

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL DISTRICT  
SANGAMON COUNTY, ILLINOIS

CLARENCE SMITH, STARLA SMITH,	)	
ANTONIO ENRIQUEZ, MATT DEVINE,	)	
MELISSA JOHNSON and ANNIE PORTER,	)	
on behalf of themselves and all other persons	)	
similarly situated, known and unknown,	)	Case No. 2023 CH 000053
	)	
Plaintiffs,	)	
	)	Judge Gail L. Noll
v.	)	
	)	
KEDPLASMA USA,	)	
	)	
Defendant.	)	

**FIRST AMENDED CLASS ACTION COMPLAINT**

Clarence Smith, Starla Smith, Antonio Enriquez, Matt Devine, Melissa Johnson, and Annie Porter (“Plaintiffs”) file this First Amended Class Action Complaint (“Complaint”) against KEDPlasma USA (“KEDPlasma” or “Defendant”) for violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 *et seq.*

**SUMMARY OF CLAIMS**

1. This class action arises from Defendant’s unlawful capture of its donors’ private biometric information, without informed consent, and in violation of the BIPA, 740 ILCS 14/1 *et seq.*
2. KEDPlasma specializes in the collection and procurement of high-quality plasma that is processed into plasma-based therapies. KEDPlasma operates throughout the United States.
3. Defendant has mandated that its donors provide their fingerprints before each plasma-donation.
4. The fingerprints of Defendant’s donors are biometric identifiers. Biometrics are *unique* and *permanent* identifiers associated with each donor.

5. Capture of biometric data puts donors at risk of irreversible breaches of privacy, such as through hacks of databases containing such data. Such data breaches subject donors to potential identity theft and other improper or unlawful use of highly private unique identifiers.

6. Plaintiffs donated plasma to Defendant at its Illinois donation centers multiple times over the last five years.

7. Defendant captured, collected, and otherwise obtained the biometric identifiers or biometric information of Plaintiffs and its other donors.

8. Defendant required Plaintiffs and other donors to have their fingers scanned in order to donate plasma to Defendant.

9. In enacting the Biometric Information Privacy Act, the Illinois legislature recognized that biologically unique identifiers, like fingerprints, can never be changed when compromised, and thus subject a victim of identity theft to heightened risk of loss.

10. As a result, Illinois restricted private entities, like Defendant, from collecting, storing, using, or transferring a person's biometric identifiers and information without adhering to strict informed-consent procedures established by the Biometric Information Privacy Act.

11. Defendant collected, stored, used, and transferred the unique fingerprints identifiers, or information derived from those identifiers, of Plaintiffs and others similarly situated without following the detailed requirements of the Biometric Information Privacy Act.

12. As a result, Defendant violated the Biometric Information Privacy Act and compromised the privacy and security of the biometric identifiers and information of Plaintiffs and other similarly situated donors.

## **JURISDICTION AND VENUE**

13. This Court has personal jurisdiction over Defendant because, during the relevant

time period, Defendant did business in Illinois, were registered to do business in Illinois, and committed the statutory violations alleged in this Complaint in Illinois.

14. Sangamon County is an appropriate venue for this litigation because, during the relevant time period, Defendant did business in Sangamon County and committed the alleged statutory violations in Sangamon County.

### **THE PARTIES**

15. Plaintiffs are each a resident of Illinois and donated their plasma to Defendant at one of Defendant's Illinois plasma donation centers, including in Springfield, Illinois.

16. Defendant KEDPlasma is a Delaware corporation headquartered in Atlanta, Georgia and conducts substantial operations in the State of Illinois.

### **REQUIREMENTS OF THE BIOMETRIC INFORMATION PRIVACY ACT**

17. In enacting the Biometric Information Privacy Act, the Illinois legislature recognized that the full ramifications of biometric technology are not yet known and so the public will benefit from "regulations on the collection, use, safeguarding, handling, storage retention, and description of biometric identifiers and information." 740 ILCS 14/5(f)-(g).

18. The Biometric Information Privacy Act prohibits a "private entity" from capturing or collecting biometric identifiers or information from an individual unless that private entity first obtains the individual's written consent or employment-related release authorizing the private entity to capture or collect an individual's biometric identifiers and/or biometric information. 740 ILCS 14/15(b)(3).

