



2. This case is about one of the nation's largest cosmetics retailers capturing, collecting, storing, and using Plaintiff's and other users' biometric identifiers and/or biometric information without regard to BIPA and the concrete privacy rights and pecuniary interests that BIPA protects. Defendants' collect their customers' biometric information in the form of their facial geometry through their Virtual Artist Kiosk. The Virtual Artist Kiosk works by extracting the biometric facial geometry of customers. Defendants then use this facial geometry data and proprietary software to digitally apply cosmetic products to images of the customers face. This allow customers to digitally see what various cosmetic products and colors would look like on their fact without actually needing to apply such cosmetics to their faces.

3. Using their Virtual Artist Kiosks, Defendants capture, upload, store, and disseminate customers' facial geometry and related biometric information without complying with BIPA's requirements.

4. Defendant Sephora uses Defendant Modiface's biometric technology to capture, collect, and otherwise use biometrics, including face scans and facial geometry. Defendant Modiface offers such technology to its various corporate and business clients, which such clients in turn use the technology on customers and/or employees, such as Plaintiff – often without their consent and in violation of the BIPA.

5. BIPA provides, *inter alia*, that private entities, such as Defendants, may not obtain and/or possess an individual's biometrics unless they first:

- (1) inform that person in writing that biometrics will be collected or stored;
- (2) inform that person in writing of the specific purpose and the length of term for which such biometric identifiers or biometric information is being collected, stored and used;

(3) receive a written release from the person for the collection of their biometric identifiers or biometric information; and

(4) publish a publicly available retention schedule and guidelines for permanently destroying biometric identifiers and biometric information.

740 ILCS 14/5.

6. BIPA's statutory scheme requires specific disclosures prior to collecting biometrics, which in turn allows individuals the opportunity to make a truly informed choice when private entities request their biometrics. So, unlike other statutes that only create a right of action if there is a qualifying data breach, BIPA strictly regulates the manner in which entities may collect, store, and use biometrics and creates a private right of action for lack of compliance.

7. In this case, Defendants elected to implement an invasive biometric face scanning program that relied on the illegal collection of consumers' biometrics, thereby invading their substantive privacy rights under BIPA.

8. Defendants' system works by extracting biometric information from their customers facial geometry and subsequently transferring such information to third party vendors, where such information is then stored and transmitted to the cell phones of their customers.

9. Defendants implemented this biometric face scanning regime, collecting facial geometry of their customers, without first obtaining such individuals' informed written consent or providing them with the necessary disclosures as required by law.

10. Defendants' conduct is particularly unsettling considering the economic benefit and marketing advantages they obtain from the biometric face scanning system while wholly avoiding any costs associated with implementing such systems in compliance with the law.

11. Indeed, “biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, even sensitive information like Social Security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to each individual and therefore, once compromised . . . such individual has no recourse[.]” 740 ILCS 14/5. The risk is compounded when, like in the consumer context, a person’s biometrics are also associated with other personally identifiable information, such as cell phone numbers and addresses. Here, Defendants’ system even captures the biometrics of unintended bystanders not actively seeking Defendant Sephora’s products.

12. Compliance with BIPA is straightforward and minimally-burdensome. For example, the necessary disclosures may be accomplished through a single sheet of paper and/or through a prominently featured notice affixed to a biometric-enabled device.

13. BIPA’s requirements bestow a right to privacy in biometrics and a right to make an *informed* decision when electing whether to provide or withhold biometrics.

14. The deprivation of the statutory rights conferred by BIPA constitutes the actual injuries the Illinois Legislature sought to prevent.

15. Plaintiff brings this action for statutory damages and other remedies as a result of Defendants’ respective and collective conduct in violating her state biometric privacy rights.

16. On behalf of herself and the proposed Class defined below, Plaintiff seeks an injunction requiring Defendant to comply with BIPA, as well as an award of statutory damages to the Class members, together with costs and reasonable attorneys’ fees.

#### **PARTIES**

17. Defendant Modiface, Inc. is a Toronto company that conducts business throughout the State of Illinois and in Cook County.

18. Defendant Sephora USA, Inc., is a Delaware corporation that conducts, and is licensed by the Illinois Secretary of State to conduct, business throughout Illinois and in Cook County. Sephora transacts business throughout the State and intentionally seeks to transact with Illinois residents.

19. At all relevant times, Plaintiff has been a resident and citizen of the state of Illinois.

### **JURISDICTION AND VENUE**

20. This Court has subject matter jurisdiction over this matter pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d) *et seq.*, because this case is a class action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; there are greater than 100 putative class members; at least one putative class member is a citizen of a state other than Defendants; and none of the exceptions under subsection 1332(d) apply.

