UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS BURLINSKI and MATTHEW, MILLER, on behalf of themselves and all other persons similarly situated, known and unknown,	)	
Plaintiffs,	)	No. 19-cv-06700
v.	)	Judge Edmond E. Chang
TOP GOLF USA INC., TOPGOLF USA SALT CREEK, LLC, and TOPGOLF USA, NAPERVILLE, LLC,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Thomas Burlinski and Matthew Miller have brought a proposed class action against their former employer, Topgolf, for violations of the Illinois Biometric Privacy Act, 740 ILCS 14/1 *et seq*. R. 1-1, Second Am. Compl.[1] Burlinski and Miller allege that Topgolf required its employees to track their shifts using a fingerprint-scan system and that Topgolf later disclosed their fingerprint data to a third-party vendor. In October 2019, Topgolf removed the case to federal court, R. 1, Notice of Removal, and then filed a motion to dismiss the claims, R. 19. The next day, the Plaintiffs filed a motion to remand the case to state court. R. 21. For the reasons discussed below, the motion to remand is denied in part and granted in part, and the motion to dismiss is denied.

[1]Citations to the record are noted as "R." followed by the docket number, and when necessary, the page or paragraph number.

I. Background

For purposes of these motions, the Court accepts as true the factual allegations in the complaints. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Topgolf is a company that operates driving range and bar facilities across the country. Second Am. Compl. ¶ 1. Thomas Burlinksi worked as a bartender at Topgolf for a few months in 2017, while Matthew Miller worked in a variety of positions at Topgolf from 2017 through 2019. *Id.* ¶¶ 2-3. Both Burlinksi and Miller were paid by the hour. *Id.*

During this period, Topgolf required its hourly employees to track their time using a biometric fingerprint-scan system. Second Am. Compl. ¶ 4. Specifically, hourly employees were asked to scan their fingerprints each time they began a shift, stopped to take a break, returned from a break, and finished working a shift. *Id.* ¶ 5. According to the Plaintiffs, Topgolf's rationale for using a biometric timecard system, as opposed to identification numbers or badges, was to prevent one employee from clocking in for a different employee. *Id.* ¶ 7.

The Plaintiffs allege that Topgolf, by implementing the biometric time clock system, "captured, collected, and stored" their fingerprint data. Second Am. Compl. ¶ 30. What's more, Topgolf allegedly "disseminated and disclosed" that fingerprint data to a third-party time-keeping vendor. *Id.* ¶ 31. Burlinski asserts that Topgolf never provided him any written disclosures about the collection, retention, destruction, use, or dissemination of his fingerprint data. *Id.* ¶ 32. Similarly, Miller claims that Topgolf never provided him written disclosures until nearly two years into his employment. *Id.* ¶ 33. And disclosure aside, both Burlinski and Miller allege

that Topgolf never obtained their consent before collecting their fingerprints in the first place. *Id.* ¶ 34.

Based on these allegations, Burlinski and Miller filed suit against Topgolf in Illinois state court, alleging certain violations of the Illinois Biometric Privacy Act, which has come to be known as BIPA for short. *See* Second Am. Compl. Specifically, Burlinski and Miller brought claims under three separate sections of BIPA:

- *Retention Schedule*: Section 15(a), which requires companies to maintain a public retention and destruction schedule before collecting biometric data, 740 ILCS 14/15(a);
- *Consent to Collect*: Section 15(b), which requires companies to obtain written consent before collecting biometric data, 740 ILCS 14/15(b); and
- *Consent to Disclose*: Section 15(d), which requires companies to obtain written consent before disclosing biometric data to third parties, 740 ILCS 14/15(d).

In addition, Burlinski and Miller seek to represent a class of Illinois Topgolf employees who were required to scan their fingerprints into the biometric time-clock system. *Id.* ¶ 35. The proposed class, according to the Plaintiffs, includes more than 40 members. *Id.* ¶ 37.

