

**IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF MACOUPIN
STATE OF ILLINOIS**

ROBERT YESKE,)
DAN HOPLEY,)
RONALD STOUT,)
DOUGLAS DENOON,)
JASON MOORE,)
GREGORY ROACH)
EACH INDIVIDUALLY AND ON)
BEHALF OF ALL OTHERS SIMILARLY SITUATED)

Plaintiffs,)

v.)

MACOUPIN ENERGY LLC,)
MARYAN MINING LLC,)
HILLSBORO ENERGY LLC,)
PATTON MINING LLC,)
MACH MINING, LLC,)
VIKING MINE LLC,)

Defendants.)
_____)

Case No.: 2017-L-24

Judge: Kenneth R. Deihl

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Robert Yeske, Dan Hopley, Ronald Stout, Douglas Denoon and Jason Moore, and Gregory Roach (hereinafter collectively “Plaintiffs”), individually and on behalf of all others similarly situated, by and through their undersigned counsel, upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters, brings this Class Action Complaint against Macoupin Energy LLC, MaRyan Mining LLC, Hillsboro Energy LLC, Patton Mining, LLC, Mach Mining, LLC, and Viking Mining LLC (hereinafter “Defendants”). Plaintiffs allege as follows:

INTRODUCTION

1. Plaintiffs worked for Defendants as coal miners at a Foresight Energy coal mine in Illinois.

2. Defendants' employees have been required to "clock in" and "clock out" of their work shifts by having their hand scanned, which identifies the employee.

3. The Biometric Information Privacy Act (hereinafter "BIPA" or the "Act") expressly obligates Defendants to obtain an executed, written release from an individual, as a condition of employment, in order to capture, collect, and store an individual's biometric identifiers, especially a fingerprint or hand scan, and biometric information derived from it.

4. BIPA further obligates Defendants to inform its employees in writing that a biometric identifier or biometric information is being collected or stored; to tell its employees in writing for how long it will store their biometric fingerprint data or information and any purposes for which biometric information is being captured, collected, and used; and to make available a written policy disclosing when it will permanently destroy such information.

5. Defendants were also required to have a publicly available policy as set forth in BIPA.

6. BIPA makes all of these requirements a *precondition* to the collection or recording of fingerprints and associated biometric information – under the Act, no biometric identifiers or biometric information may be captured, collected, stored, or recorded if these pre-capture, pre-collection, pre-storage, or pre-recording requirements are not met.

7. The State of Illinois takes the privacy of biometric data seriously. There is no realistic way, absent surgery, to reassign someone's biometric data. A person can obtain a new social security number, but not a new hand, which makes the protection of, and control over, biometric data particularly important – particularly given the increasing use of biometric information or identifiers in the stream of commerce and financial transactions.

8. Defendants captured, collected, stored, and recorded biometric information of their Illinois employees, like Plaintiffs, without properly obtaining the above-described written executed

release, and without making the required disclosures concerning the collection, storage, use, or destruction of biometric identifiers or information.

9. Defendants utilized the Schlage GT-400 series hand geometry scanner as part of its timekeeping practices.

10. The Schlage GT-400 captures a three-dimensional image of the users hand each time the device is used.

11. Plaintiffs seek statutory for Defendants' BIPA violations, for themselves and all those similarly situated in the State of Illinois.

PARTIES, JURISDICTION, AND VENUE

12. Plaintiff Robert Yeske is an individual citizen of the State of Illinois.

13. Plaintiff Dan Hopley is an individual citizen of the State of Illinois.

14. Plaintiff Ronald Stout is an individual citizen of the State of Illinois.

15. Plaintiff Douglas Denoon is an individual citizen of the State of Illinois.

16. Plaintiff Jason Moore is an individual citizen of the State of Illinois.

17. Gregory Roach is an individual citizen of the State of Illinois

18. Defendant Macoupin Energy LLC is a Delaware limited liability company with its principal place of business in Macoupin County, located at 14300 Brushy Mound Road, Carlinville Illinois. Macoupin Energy LLC may be served through its registered agent, Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

19. Defendant MaRyan Mining LLC is a Delaware limited liability company with its principal place of business in Macoupin County, located at 14300 Brushy Mound Road, Carlinville, Illinois. MaRyan Mining LLC may be served through its registered agent, Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

20. Defendant Hillsboro Energy LLC is a Delaware limited liability company with its principal place of business in Montgomery County, located at 12182 Fillmore Trail, Hillsboro, Illinois. Hillsboro Energy LLC may be served through its registered agent, Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

21. Defendant Patton Mining LLC is a Delaware limited liability company with its principal place of business in Montgomery County, located at 12182 Fillmore Trail, Hillsboro, Illinois. Patton Mining LLC may be served through its registered agent, Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

22. Defendant Mach Mining, LLC is a Delaware limited liability company with its principal place of business in Williamson County, located at 16468 Liberty School Road, Marion, Illinois. Mach Mining LLC may be served through its registered agent, Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

23. Defendant Viking Mine LLC is a Delaware limited liability company with its principal place of business in Hamilton County, located at 11351 N. Thompsonville Road, Macedonia, Illinois. Viking Mining LLC may be served through its registered agent, Illinois Corporation Service C, 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

24. Jurisdiction is proper in this Court as all Plaintiffs are citizens of Illinois and all Defendants maintain their principal place of business in Illinois, namely, in Macoupin County and Montgomery County, Illinois.

