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EXHIBITS

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JAN GAMBOA, individually and on)
behalf of all others similarly situated,)
)
 Plaintiff,)
)
 v.)
)
 THE PROCTER & GAMBLE)
 COMPANY,)
)
 Defendant.)

15354976

No. 2021CH05459

Hon.

CLASS ACTION COMPLAINT

Plaintiff Jan Gamboa, individually and on behalf of similarly situated individuals, brings this Class Action Complaint against Defendant The Procter & Gamble Company (“Defendant” or “Procter & Gamble”) to stop its capture, collection, use, storage, and dissemination of individuals’ biometric identifiers and/or biometric information in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (the “BIPA”), and to obtain redress for all persons injured by its conduct. Plaintiff alleges as follows based upon personal knowledge as to his acts and experiences and, as to all other matters, upon information and belief, including an investigation conducted by his attorneys.

INTRODUCTION

1. BIPA defines a “biometric identifier” as a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. “Biometric information” is any information based on a biometric identifier, regardless of how it is converted or stored. 740 ILCS § 14/10. Collectively, biometric identifiers and biometric information are known as “biometrics.”

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2. This case is about one of the nation's largest consumer goods manufacturers capturing, collecting, storing, and using Plaintiff's and other users' biometric identifiers and/or biometric information without regard to BIPA and the privacy rights and pecuniary interests that BIPA protects through the use of a "Smart toothbrush" and accompanying Oral-B Smartphone Application (the "App").

3. The App features "position detection technology" which uses consumers' smartphone cameras to extract the facial geometry of individuals like Plaintiff. The App, coupled with the Bluetooth enabled smart toothbrush, identifies the "zone" of the user's mouth that is being brushed. Defendant then uses this facial geometry data and proprietary software to analyze App users' toothbrushing during and after the time users are brushing. The App allows users to track their brushing, receive real-time feedback pertaining to the effectiveness of their toothbrushing technique in specific zones of their mouth, and to view after-brushing reports.

4. Using its App, Defendant captures, stores, and disseminates users' facial geometry and related biometric information without complying with BIPA.

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

- (1) inform the person whose biometrics are to be collected *in writing* that biometric identifiers or biometric information will be collected or stored;
- (2) inform the person whose biometrics are to be collected *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 whose biometrics are to be collected, allowing the capture and collection of their biometric identifiers or biometric

information; and

(4) publish publicly available retention guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a).

6. BIPA also requires private entities in possession of biometric identifiers and biometric information to obtain individuals' consent before disseminating or disclosing such data to third parties. 740 ILCS 14/15(d).

7. Compliance with BIPA is straightforward and may be accomplished through a single, signed sheet of paper or an electronic disclosure and consent screen. BIPA's requirements bestow a right to privacy in one's biometrics and a right to make an *informed* decision when electing whether to provide or withhold biometrics.

8. The Illinois Legislature rightly found that "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 can be changed. Biometrics, however, are biologically unique to each individual and, once compromised, such individual has no recourse, is at a heightened risk for identity theft, and is likely to withdraw from biometric facilitated transactions." 740 ILCS 14/5. The risk is compounded when a person's biometrics are also associated with their other personally identifiable information.

9. Plaintiff brings this action for statutory damages and other remedies as a result of Defendant's conduct in violating Plaintiff's state biometric privacy rights.

10. On Plaintiff's own behalf, and on behalf of the proposed Class defined below, Plaintiff seeks an injunction requiring Defendant to comply with BIPA, as well as an award of damages, including statutory damages, to the Class members, together with costs and reasonable attorneys' fees.

PARTIES

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

12. Defendant The Procter & Gamble Company is a corporation organized under the laws of the state of Ohio that conducts substantial business throughout Illinois, including in Cook County.

JURISDICTION AND VENUE

13. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant is doing business within this State and because Plaintiff’s claims arise out of Defendant’s unlawful in-state actions, as Defendant captured, collected, stored, and used Plaintiff’s biometric identifiers and/or biometric information in this State.

14. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, because Defendant is doing business in Cook County and thus resides there under § 2-102.

FACTS SPECIFIC TO PLAINTIFF

15. In June of 2021 Plaintiff Gamboa purchased the Oral B iO Series 7G toothbrush (“the toothbrush”).

16. Plaintiff also downloaded and used the App in combination with the toothbrush to track which zones of his mouth he was brushing by using the App’s position detection technology to track his toothbrushing.

17. During his use of the App, Defendant captured, collected, stored, and transferred biometric scans of Plaintiff’s face and facial geometry.

18. Defendant's App collects users' biometric identifiers, i.e. facial scans and facial geometry, and converts them to an electronic format *derived from* those identifiers, i.e. biometric information. Such conversion is necessary for Defendant to store the biometrics itself, and, on information and belief, to allow Defendant to transmit biometric data to the vendor of the facial recognition technology, a German corporation known as Fraunhofer.

