



COOK COUNTY RECORD

grocery chain broke Illinois biometric law, should be thrown out because it is "conclusory and speculative," based on "bald information and belief," without hard facts.

In 2018 in Cook County Circuit Court, Gregg Bruhn filed for a class action against New Albertsons Inc., the parent company of Jewel-Osco, which runs almost 200 stores in Illinois, Indiana and Iowa, but mostly in the Chicago area. Bruhn was a Jewel-Osco pharmacist from 1989 to 2018.

Bruhn said he and other employees had to scan their fingerprints, when gaining access to the pharmacy's computer system, from 2006 until at least 2018. However, Bruhn alleged Jewel has violated the Illinois Biometric Information Privacy Act (BIPA), by passing his prints to out-of-state third parties and failing to give notice as to how his prints will be used, stored, shared and destroyed, as well as failing to secure his consent before acquiring his prints. He wants as much as \$5,000 statutory damages per violation, per employee.

Under the Illinois BIPA law, employers could be made to pay such damages for each time an employee scanned their fingerprints when verifying their identity.

Jewel is asking Cook County Judge Anna Loftus to dismiss the case.

"Plaintiff's information and belief allegations are unsupported by a single factual



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allegations of misconduct based upon information and belief that courts routinely reject," **Jewel said in the motion filed Feb. 2**, quoting an Illinois Third District Appellate Court ruling from 1990.

Jewell noted Bruhn lodged his suit two weeks after leaving Jewel, but BIPA allows an employer to delete biometric data within three years of the employee's last interaction with the employer. As a consequence, Bruhn cannot "logically" show the timeframe was breached, Jewel claimed.

In addition, Jewel is contending Bruhn's suit was filed too late.

According to Jewel, judges are undecided whether a BIPA suit must be filed within one, two or five years of when a claim accrues. Regardless, Bruhn did not launch his suit until more than 10 years after his print was first scanned, putting his action beyond any possible statute of limitations, in Jewel's view.

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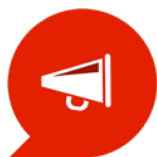


Jewel further argued if Bruhn's suit is taken at face value, Bruhn scanned his print at least once every working day for 12 years. If a new claim for a violation arose from each scan, Bruhn alone could claim \$3 million damages; if he scanned 10 times per day, the amount would be \$30 million, Jewel said. These amounts are the types of "illogical and absurd" damages that would force out of business "droves" of employers, who unknowingly failed to comply with the letter of the law — a result frowned upon by the courts, Jewel said.

In February 2020, **Jewel wanted Illinois First District Appellate Court to decide whether HIPAA exempts pharmacists and other health care workers from BIPA** and whether BIPA unconstitutionally exempts companies considered "financial institutions." However, in December, Jewel's request was denied.

Bruhn is represented by attorneys Andrew C. Ficzko, Ryan Stephan and James Zouras, of the Chicago firm of Stephen Zouras LLP.

Albertsons and Jewel are defended by attorneys David S. Almeida, Suzanne M. Alton de Eraso, and Mark S. Eisen, of the firm of Benesch Friedlander Coplan & Aronoff LLP, of Chicago.



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