25. Venue is proper in this court pursuant to 735 ILCS 5/2-101 as Defendant Macoupin Energy LLC and Defendant MaRyan Mining LLC are joined in good faith and part of the transactions at issue took place in Macoupin County, namely, at Defendants' location in Macoupin County.

PLAINTIFF SPECIFIC ALLEGATIONS

ROBERT YESKE

26. Plaintiff Yeske worked at the Shay No. 1 coal mine owned by Defendant Macoupin Energy, LLC.

27. Plaintiff Yeske commended employment at Shay No. 1 on or about 2011.

28. Plaintiff Yeske ended employment at Shay No. 1 on or about December 2016.

29. Plaintiff Yeske was required to “clock-in” and “clock-out” using a timeclock that operated, at least in part, by scanning Plaintiff’s hand geometry and capturing an image of Plaintiff Yeske’s hand each time the biometric timeclock was used.

30. Upon information and belief, Plaintiff Yeske was required to use the hand-scanning timeclock, and therefore had his biometric information collected, captured, stored, and used by Defendant Macoupin Energy LLC and Defendant MaRyan Mining LLC, two (2) times per day from the installation of the hand-scanning timeclock until he ended employment at the mine.

DAN HOPLEY

31. Plaintiff Hopley worked at the Deer Run coal mine owned by Defendant Hillsboro Energy, LLC. Plaintiff Hopley commended employment at Deer Run on or about the year 2010.

32. Plaintiff Hopley ended employment at Deer Run on or about August 2015.

33. Plaintiff Hopley was required to “clock-in” and “clock-out” using a timeclock that operated, at least in part, by scanning Plaintiff’s hand geometry and capturing an image of Plaintiff Hopley’s hand each time the biometric timeclock was used.

34. Upon information and belief, Plaintiff Hopley was required to use the hand-scanning timeclock, and therefore had his biometric information collected, captured, stored, and used by Defendant Hillsboro Energy LLC and Defendant Patton Mining LLC, two (2) times per day from the installation of the hand-scanning timeclock until he ended employment at the mine.

RONALD STOUT

35. Plaintiff Stout worked at the Deer Run coal mine owned by Defendant Hillsboro Energy, LLC.

36. Plaintiff Stout commenced employment at Deer Run on or about May 2012.

37. Plaintiff Stout ended employment at Deer Run on or about late 2014.

38. Plaintiff Stout was required to “clock-in” and “clock-out” using a timeclock that operated, at least in part, by scanning Plaintiff’s hand geometry and capturing an image of Plaintiff Stout’s hand each time the biometric timeclock was used.

39. Upon information and belief, Plaintiff Stout was required to use the hand-scanning timeclock, and therefore had his biometric information collected, captured, stored, and used by Defendant Hillsboro Energy LLC and Defendant Patton Mining LLC, two (2) times per day from the installation of the hand-scanning timeclock until he ended employment at the mine.

DOUGLAS DENOON

40. Plaintiff Denoon worked at the Viking Mining coal mine.

41. Plaintiff Denoon commenced employment at Viking Mining on or about July 2017.

42. Plaintiff Denoon ended employment at Viking Mining on or about April 2018.

43. Plaintiff Denoon was required to “clock-in” and “clock-out” using a timeclock that operated, at least in part, by scanning Plaintiff’s hand geometry and capturing an image of Plaintiff Denoon’s hand each time the biometric timeclock was used.

44. Upon information and belief, Plaintiff Denoon was required to use the hand-scanning timeclock, and therefore had his biometric information collected, captured, stored, and used by Defendant Viking Mine coal Mine two (2) times per day from the installation of the hand-scanning timeclock until he ended employment at the mine.

JASON MOORE

45. Plaintiff Moore worked at the Mach Mining.

46. Plaintiff Moore commended employment at Mach Mining on or about September 2008.

47. Plaintiff Moore ended employment at Mach Mining on or about November 2017.

48. Plaintiff Moore was required to “clock-in” and “clock-out” using a timeclock that operated, at least in part, by scanning Plaintiff’s hand geometry and capturing an image of Plaintiff Moore’s hand each time the biometric timeclock was used.

49. Upon information and belief, Plaintiff Moore was required to use the hand-scanning timeclock, and therefore had his biometrics information collected, captured, stored, and used by Defendant Mach Mining, two (2) times per day from the installation of the hand-scanning timeclock until he ended employment at the mine.