19. Relatedly, the Biometric Information Privacy Act prohibits a private entity from capturing or collecting biometric identifiers or information from an individual unless that private entity first informs the individual, in writing, of the following: (a) that the private entity is

collecting biometric identifiers or information, (b) the purpose of such collection, and (c) the length of time the private entity will retain the biometric identifiers or information. 740 ILCS 14/15(b)(1)-(2).

20. In addition, the Biometric Information Privacy Act prohibits a private entity from possessing biometric identifiers or information unless it creates and follows a written policy, made available to the public, establishing a retention schedule and destruction guidelines for its possession of biometric identifiers and information. 740 ILCS 14/15(a).

21. Finally, the Biometric Information Privacy Act prohibits a private entity from disclosing or otherwise disseminating biometric identifiers or information without first obtaining an individual's consent for that disclosure or dissemination, unless the disclosure or dissemination was (a) in furtherance of an authorized financial transaction, (b) authorized by law, or (c) pursuant to a valid warrant or subpoena. 740 ILCS 14/15(d).

### **BACKGROUND FACTS**

22. When Defendant scanned Plaintiffs' fingers using a fingerprints scanner, Defendant captured and stored Plaintiffs' fingerprints, or personal identifying information derived from Plaintiffs' fingerprints.

23. Before requiring Plaintiffs to scan their fingerprints, Defendant never provided Plaintiffs any written materials stating that they were collecting and retaining their fingerprints or personal identifying information derived from their fingerprints.

24. Before requiring Plaintiffs to scan their fingerprints, Defendant never obtained Plaintiffs' written consent, or release as a condition of employment, authorizing the collection, storage, dissemination, or use of their fingerprints or personal identifying information derived from their fingerprints.

25. Defendant violated Plaintiffs' privacy and the Illinois Biometric Privacy Act by capturing or collecting their unique biometric identifiers and information, without their consent.

### **CLASS ACTION ALLEGATIONS**

26. Plaintiffs seek to represent a class of Defendant's donors who scanned their fingerprints in order to donate plasma to Defendant in Illinois, without first executing a written release, from five years preceding the filing of this Complaint until resolution of this action ("the Class").

27. Plaintiffs and the Class are similar to one another because they were all subject to the same allegedly illegal practices: scanning their fingerprints in order to donate plasma to Defendant despite Defendant failing to adhere to the requirements of the Biometric Information Privacy Act.

28. The Class includes more than 50 members. As a result, the Class is so numerous that joining of all class members in one lawsuit is not practical.

29. The issues involved in this lawsuit present common questions of law and fact, including: whether Defendant required the Class to scan their fingerprints in order to donate plasma to Defendant; whether Defendant collected the Class's "biometric identifiers" or "biometric information" under the Biometric Information Privacy Act; and whether Defendant complied with the procedures in 740 ILCS 14/15(a), (b), and (d) of the Biometric Information Privacy Act.

30. These common questions of law and fact predominate over variations that may exist between members of the Class, if any.

31. Plaintiffs, the members of the Class, and Defendant have a commonality of interest in the subject matter of the lawsuit and the remedy sought.

32. If each member of the Class was required to bring individual actions, the result would be a multiplicity of actions, creating a hardship to the Class, to the Court, and to Defendant.

33. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this lawsuit and distribution of the common fund to which the Class is entitled.

34. The books and records of Defendant are material to Plaintiffs' case as they disclose how and when Plaintiffs and the Class were subjected to fingerprints scans and captures and what information Defendant provided Plaintiffs and the Class about the collection, retention, use, and dissemination of their biometric identifiers and information.

35. Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

36. Plaintiffs retained counsel experienced in complex class action litigation.

**COUNT I**  
**Violation of the Biometric Information Privacy Act (740 ILCS 14/15(b))**  
**(Class Action)**

37. Plaintiffs reallege and incorporate the previous allegations of this Complaint.

38. Defendant is a "private entity" under the Biometric Information Privacy Act. 740 ILCS 14/10.

39. Plaintiffs and the Class's fingerprints qualify as "biometric identifier[s]" as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

40. Defendant has "biometric information" from Plaintiffs and the Class through its acquisition and retention of personal identifying information based on Plaintiffs' and the Class's fingerprints.

41. Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiffs' and the Class's biometric identifiers and biometric information without first

informing them in writing that Defendant was doing so.

42. Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiffs' and the Class's biometric identifiers and biometric information without first informing them in writing of the purpose of Defendant doing so and the length of time Defendant would store and use Plaintiffs' and the Class's biometric identifiers and/or biometric information.

43. Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiffs' and the Class's biometric identifiers and biometric information without first obtaining their written consent or other release authorizing Defendant to capture or collect Plaintiffs' and the Class's biometric identifiers and/or biometric information.

44. Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

WHEREFORE, Plaintiffs and the Class pray for a judgment against Defendant as follows:

- A. Awarding liquidated or actual monetary damages, whichever is higher, to Plaintiffs and the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);
- B. Enjoining Defendant from committing further violations of the Biometric Information Privacy Act as authorized by 740 ILCS 14/20(4);
- C. Awarding Plaintiffs' reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by 740 ILCS 14/20(3); and
- D. Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

**COUNT II**  
**Violation of the Biometric Information Privacy Act (740 ILCS 14/15(a))**  
**(Class Action)**

45. Plaintiffs reallege and incorporate the previous allegations of this Complaint.

46. Defendant is a “private entity” under the Biometric Information Privacy Act. 740 ILCS 14/10.

47. Plaintiffs’ and the Class’s fingerprints qualify as “biometric identifier[s]” as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

48. Defendant has “biometric information” from Plaintiffs and the Class through their acquisition and retention of personal identifying information based on Plaintiffs’ and the Class’s fingerprints.

49. Defendant violated the Biometric Information Privacy Act by possessing Plaintiffs’ and the Class’s biometric identifiers and biometric information without creating and following a written policy, made available to the public, establishing a retention schedule and destruction guidelines for its possession of biometric information derived from Plaintiffs’ and the Class’s fingerprints.

50. Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law’s requirements were published before Defendant committed the legal violations alleged in this Complaint.

51. As a result, Defendant’s violations of the Biometric Information Privacy Act were reckless or, in the alternative, negligent.

WHEREFORE, Plaintiffs and the Class pray for a judgment against Defendant as follows:

- A. Awarding liquidated or actual monetary damages, whichever is higher, to Plaintiffs and the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);
- B. Enjoining Defendant from committing further violations of the Biometric Information Privacy Act as authorized by 740 ILCS 14/20(4);
- C. Awarding Plaintiffs’ reasonable attorneys’ fees and costs incurred in filing and



prosecuting this action as provided by 740 ILCS 14/20(3); and

- D. Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

Dated: March 13, 2024

Respectfully submitted,

/s/Douglas M. Werman

Douglas M. Werman (dwerman@flsalaw.com)

ARDC # 6204740

Maureen A. Salas (msalas@flsalaw.com)

ARDC # 6289000

**WERMAN SALAS P.C.**

77 W. Washington St., Ste 1402

Chicago, IL 60602

Telephone: (312) 419-1008

David J. Fish – dfish@fishlawfirm.com

Mara Baltabols - mara@fishlawfirm.com

**FISH POTTER BOLANOS, P.C.**

200 E. 5<sup>th</sup> Avenue, Suite 123

Naperville, IL 60563

(312) 861-1800

Josh G. Konecky - jkonecky@schneiderwallace.com (*to apply Pro Hac Vice*)

Nathan B. Piller - npiller@schneiderwallace.com (*to apply Pro Hac Vice*)

Philippe M.J. Gaudard - pgaudard@schneiderwallace.com (*to apply Pro Hac Vice*)

**SCHNEIDER WALLACE**

**COTTRELL KONECKY LLP**

200 Powell St., Ste 1400

Emeryville, CA 94608

Telephone: (415) 421-7100

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document was electronically filed and served on Defendant's Counsel via E-mail:

Thomas Ahlering  
King & Spalding LLP  
110 N. Wacker Dr., Ste 3800  
Chicago, IL 60606  
tahlering@kslaw.com

/s/ Douglas M. Werman  
**Douglas M. Werman**