21. This Court may assert personal jurisdiction over Defendants because they conduct substantial business within Illinois and intentionally market their products to Illinois residents.

22. Defendant Modiface, through its biometric devices and technology, intentionally captures the biometrics of Illinois residents while in Illinois. Modiface develops biometric collection devices and technology for its clients in the beauty industry with the knowledge and intent that such devices and technology will be used to capture, collect, store, disseminate, and transfer the biometrics of Illinois residents. Modiface developed, and continues to develop, customized bespoke biometric devices and technology with Defendant Sephora with the knowledge and intent that such biometrically-enabled solutions be deployed throughout the state of Illinois and utilize the biometrics of thousands of Illinois residents.

23. For the past several years, Defendant Modiface has co-developed its biometric devices and technology with Defendant Sephora, including for deployment of such biometric

devices and technology specifically within Sephora's dozens of Illinois-based locations. Throughout this time, Modiface has provided store-and-location-specific analytics regarding its technology to Sephora, as well as training and best practices to Sephora personnel. These analytics allow Defendants to readily determine and analyze the volume of biometrics they capture, collect, store, and use from Sephora's Illinois-based customers.

24. Defendant Modiface continually services, updates, improves, or otherwise modifies the biometric devices and technology it deploys throughout Illinois in order to continually meet the objectives and needs of its clients operating throughout Illinois, including Defendant Sephora.

25. Defendant Modiface intentionally provides, develops in tandem, and continually services its biometric devices and technology to other clients operating throughout Illinois, including Bobbi Brown Professional Cosmetics Services, Inc. and The Estee Lauder Companies, Inc., both of which conduct substantial business throughout Illinois via various cosmetic offerings.

#### **FACTS SPECIFIC TO PLAINTIFF**

26. Defendants, using their Virtual Artist Kiosks, captured, collected, stored, and transferred the biometric facial geometry of Plaintiff and other Illinois residents and consumers. The Virtual Artist Kiosks provide customers with the ability to superimpose Defendant Sephora's products on a biometric recreation of their own face.

27. Plaintiff visited one of Defendant Sephora's locations in Chicago, Illinois during the relevant period and was subjected to Defendants' Virtual Artist Kiosks. Defendants, using the Modiface biometric technology, captured, collected, stored, and transferred biometric scans of Plaintiff's face and facial geometry.

28. After Plaintiff's biometrics were initially captured and collected, Plaintiff was required to give her cell phone number and other personal information to receive a text message with a biometric scan of her face depicting various Sephora products.

29. Defendants then disseminated Plaintiff's biometrics in an attempt to sell her Sephora products.

30. Prior to taking Plaintiff's biometrics, Defendants did not inform Plaintiff in writing that her biometrics were being collected, stored, used, or disseminated, or publish any policy specifically about the collection, retention, use, deletion, or dissemination of her biometrics. Defendants did not seek, and Plaintiff was never provided, any written consent relating to the collection, use, storage, or dissemination of her biometrics.

31. Prior to taking Plaintiff's biometrics, Defendants did not publish any written policy as to a biometric retention schedule or guidelines for permanently destroying biometrics.

32. Additionally, Defendants did not obtain consent from Plaintiff for any dissemination and disclosure of her biometrics to third parties. Thus, Defendants have violated BIPA on each occasion they disseminate such biometrics to third parties.

33. To this day, Plaintiff is unaware of the status of her biometrics obtained by Defendants. Defendants have not informed Plaintiff whether they still retain her biometrics, and if they do, for how long they intend to retain such information without her consent.

34. By failing to comply with BIPA, Defendants have violated Plaintiff's substantive state rights to biometric information privacy.

## CLASS ALLEGATIONS

35. Plaintiff brings this action on behalf of herself and a class of similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent a Class and Subclass (“Class” unless otherwise noted) as defined as follows:

**Class:** All individuals whose biometrics were captured, collected, stored, used, transmitted, or disseminated by Defendant Modiface Inc.’s technology within the state of Illinois any time within the applicable limitations period.

**Subclass:** All individuals whose biometrics were captured, collected, stored, used, transmitted, or disseminated on or behalf of Defendant Sephora within the state of Illinois any time within the applicable limitations period.

36. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendants; and any immediate family member of such officer or director.

37. Upon information and belief, there are thousands of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. The exact number of members of the Class can be easily identified through Defendants’ records.