GREGORY ROACH

50. Plaintiff Roach worked at the Shay No. 1 coal mine owned by Defendant Macoupin Energy, LLC within the time period relevant hereto.

51. Plaintiff Roach was required to “clock-in” and “clock-out” using a timeclock that operated, at least in part, by scanning Plaintiff’s hand geometry and capturing an image of Plaintiff Roach’s hand each time the biometric timeclock was used.

52. Upon information and belief, Plaintiff Roach was required to use the hand-scanning timeclock, and therefore had his biometric information collected, captured, stored, and used by Defendant Macoupin Energy LLC and Defendant MaRyan Mining LLC, two (2) times per day.

ILLINOIS’S STRONG STANCE ON PROTECTION OF BIOMETRIC INFORMATION

53. BIPA provides valuable privacy rights, protections, and benefits to employees.

54. For example, BIPA’s requirements ensure that the environment for taking of biometrics is not forced or coerced; that individuals are freely advised that, by scanning one’s hand, the employer is capturing, extracting, creating, and recording hand biometrics; that individuals can keep tabs on their biometric roadmaps (*e.g.*, who has their biometrics, for long how, and how it is being used), including after one’s employment ceases, or after the employer stops storing the employee’s biometrics if at all, when employer-employee files or policies may not be freely accessible; that individuals can evaluate the potential consequences of providing their biometrics; that companies must give individuals the right, and opportunity, to freely consent (or decline consent) before taking their biometrics; that, if the disclosure does not say so, the employee’s biometrics will not be used for any other purpose except for employee time and attendance and will not be used to run a criminal background check; and that their biometrics are being handled with a measure of security. The BIPA-required environment for the taking of biometrics provides legislatively-imposed peace for biometric subjects.

55. To this end, in passing the Biometric Information Privacy Act (hereinafter “the Act”), the Illinois General Assembly found:

- (a) The use of biometrics is growing in the business and security screening sectors and appears to promise streamlined financial transactions and security screenings.
- (b) Major national corporations have selected the City of Chicago and other locations in this State as pilot testing sites for new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias.
- (c) 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 heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions.
- (d) An overwhelming majority of members of the public are weary of the use of biometrics when such information is tied to finances and other personal information.

- (e) Despite limited State law regulating the collection, use, safeguarding, and storage of biometrics, many members of the public are deterred from partaking in biometric identifier-facilitated transactions.
- (f) The full ramifications of biometric technology are not fully known.
- (g) The public welfare, security, and safety will be served by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information.

See, 740 ILCS 14/5, Legislative findings; intent.

56. The law is specifically designed to require a company that collects biometrics to jump through several hoops, *before collection*, aimed, in part, at educating and protecting the person whose biometrics it is taking for its own use, and requiring signed, written consent attesting that the individual has been properly informed and has freely consented to biometrics collection.

57. The Act defines “Biometric identifier” as:

a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Biometric identifiers do not include writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color. Biometric identifiers do not include donated organs, tissues, or parts as defined in the Illinois Anatomical Gift Act or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency. Biometric identifiers do not include biological materials regulated under the Genetic Information Privacy Act. Biometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996. Biometric identifiers do not include an X-ray, roentgen process, computed tomography, MRI, PET scan, mammography, or other image or film of the human anatomy used to diagnose, prognose, or treat an illness or other medical condition or to further validate scientific testing or screening.

See, 740 ILCS 14/10.

58. The Act defines “Biometric information” 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. Biometric information does not include information derived from items or procedures excluded under the definition of biometric identifiers.

See, 740 ILCS 14/10.

59. The Act defines “Confidential and sensitive information” as:

personal information that can be used to uniquely identify an individual or an individual’s account or property. Examples of confidential and sensitive information include, but are not limited to, a genetic marker, genetic testing information, a unique identifier number to locate an account or property, an account number, a PIN number, a pass code, a driver’s license number, or a social security number.

See, 740 ILCS 14/10.

60. The Act defines “Private entity” as:

means any individual, partnership, corporation, limited liability company, association, or other group, however organized. A private entity does not include a State or local government agency. A private entity does not include any court of Illinois, a clerk of the court, or a judge or justice thereof.

See, 740 ILCS 14/10.

61. The Act defines “Written release” as:

informed written consent or, in the context of employment, a release executed by an employee as a condition of employment

See, 740 ILCS 14/10.

62. The Act requires:

A private entity 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. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines.

740 ILCS 14/15(a).

63. Additionally, the Act provides:

No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person’s or a customer’s biometric identifier or biometric information, unless it first:

(1) informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored;

(2) informs the subject or the subject's legally authorized representative 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

(3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.

740 ILCS 14/15(b).

64. Further, the Act provides:

No private entity in possession of a biometric identifier or biometric information may sell, lease, trade, or otherwise profit from a person's or a customer's biometric identifier or biometric information.