In October 2019, Topgolf removed the case to federal court, alleging diversity jurisdiction, 28 U.S.C. § 1332(a), as the basis for subject matter jurisdiction. Notice of Removal. Specifically, Topgolf alleged that complete diversity exists among the parties[2] and the amount in controversy exceeds $75,000. *Id.* ¶¶ 6-13. On the amount-

[2]Both Burlinski and Miller are domiciled in and thus citizens of Illinois. Notice of Removal ¶ 6. Corporations are citizens of their state of incorporation and principal place of business. 28 U.S.C. §1332(c)(1). Limited liability companies are citizens of any state in which an LLC member is a citizen. *Cosgrove v. Bartolotta*, 150 F.3d 729, 731 (7th Cir. 1998). Here,

in-controversy question, Topgolf calculated that Burlinski and Miller were each alleging five BIPA violations and seeking statutory damages of $5,000 per reckless violation, plus attorney's fees (which totaled $26,000 at the time that the notice was filed). *Id.* ¶ 14. In other words: 2 plaintiffs x 5 violations per plaintiff x $5,000 per violation = $50,000, and then $50,000 + $26,000 in fees = $76,000. *Id.*

In addition to the individual claims, Topgolf also argued that, in light of the proposed class action, there was federal jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d). Specifically, Topgolf argued that the amount in controversy for the class-action claims exceeds CAFA's $5,000,000 statutory requirement. Notice of Removal ¶¶ 16-19. Here, Topgolf counted 205 potential class members x 5 alleged violations per individual x $5,000 per violation = $5,125,000. *Id.* ¶ 19. With the addition of attorneys' fees, argues Topgolf, the amount in controversy is well over the CAFA minimum. *Id.* Shortly after removing the case, Topgolf filed a motion to dismiss all of the BIPA claims. R. 19.

One day later, Burlinski and Miller filed a motion to remand the case to state court. Their main argument is that the amount in controversy requirements have not been met. For one, Plaintiffs argue that Topgolf improperly aggregated the value of the claims of *both* Burlinski and Miller to reach the $75,000 threshold under 28

Top Golf USA Inc. is a corporation formed in Delaware with a principal place of business in Texas. *Id.* ¶ 9. TopGolf USA Salt Creek, LLC has only one member, Top Golf USA Inc., so the Salt Creek LLC is also a citizen of Delaware and Texas. *Id.* ¶ 10. TopGolf USA Naperville, LLC also has only one member, TG Holdings I, LLC. *Id.* ¶ 11. All of the managers of TG Holdings are in turn domiciled in Texas. *Id.* So, TG Holdings is a Texas citizen, which means the Naperville LLC is also a Texas citizen. *Id.* The Plaintiffs do not dispute these citizenship allegations.

U.S.C. § 1332(a). Mot. Remand at 1. Moreover, the Plaintiffs argue that the CAFA removal is also deficient because Topgolf included the value of claims for which the proposed class members lack Article III standing. *Id*.

II. Legal Standard

On the motion to remand, the general rule is that a defendant may remove an action filed in state court to federal court in any case in which the plaintiff could have filed the case in federal court in the first place. 28 U.S.C. § 1441(a). The party seeking removal bears the burden of demonstrating federal jurisdiction, "and federal courts should interpret the removal statute narrowly, resolving any doubt in favor of the plaintiff's choice of forum in state court." *Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 752, 758 (7th Cir. 2009). Where, as here, defendants invoke diversity jurisdiction, the defendants must demonstrate complete diversity of citizenship and an amount in controversy exceeding $75,000. 28 U.S.C. § 1332(a). Alternatively, for the proposed class action, defendants must allege minimal diversity and an amount in controversy exceeding $5,000,000. 28 U.S.C. § 1332(d).

As for the sufficiency of the complaint, Federal Rule of Civil Procedure 8(a)(2) provides that a complaint generally need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." This short and plain statement must "give the defendant fair notice of what the … claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (cleaned

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