38. Plaintiff’s claims are typical of the claims of the Class she seeks to represent, because the factual and legal bases of Defendants’ liability to Plaintiff and the Class is the same, and because Defendants’ conduct has resulted in similar injuries to Plaintiff and to the Class. As alleged herein, Plaintiff and the Class have all suffered damages as a result of Defendants’ BIPA violations and biometric handling practices.

39. There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not limited to, the following:

- a. Whether Defendants made available to the public a written policy that



- establishes a retention schedule and guidelines for destroying biometrics;
- b. Whether Defendants obtained a written release from the Class before capturing, collecting, or otherwise obtaining their biometrics;
  - c. Whether Defendants provided a written disclosure that explains the specific purposes, and the length of time, for which their biometrics were being collected, stored and used before taking their biometrics;
  - d. Whether Defendants' conduct violates BIPA;
  - e. Whether Defendants' conduct is fraudulent;
  - f. Whether Defendants' conduct is negligent;
  - g. Whether Defendants' violations of the BIPA are willful or reckless; and
  - h. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

40. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

41. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class she seeks to represent. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Class.

42. Defendants have acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

**COUNT I**

**Violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*,  
(On behalf of Plaintiff and the Class)**

43. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

44. Defendants are private entities under BIPA.

45. Plaintiff and the Class their biometric identifiers collected, captured, received or otherwise obtained and/or used by Defendants.

46. Each instance when Plaintiff and the Class scanned their faces into Defendants' biometric technology devices, *i.e.* the Virtual Artist Kiosks, Defendants captured, collected, stored, and/or used Plaintiff's and the Class's biometrics without valid consent and without complying with BIPA.

47. Plaintiff and the Class have been aggrieved by Defendants' failures to adhere to the following BIPA requirements, with each such failure constituting a separate and distinct violation of BIPA:

- a. Defendants failed to inform Plaintiff and the members of the Class in writing that their biometrics were being collected and stored, prior to such collection or storage, as required by 740 ILCS 14/15(b)(1);
- b. Defendants failed to inform Plaintiff and Class in writing of the specific purpose for which their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);

- c. Defendants failed to inform Plaintiff and the Class in writing the specific length of term their biometrics were being captured, collected, stored, and used, as required by 740 ILCS 14/15(b)(2);
- d. Defendants failed to obtain a written release, as required by 740 ILCS 14/15(b)(3);
- e. Defendants failed to provide a publicly available retention schedule detailing the length of time the biometrics are stored and/or guidelines for permanently destroying the biometrics they store, as required by 740 ILCS 14/15(a); and
- f. Defendants failed to obtain informed consent to disclose or disseminate the Class's biometrics, as required by 740 ILCS 14/15(d)(1).

48. By capturing, collecting, storing, using, and disseminating Plaintiff's and the Class's biometrics as described herein, Defendants denied Plaintiff and the Class their right to statutorily-required information and violated their respective state rights to biometric privacy as set forth in the BIPA.

49. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of the BIPA.

50. Defendants' violations of BIPA, as set forth herein, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendants negligently failed to comply with the BIPA disclosure, consent, and policy posting requirements.

51. Accordingly, with respect to Count I, Plaintiff, on behalf of herself and the proposed Class, prays for the relief set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and the proposed Class, respectfully requests that this Court enter an Order:

- a. Certifying the Class as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendants' actions, as set forth herein, violate the BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with the BIPA requirements for the capture, collection, storage, use, and dissemination of biometric identifiers and biometric information;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of the BIPA, pursuant to 740 ILCS 14/20(1);
- e. Awarding statutory damages of \$1,000 for each negligent violation of the BIPA, pursuant to 740 ILCS 14/20(3);
- f. Awarding reasonable attorneys' fees, costs, and other litigation expenses pursuant to 740 ILCS 14/20(3);
- g. Awarding pre- and post-judgment interest, as allowable by law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

**JURY DEMAND**

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: May 7, 2019

Respectfully Submitted,

AUSTE SALKAUSKAITE, individually and on  
behalf of a class of similarly situated individuals

By: /s/ Jad Sheikali  
*One of Plaintiff's Attorneys*

Myles McGuire  
Jad Sheikali  
David L. Gerbie  
MCGUIRE LAW, P.C.  
55 W. Wacker Drive, 9th Fl.  
Chicago, IL 60601  
(312) 893-7002  
mmcguire@mcgpc.com  
jsheikali@mcgpc.com  
dgerbie@mcgpc.com

*Attorneys for Plaintiff and the Putative Classes*