740 ILCS 14/15(c).

65. The Act also provides:

No private entity in possession of a biometric identifier or biometric information may disclose, redisclose, or otherwise disseminate a person's or a customer's biometric identifier or biometric information unless:

(1) the subject of the biometric identifier or biometric information or the subject's legally authorized representative consents to the disclosure or redisclosure;

(2) the disclosure or redisclosure completes a financial transaction requested or authorized by the subject of the biometric identifier or the biometric information or the subject's legally authorized representative;

(3) the disclosure or redisclosure is required by State or federal law or municipal ordinance; or

(4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction.

740 ILCS 14/15(d).

66. Furthermore, the Act provides:

A private entity in possession of a biometric identifier or biometric information shall:

(1) store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within the private entity's industry; and

(2) store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information.

740 ILCS 14/15(e).

67. BIPA provides statutory damages if an employer takes an employee's biometrics and invades an employee's privacy by circumventing BIPA's preconditions and requirements.

68. The Act explicitly provides a private right of action for violations of the Act, and provides that a prevailing party "may recover for each violation:"

(1) against a private entity that negligently violates a provision of this Act, liquidated damages of \$1,000 or actual damages, whichever is greater;

(2) against a private entity that intentionally or recklessly violates a provision of this Act, liquidated damages of \$5,000 or actual damages, whichever is greater;

(3) reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses; and

(4) other relief, including an injunction, as the State or federal court may deem appropriate.

740 ILCS 14/20.

69. In enacting BIPA, the Illinois General Assembly explicitly singled out and bound employers to BIPA's requirements. 740 ILCS § 14/10 (defining "Written release" in the context of employment); 740 ILCS § 14/15(b)(3).

70. In fact, BIPA requires express written consent not only in order to capture or collect biometrics in the first place, but in the context of employment, the requirement goes a step further: the employer must obtain "informed written consent," in the form of "a release executed by an employee," and further, the release must be executed "as a condition of employment." *Id.* These formalized protections enable employees to freely consent to the taking of their biometrics.

71. Defendants violated these clear protections.¹

CLASS ALLEGATIONS

72. Plaintiff Yeske and Plaintiff Roach bring this action on behalf of themselves and pursuant to 735 ILCS 5/2-801 on behalf of a class defined as follows:

Shay Mine Class:

All persons who were enrolled in the biometric timekeeping system and subsequently hand scanned when clocking in or clocking out of work at the Shay No. 1 coal mine.

Excluded from the Shay Mine Class are Defendants' officers and directors, Plaintiffs' counsel, and any member of the judiciary presiding over this action.

73. Plaintiffs Dan Hopley and Ronald Stout bring this action on behalf of themselves and pursuant to 735 ILCS 5/2-801 on behalf of a class defined as follows:

Deer Run Class:

All persons who were enrolled in the biometric timekeeping system and subsequently hand scanned when clocking in or clocking out of work at the Deer Run coal mine.

Excluded from the Deer Run Class are Defendants' officers and directors, Plaintiffs' counsel, and any member of the judiciary presiding over this action.

74. Plaintiff Denoon brings this action on behalf of himself and pursuant to 735 ILCS 5/2-801 on behalf of a class defined as follows:

Viking Mine Class:

All persons who were enrolled in the biometric timekeeping system and subsequently hand scanned when clocking in or clocking out of work at the Viking coal mine.

Excluded from the Viking Mine Class are Defendants' officers and directors, Plaintiffs' counsel, and any member of the judiciary presiding over this action.

¹ Upon information and belief, at some point after the filing of the Class Action Complaint in this matter, Defendants required coal miners to sign purported BIPA consent forms, and any coal miner who did not sign the form would be terminated.

75. Plaintiff Moore brings this action on behalf of himself and pursuant to 735 ILCS

5/2-801 on behalf of a class defined as follows:

Mach Mine Class:

All persons who were enrolled in the biometric timekeeping system and subsequently hand scanned when clocking in or clocking out of work at the Mach coal mine.

Excluded from the Mach Mine Class are Defendants' officers and directors, Plaintiffs' counsel, and any member of the judiciary presiding over this action.

76. Each class, when referred to collectively, will be called the "Classes."

77. **Numerosity:** The exact number of class members for each of the Classes is unknown and is not available to Plaintiffs at this time, but upon information and belief and pursuant to discovery responses received, there are likely in excess of one hundred potential class members per Class, and individual joinder in this case is impracticable. Class members can easily be identified through Defendants' records and allowing this matter to proceed on a class basis will prevent any retaliation by Defendants.