19. Prior to taking Plaintiff's biometrics, Defendant did not inform Plaintiff in writing that his biometrics were being collected, stored, used, or disseminated to a third party.

20. Defendant did not seek, and Plaintiff never provided, any written consent relating to the collection or use of her biometrics.

21. Defendant did not seek, and Plaintiff never provided, any consent to Defendant's disclosure of her biometrics to its third-party vendor.

22. Prior to taking, and while in possession of, Plaintiff's biometrics, Defendant did not publish any written policy as to a biometric retention schedule or guidelines for permanently destroying biometrics.

23. To this day, Plaintiff is unaware of the status of the biometrics obtained by Defendant.

24. By failing to comply with BIPA, Defendant has violated Plaintiff's substantive state rights to biometric privacy.

CLASS ALLEGATIONS

25. Plaintiff brings this action individually and on behalf of all similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent a Class defined as follows:

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

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

27. Upon information and belief, there are scores of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. Although the exact number of members of the Class is currently unknown to Plaintiff, the members can be easily identified through Defendant's records.

28. Plaintiff's claims are typical of the claims of the members of the Class Plaintiff seeks to represent, because the factual and legal bases of Defendant's liability to Plaintiff and the other members are the same, and because Defendant's 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 Defendant's BIPA violations.

29. 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. Common questions for the Class include, but are not limited to, the following:

- a. Whether Defendant's conduct is subject to BIPA;
- b. Whether Defendant made available to the public a written policy that establishes a retention schedule and guidelines for destroying biometrics;
- c. Whether Defendant obtained a written release from the Class before capturing, collecting, or otherwise obtaining their biometrics;
- d. Whether Defendant provided a written disclosure that explains the specific purposes, and the length of time, for which biometrics were being collected, stored and used before taking such biometrics;

- e. Whether Defendant’s conduct violates BIPA;
- f. Whether Defendant’s violations of the BIPA are willful or reckless; and
- g. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

30. 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 in that it conserves the resources of the courts and the litigants and promotes consistency of adjudication.

31. Plaintiff will adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and Plaintiff’s 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 Plaintiff’s counsel has any interest adverse to those of the other members of the Class.

32. Defendant has acted and failed to act on grounds generally applicable to 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

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

- 33. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
- 34. Defendant is a private entity under BIPA.
- 35. BIPA requires a private entity, such as Defendant, to obtain informed written consent from individuals before acquiring their biometric identifiers or biometric information.

Specifically, BIPA makes it unlawful to “collect, capture, purchase, receive through trade, or otherwise obtain a person’s or customer’s biometric identifiers or biometric information unless [the entity] first: (1) informs the subject . . . in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject . . . in writing of the specific purpose and length of for which a biometric identifier or biometric information is being captured, collected, stored, and used; and (3) receives a written release executed by the subject of the biometric identifier or biometric information” 740 ILCS 14/15(b).

36. BIPA also requires that a private entity in possession of biometric identifiers and/or biometric information make publicly available a biometric retention policy. An entity which possesses biometric identifiers or information must (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric information (entities may not retain biometric information longer than three years after the last interaction with the individual); and (ii) adhere to the publicly posted retention and deletion schedule.

37. Plaintiff and the other Class members have had their “biometric identifiers,” namely their facial scans and facial geometry, collected, captured, or otherwise obtained by Defendant.

38. Each instance when Plaintiff and the Class scanned their faces into Defendant’s biometric technology, *i.e.* The App, Defendant captured, collected, stored, and/or used Plaintiff’s and the Class’s biometrics without valid consent and without complying with BIPA.

39. Defendant’s practice with respect to capturing, collecting, storing, and using biometrics fails to comply with the following provisions BIPA:

- a. Defendant 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. Defendant failed to inform Plaintiff and the 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. Defendant 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. Defendant failed to obtain a written release, as required by 740 ILCS 14/15(b)(3) prior to collecting biometrics;
- e. Defendant failed to make publicly available a biometric retention and destruction schedule detailing the length of time for which the biometrics are stored and/or guidelines for permanently destroying biometrics, as required by 740 ILCS 14/15(a); and
- f. Defendant failed to obtain informed consent to disclose or disseminate the Class' biometrics, as required by 740 ILCS 14/15(d)(1).

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

41. 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 BIPA. 740 ILCS 14/20(1)-(2).

42. Defendant's violations of BIPA, a statute that has been in effect since 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with BIPA.

43. Accordingly, Plaintiff, individually and on behalf of the proposed Class, prays for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of 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 Defendant's actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(2);
- e. Awarding statutory damages of \$1,000 for each negligent violation of BIPA, pursuant to 740 ILCS 14/20(1);
- 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: October 26, 2021

Respectfully submitted,

JAN GAMBOA, individually and on behalf of all
similarly situated individuals

By: /s/ Steven R. Beckham
One of Plaintiff's Attorneys

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Biometric Privacy: Oral B 'Smart' Toothbrush Collects Facial Geometry Without Consent, Class Action Claims](#)
