative Heights collected, captured, or otherwise obtained Plaintiff's and Class Members' biometric identifiers or biometric information;
- c. Whether Innovative Heights informed Plaintiff and Class Members in writing that it was collecting their biometric identifier or biometric information;
- d. Whether Innovative Heights informed Plaintiff and Class Members in writing of the specific purpose and length of term for which it was collecting their biometric identifier or biometric information;

- e. Whether Innovative Heights received written releases from Plaintiffs and Class Members before capturing, collecting, or otherwise obtaining their biometric identifiers or biometric information;
- f. Whether Innovative Heights used Plaintiff's and Class Members' biometric identifiers or biometric information to identify them; and
- g. Whether any violations of IBIPA by Innovative Heights were negligent, or rather were reckless or intentional.

42. **Typicality.** The claims of Plaintiff are typical of the claims of the members of the Class. Plaintiff and all members of the Class have had their rights under IBIPA violated based on Innovative Heights' failure to comply with the provisions of IBIPA.

43. **Adequacy of Representation.** Plaintiff is an adequate representative of the Class and has no conflict of interest with other Class Members. Plaintiff's attorneys are experienced in this type of litigation and will prosecute the action vigorously on behalf of the Class.

44. **Superiority.** A class action is an appropriate method to adjudicate this controversy and is superior to any other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Furthermore, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications concerning the subject of this action. A class action would conserve the resources of the courts and litigants and further efficient adjudication of Class Member claims.

COUNT I: INNOVATIVE HEIGHTS' VIOLATION OF 740 ILCS 14/1, et seq.

(Plaintiff and the Class)

45. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Complaint as though fully set forth herein.

46. By obtaining and possessing Plaintiff's and Class Members' fingerprints without developing a written policy made available to the public that established a retention schedule and

guidelines for the destruction of Plaintiff's and Class Members' biometric identifiers or biometric information, Innovative Heights violated IBIPA. 740 ILCS 14/15(a).

47. Innovative Heights also violated Plaintiff's and Class Members' rights under IBIPA by collecting, capturing, or otherwise obtaining their fingerprints, and not first:

- a. informing Plaintiff and Class Members in writing that their fingerprints were being collected or stored;
- b. informing Plaintiff and Class Members in writing of the specific purpose and length of term for which their fingerprints were being collected, stored, and used;
- c. receiving a written release executed by Plaintiff and Class Members.

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

48. Because Plaintiff's and Class Members' biometric identifiers (in the form of their fingerprints) were used to identify them, they constitute "biometric information." 740 ILCS 14/10.

49. Plaintiff's and Class Members' rights under IBIPA were violated by Innovative Height's failure to comply with IBIPA as set forth above, and in so violating IBIPA, Innovative Heights acted negligently, recklessly and/or intentionally.

50. Plaintiff and Class Members are "aggrieved" under IBIPA based on Innovative Heights' violation of their rights under IBIPA, and accordingly are entitled to seek damages and relief provided for under the statute. *See Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶ 40.

51. Plaintiff and Class Members are therefore entitled to damages available under IBIPA, including liquidated damages of \$1,000 for each and every negligent violation, or alternatively, \$5,000 for each and every intentional or reckless violation, or actual damages,

whichever is greater, injunctive relief, and further damages and relief as set forth in the PRAYER FOR RELIEF below. 740 ILCS 14/20(1)-(4).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, pray for judgment against Innovative Heights as follows:

- A. Certifying the Class as requested herein;
- B. Entering an order appointing Law Office of Richard S. Cornfeld, LLC and Goldenberg Heller & Antognoli, P.C. as lead counsel for the Class;
- C. Awarding statutory damages of \$1,000 for each and every negligent violation of IBIPA, or alternatively, statutory damages of \$5,000 for each and every violation if the Court finds that Innovative Heights' violations were intentional or reckless;
- D. Awarding actual damages to Plaintiff and the members of the Class if greater than liquidated damages, as provided for under IBIPA;
- E. Declaring that Innovative Heights' actions, as set forth above, violate IBIPA;
- F. Awarding injunctive or other equitable relief as required to protect the interests of Plaintiff and Class Members, including an order requiring Innovative Heights to collect, store, use, and destroy biometric identifiers and biometric information in a manner that complies with the requirements set forth in IBIPA;
- G. Awarding pre-judgment and post-judgment interest;
- H. Awarding reasonable attorneys' fees and costs herein;
- I. Awarding such other and further relief as the court deems fit and proper.

Dated: April 29, 2019

Respectfully submitted,

LAW OFFICE OF RICHARD S. CORNFELD, LLC

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