78. **Commonality and Predominance:** There are several questions of law and fact common to the claims of Plaintiffs and the Classes, and those questions predominate over any questions that may affect individual class members. Common questions include, but are not limited to, the following:

- a. whether Defendants have a practice of capturing or collecting biometrics;
- b. whether Defendants developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of the individual's last interaction with Defendants, whichever occurs first;
- c. whether Defendants obtained an executed written release from hand scanned employees before capturing, collecting, or otherwise obtaining employee biometrics;
- d. whether Defendants obtained an executed written release from hand scanned employees, as a condition of employment, before capturing, collecting, converting,

- sharing, storing or using employee biometrics;
- e. whether Defendants provided a writing disclosing to employees the specific purposes for which the biometrics are being collected, stored, and used;
 - f. whether Defendants provided a writing disclosing to hand scanned employees the length of time for which the biometrics are being collected, stored, and used;
 - g. whether Defendants' conduct violates BIPA;
 - h. whether Defendants' conduct was negligent, reckless, or willful;
 - i. whether Plaintiffs and class members are entitled to damages, and what is the proper measure of damages;

79. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect the interest of the Classes, and have retained competent counsel experienced in complex litigation and class actions.

80. **Appropriateness:** Class proceedings are also superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. Further, it would be virtually impossible for the individual members of the Classes to obtain effective relief because of the fear and likelihood of retaliation by Defendants against current employees bringing a civil action as an individual. Even if Class members were able or willing to pursue such individual litigation, a class action would still be preferable due to the fact that a multiplicity of individual actions would likely increase the expense and time of litigation given the complex legal and factual controversies presented in this Amended Class Action Complaint. A class action, on the other hand, provides the benefits of fewer management difficulties, single adjudication, economy of scale, and comprehensive supervision by a single Court, and would result in reduced time, effort and expense for all parties and the Court, and ultimately, the uniformity of decisions.

COUNT I – FOR DAMAGES
VIOLATION OF 740 ILCS 14/1, ET SEQ. – THE BIOMETRIC INFORMATION PRIVACY ACT
PLAINTIFFS YESKE AND ROACH V. MACOUPIN ENERGY LLC AND MARYAN MINING LLC

81. Plaintiffs Yeske and Roach, individually and on behalf of all others similarly situated, repeat, re-allege, and incorporate all preceding paragraphs as if fully set forth herein.

82. BIPA is a remedial statute designed to protect employees, by requiring consent and disclosures associated with the handling of biometrics, particularly in the context of biometric technology. 740 ILCS 14/5(g), 14/10, and 14/15(b)(3).

83. The Illinois General Assembly’s recognition of the importance of the public policy and benefits underpinning BIPA’s enactment, and the regulation of biometrics collection, is detailed in the text of the statute itself.

84. Defendant Macoupin Energy LLC has been and continues to be a “private entity” in possession of Plaintiff Yeske’s, Plaintiff Roach’s, and other employees’ biometrics, and it collected and captured their biometric identifiers and biometric information within the meaning of the Act.

85. Defendant MaRyan Mining LLC has been and continues to be a “private entity” in possession of Plaintiff Yeske’s, Plaintiff Roach’s, and other employees’ biometrics, and it collected and captured their biometric identifiers and biometric information within the meaning of the Act

86. As more fully set forth above, at relevant times Defendant Macoupin Energy LLC and Defendant MaRyan Mining LLC recorded, collected, and stored Plaintiff Yeske’s, Plaintiff Roach’s, and other employees’ biometric identifiers and biometric information based on those identifiers as defined by BIPA, 740 ILCS 14/10, through the imposition of biometric time clocks.

87. In violation of 740 ILCS 14/15(a), during relevant times, Defendants failed to make such a written policy publicly available to Plaintiff Yeske, Plaintiff Roach, and other Shay Mine Class members.

88. In violation of 740 ILCS 14/15(b), Defendants have collected, captured, stored or obtained Plaintiff Yeske's, Plaintiff Roach's, and other Shay Mine Class members' biometric identifiers and biometric information, without:

- a. informing them (including, where applicable, their legal authorized representatives), in writing, that the biometric identifiers or biometric information were being recorded, obtained, collected or stored;
- b. informing them (including, where applicable, their legal authorized representatives), in writing, of the specific purpose and length of term for which the biometric identifiers or biometric information were being collected, stored, and used; and
- c. receiving a valid written release executed by them, and executed by them as a condition of employment.

89. Defendants took Plaintiff Yeske's, Plaintiff Roaches, and other class members' hand scans, including capturing an image of their hand, and knowingly caused their biometrics to be captured, collected, recorded, and stored, without making publicly available the required policy that explains, for example, any purposes for which the biometric identifiers and information were collected, a retention schedule, and guidelines for permanently destroying biometric identifiers and information.

90. Defendants above-described conduct is negligent. As a result of Defendants above-described acts and omissions, Defendants have invaded the privacy of Plaintiff Yeske, Plaintiff Roach, and the Shay Mine Class; it has unlawfully and coercively taken their biometrics; it has failed to provide them with information required by BIPA; it has deprived them of benefits, rights, opportunities and decisions conferred and required by the Illinois legislature via BIPA; and it illegally recorded, possessed, converted, and stored their hand scans, biometrics, and property.

91. Accordingly, Defendants have negligently violated the BIPA, and Plaintiff Yeske, Plaintiff Roach, and the Shay Mine Class are entitled to statutory damages of \$1,000 for each violation of BIPA. 740 ILCS 14/20(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Yeske and Plaintiff Roach, individually and on behalf of the Shay Mine Class, pray for an Order as follows:

- A. Finding this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Shay Mine Class defined herein;
- B. Designating Plaintiff Yeske and Plaintiff Roach as representatives of the Shay Mine Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiffs and the Shay Mine Class and Against Defendants Macoupin Energy LLC and MaRyan Mining LLC;
- D. Awarding Plaintiffs and the Shay Mine Class members statutory damages of \$1,000 for each violation of BIPA;
- E. Awarding Plaintiffs and the Shay Mine Class reasonable attorneys' fees and costs incurred in this litigation; and
- F. Granting all such other and further relief as the Court deems just and appropriate.

COUNT II – FOR DAMAGES

VIOLATION OF 740 ILCS 14/1, *ET SEQ.* – THE BIOMETRIC INFORMATION PRIVACY ACT PLAINTIFFS DAN HOPLY AND RONALD STOUT V. HILLSBORO ENERGY LLC AND PATTON MINING LLC

92. Plaintiffs Dan Hopley and Ronald Stout, individually and on behalf of all others similarly situated, repeat, re-allege, and incorporate all preceding paragraphs as if fully set forth herein.

93. BIPA is a remedial statute designed to protect employees, by requiring consent and disclosures associated with the handling of biometrics, particularly in the context of biometric technology. 740 ILCS 14/5(g), 14/10, and 14/15(b)(3).

94. The Illinois General Assembly's recognition of the importance of the public policy and benefits underpinning BIPA's enactment, and the regulation of biometrics collection, is detailed in the text of the statute itself.

95. Defendant Hillsboro Energy LLC has been and continues to be a "private entity" in

possession of Plaintiffs Dan Hopley's and Ronald Stout's and other employees' biometrics, and it collected and captured their biometric identifiers and biometric information within the meaning of the Act.

96. Defendant Patton Mining LLC has been and continues to be a "private entity" in possession of Plaintiffs Dan Hopley's and Ronald Stout's and other employees' biometrics, and it collected and captured their biometric identifiers and biometric information within the meaning of the Act

97. As more fully set forth above, at relevant times Defendant Hillsboro Energy LLC and Defendant Patton Mining LLC recorded, collected, and stored Plaintiffs Dan Hopley's and Ronald Stout's and other employees' biometric identifiers and biometric information based on those identifiers as defined by BIPA, 740 ILCS 14/10, through the imposition of biometric time clocks.

98. In violation of 740 ILCS 14/15(a), Defendant Hillsboro Energy LLC and Defendant Patton Mining LLC, at relevant times, failed to make such a written policy publicly available to Plaintiffs Dan Hopley and Ronald Stout and other Deer Run Class members.

99. In violation of 740 ILCS 14/15(b), Defendant Hillsboro Energy LLC and Defendant Patton Mining LLC have collected, captured, stored or obtained Plaintiffs Dan Hopley and Ronald Stout and other Deer Run Class members' biometric identifiers and biometric information, without:

- a. informing them (including, where applicable, their legal authorized representatives), in writing, that the biometric identifiers or biometric information were being recorded, obtained, collected or stored;
- b. informing them (including, where applicable, their legal authorized representatives), in writing, of the specific purpose and length of term for which the biometric identifiers or biometric information were being collected, stored, and used; and
- c. receiving a written release executed by them, and executed by them as a condition of employment.

100. Defendant Hillsboro Energy LLC and Defendant Patton Mining LLC took Plaintiffs Dan Hopley's and Ronald Stout's and other Deer Run Class members' hand scans, including capturing an image of their hands, and knowingly caused their biometrics to be captured, collected, recorded, and stored, without making publicly available the required policy that explains, for example, any purposes for which the biometric identifiers and information were collected, a retention schedule, and guidelines for permanently destroying biometric identifiers and information.

101. Defendant Hillsboro Energy LLC's and Defendant Patton Mining LLC's above-described conduct is negligent. As a result of Defendant Hillsboro Energy LLC's and Defendant Patton Mining LLC's above-described acts and omissions, Defendant Hillsboro Energy LLC and Defendant Patton Mining LLC have invaded the privacy of Plaintiffs Dan Hopley and Ronald Stout and other Deer Run Class members; it has unlawfully and coercively taken their biometrics; it has failed to provide them with information required by BIPA; it has deprived them of benefits, rights, opportunities and decisions conferred and required by the Illinois legislature via BIPA; and it illegally recorded, possessed, converted, and stored their hand scans, biometrics, and property.

102. Accordingly, Defendant Hillsboro Energy LLC and Defendant Patton Mining LLC have negligently violated the BIPA, and Plaintiffs Dan Hopley and Ronald Stout and other Deer Run Class members are entitled to statutory damages of \$1,000 for each violation of BIPA. 740 ILCS 14/20(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Dan Hopley, and Ronald Stout, individually and on behalf of the Deer Run Class, prays for an Order as follows:

- A. Finding this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Deer Run Class defined herein;
- B. Designating Plaintiffs Dan Hopley and Ronald Stout representatives of the Deer Run Class and their undersigned counsel as Class Counsel;

- C. Entering judgment in favor of Plaintiffs Dan Hopley and Ronald Stout and other Deer Run Class members and against Defendant Hillsboro Energy LLC and Defendant Patton Mining LLC;
- D. Awarding Plaintiffs Dan Hopley and Ronald Stout and other Deer Run Class members statutory damages of \$1,000 for each violation of BIPA;
- E. Awarding Plaintiffs Dan Hopley, and Ronald Stout and other Deer Run Class members reasonable attorneys' fees and costs incurred in this litigation; and
- F. Granting all such other and further relief as the Court deems just and appropriate.

COUNT III – FOR DAMAGES
VIOLATION OF 740 ILCS 14/1, ET SEQ. – THE BIOMETRIC INFORMATION PRIVACY ACT
PLAINTIFF DOUGLAS DENOON V. VIKING MINING LLC

103. Plaintiff Douglas Denoon, individually and on behalf of all others similarly situated, repeats, re-alleges, and incorporates all preceding paragraphs as if fully set forth herein.

104. BIPA is a remedial statute designed to protect employees, by requiring consent and disclosures associated with the handling of biometrics, particularly in the context of biometric technology. 740 ILCS 14/5(g), 14/10, and 14/15(b)(3).

105. The Illinois General Assembly's recognition of the importance of the public policy and benefits underpinning BIPA's enactment, and the regulation of biometrics collection, is detailed in the text of the statute itself.

106. Defendant Viking Mining LLC has been and continues to be a "private entity" in possession of Plaintiff Douglas Denoon and other employees' biometrics, and it collected and captured their biometric identifiers and biometric information within the meaning of the Act.

107. Defendant Viking Mining LLC has been and continues to be a "private entity" in possession of Plaintiff Douglas Denoon and other employees' biometrics, and it collected and captured their biometric identifiers and biometric information within the meaning of the Act

108. As more fully set forth above, at relevant times Defendant Viking Mining LLC recorded, collected, and stored Plaintiff Douglas Denoon's and other employees' biometric identifiers

and biometric information based on those identifiers as defined by BIPA, 740 ILCS 14/10, through the imposition of biometric time clocks.

109. In violation of 740 ILCS 14/15(a), Defendant Viking Mining LLC failed to make such a written policy publicly available to Plaintiff Douglas Denoon and other Viking Mine Class members.

110. In violation of 740 ILCS 14/15(b), Defendant Viking Mining LLC have collected, captured, stored or obtained Plaintiff Douglas Denoon and other Viking Mine Class members' biometric identifiers and biometric information, without:

- a. informing them (including, where applicable, their legal authorized representatives), in writing, that the biometric identifiers or biometric information were being recorded, obtained, collected or stored;
- b. informing them (including, where applicable, their legal authorized representatives), in writing, of the specific purpose and length of term for which the biometric identifiers or biometric information were being collected, stored, and used; and
- c. receiving a written release executed by them, and executed by them as a condition of employment.

111. Defendant Viking Mining LLC took Plaintiff Douglas Denoon and other Viking Mine Class members' hand scans, and knowingly caused their biometrics to be captured, collected, recorded, and stored, without making publicly available the required policy that explains, for example, any purposes for which the biometric identifiers and information were collected, a retention schedule, and guidelines for permanently destroying biometric identifiers and information.

112. Defendant Viking Mining LLC's above-described conduct is negligent. As a result of Defendant Viking Mining LLC's above-described acts and omissions, Defendant Viking Mining LLC has invaded the privacy of Plaintiff Douglas Denoon and other Viking Mine Class members; it has unlawfully and coercively taken their biometrics; it has failed to provide them with information required by BIPA; it has deprived them of benefits, rights, opportunities and decisions conferred and

required by the Illinois legislature via BIPA; and it illegally recorded, possessed, converted, and stored their hand scans, biometrics, and property.

113. Accordingly, Defendant Viking Mining LLC have negligently violated the BIPA, and Plaintiff Douglas Denoon and other Viking Mine Class members are entitled to statutory damages of \$1,000 for each violation of BIPA. 740 ILCS 14/20(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Douglas Denoon, individually and on behalf of the Viking Mine Class, prays for an Order as follows:

- A. Finding this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Viking Mine Class defined herein;
- B. Designating Plaintiff Douglas Denoon representatives of the Viking Mine Class and their undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff Douglas Denoon and other Viking Mine Class members and against Defendant Viking Mining LLC;
- D. Awarding Plaintiff Douglas Denoon and other Viking Mine Class members statutory damages \$1,000 for each violation of BIPA;
- E. Awarding Plaintiff Douglas Denoon and other Viking Mine Class members reasonable attorneys' fees and costs incurred in this litigation; and
- F. Granting all such other and further relief as the Court deems just and appropriate.

COUNT IV – FOR DAMAGES VIOLATION OF 740 ILCS 14/1, ET SEQ. – THE BIOMETRIC INFORMATION PRIVACY ACT PLAINTIFF JASON MOORE V. MACH MINING LLC

114. Plaintiff Jason Moore, individually and on behalf of all others similarly situated, repeats, re-alleges, and incorporates all preceding paragraphs as if fully set forth herein.

115. BIPA is a remedial statute designed to protect employees, by requiring consent and disclosures associated with the handling of biometrics, particularly in the context of biometric technology. 740 ILCS 14/5(g), 14/10, and 14/15(b)(3).

116. The Illinois General Assembly's recognition of the importance of the public policy

and benefits underpinning BIPA's enactment, and the regulation of biometrics collection, is detailed in the text of the statute itself.

117. Defendant Mach Mining LLC has been and continues to be a "private entity" in possession of Plaintiff Jason Moore and other employees' biometrics, and it collected and captured their biometric identifiers and biometric information within the meaning of the Act.

118. Defendant Mach Mining LLC has been and continues to be a "private entity" in possession of Plaintiff Jason Moore and other employees' biometrics, and it collected and captured their biometric identifiers and biometric information within the meaning of the Act

119. As more fully set forth above, at relevant times Defendant Mach Mining LLC recorded, collected, and stored Plaintiff Jason Moore and other employees' biometric identifiers and biometric information based on those identifiers as defined by BIPA, 740 ILCS 14/10, through the imposition of biometric time clocks.

120. In violation of 740 ILCS 14/15(a), Defendant Mach Mining LLC failed to make such a written policy publicly available to Plaintiff Jason Moore and other Mach Mine Class members.

121. In violation of 740 ILCS 14/15(b), Defendant Mach Mining LLC has collected, captured, stored or obtained Plaintiff Jason Moore and other Mach Mine Class members' biometric identifiers and biometric information, without:

- a. informing them (including, where applicable, their legal authorized representatives), in writing, that the biometric identifiers or biometric information were being recorded, obtained, collected or stored;
- b. informing them (including, where applicable, their legal authorized representatives), in writing, of the specific purpose and length of term for which the biometric identifiers or biometric information were being collected, stored, and used; and
- c. receiving a written release executed by them, and executed by them as a condition of employment.

122. Defendant Mach Mining LLC took Plaintiff Jason Moore and other Mach Mine Class members' hand scans, and knowingly caused their biometrics to be captured, collected, recorded, and stored, without making publicly available the required policy that explains, for example, any purposes for which the biometric identifiers and information were collected, a retention schedule, and guidelines for permanently destroying biometric identifiers and information.

123. Defendant Mach Mining LLC's above-described conduct is negligent. As a result of Defendant Mach Mining LLC's above-described acts and omissions, Defendant Mach Mining LLC have invaded the privacy of Plaintiff Jason Moore and other Mach Mine Class members; it has unlawfully and coercively taken their biometrics; it has failed to provide them with information required by BIPA; it has deprived them of benefits, rights, opportunities and decisions conferred and required by the Illinois legislature via BIPA; and it illegally recorded, possessed, converted, and stored their hand scans, biometrics, and property.

124. Accordingly, Defendant Mach Mining LLC has negligently violated the BIPA, and Plaintiff Jason Moore and other Mach Mine Class members are entitled to statutory damages of \$1,000 for each violation of BIPA. 740 ILCS 14/20(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jason Moore, individually and on behalf of the Mach Mine Class, prays for an Order as follows:

- A. Finding this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Mach Mining Class defined herein;
- B. Designating Plaintiff Jason Moore representative of the Mach Mining Class and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff Jason Moore and other Mach Mining Class members and against Defendant Mach Mining LLC;
- D. Awarding Plaintiff Jason Moore and other Mach Mining Class members statutory damages of \$1,000 for each violation of BIPA;

- E. Awarding Plaintiff Jason Moore and other Mach Mining Class members reasonable attorneys' fees and costs incurred in this litigation; and
- F. Granting all such other and further relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

Dated: September 6, 2019

By: /s/ Brandon M. Wise
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COUNSEL FOR THE PLAINTIFFS AND THE
PUTATIVE CLASSES

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed with the Clerk of the Court using the Illinois e-filing system. That system will provide notice and allow access to all counsel of record.

/s/ Brandon M. Wise