### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

MORGAN KUKOVEC, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

Case No. 1:22-cv-01453

L'ORÉAL USA PRODUCTS, INC. D/B/A L'ORÉAL PARIS,

Defendant.

### **DEFENDANT'S NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant L'Oréal USA Products, Inc. ("L'Oréal USA Products"),<sup>1</sup> by and through its undersigned counsel, hereby removes the above-captioned civil action from the Circuit Court of DeKalb County, Illinois, to the United States District Court for the Northern District of Illinois, Western Division, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. Removal of this action is proper under 28 U.S.C. § 1332(a) because complete diversity exists and the amount in controversy exceeds \$75,000. In support of removal, L'Oréal USA Products states as follows:

### I. CLAIMS ASSERTED AND RELIEF SOUGHT

1. On February 15, 2022, Plaintiff Morgan Kukovec ("Plaintiff") commenced this action by filing a putative Class Action Complaint ("Complaint") against Defendant L'Oréal USA

<sup>&</sup>lt;sup>1</sup> The Complaint conflates L'Oréal USA Products, Inc. with L'Oréal Paris. (See Compl. ¶ 1 ("Plaintiff . . . brings this Class Action Complaint . . . against Defendant L'Oréal USA Products, Inc., d/b/a/ L'Oréal Paris[.]").) Contrary to the allegations in the Complaint, L'Oréal USA Products does not do business as L'Oréal Paris. (See Declaration of Robert G. Kinnally, filed herewith ("Kinally Decl.") ¶ 5.)

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Products in the Circuit Court of DeKalb, Illinois, Twenty-Third Judicial Circuit. As required by 28 U.S.C. §1446(a), the Complaint, Summons and all other "process, pleadings, and orders" served to date on L'Oréal USA Products are attached hereto as <u>Exhibit "A"</u>.

2. In her Complaint, Plaintiff alleges that L'Oréal USA Products violated the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.* ("BIPA"), by scanning, collecting, storing, and using Plaintiff's biometrics (in the form of alleged scans of facial geometry) without first obtaining a written executed release or making disclosures required by BIPA. (Compl. ¶¶ 25-27, 37-38, 50.) Plaintiff further alleges, upon information and belief, that L'Oréal USA Products lacks retention schedules and guidelines for permanently destroying biometric data, and/or has no written policy, made available to the public, that discloses its retention schedule and/or guidelines for retaining and then permanently destroying biometric identifiers and information that complies with the requirements of BIPA. (*Id.* ¶¶ 28-29, 38-39, 62.) Plaintiff also alleges, upon information and belief, that L'Oréal USA Products subsequently stored Plaintiff's biometric data for an unspecified period of time. (*Id.* ¶ 35.)

3. Specifically, Plaintiff alleges that L'Oréal USA Products offers a "virtual try-on tool" on its website that allows users "to use their web or phone camera to display a real-time photograph of themselves or upload a photo previously saved to their device" in order to "try-on" products. (Compl. ¶¶ 18-21.) Plaintiff further alleges that the "Virtual Try-On tool . . . operates by capturing the facial geometry of users' photos" and that "[t]hese facial-geometry scans are used to identify the shape and features of the user's face in order to accurately overlay the virtual makeup product onto the image provided." (*Id.* ¶ 23.)

4. Plaintiff alleges she received a pop-up notification "regarding the use of the tool" when she accessed the virtual try-on tool. (*Id.*  $\P$  36.) She alleges that this pop-up notification failed

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to inform her that the tool was "capturing, collecting, storing, or using scans of her facial geometry; did not inform her in writing of the specific purpose and length of time for which her facial geometry was being collected, stored, or used; and did not obtain a written release from Plaintiff authorizing Defendant to collect, store, or use her facial geometry." (*Id.* ¶ 37.) Plaintiff further alleges that she "has never been informed of the specific purposes or length of time for which Defendant collected, stored, or used her facial geometry; any biometric data, retention policy developed by Defendant; or whether Defendant will ever permanently delete her biometrics" and that she "does not know whether Defendant has destroyed—or will destroy—the biometrics collected from her." (*Id.* ¶ 38-39.)

5. Plaintiff therefore alleges that L'Oréal USA Products did not provide any of the required written disclosures under BIPA or obtain the required written release from Plaintiff or class members prior to "collecting, storing, or using their facial geometry data obtained through the use of the Virtual Try-On tool." (*Id.* ¶ 50.) Plaintiff further alleges that L'Oréal USA Products denied Plaintiff and the class members "their right under BIPA to be made aware of Defendant's retention and destruction policies as to their biometric identifiers." (*Id.* ¶ 63.)

6. Plaintiff seeks to bring her BIPA claims on behalf of a putative class defined as:

All persons whose biometric identifiers were captured by Defendant through use of the Virtual Try-On tool on Defendant's websites, including www.lorealparisusa.com, www.maybelline.com, www.nyxcosmetics.com, http://www.yslbeautyus.com, https://www.shuuemura-usa.com, https://www.lancome-usa.com, https://www.urbandecay.com, https://www.giorgioarmanibeauty-usa.com, and https://www.garnierusa.com, while residing in Illinois from five years preceding the date of the filing of this action to the present.

(*Id.* ¶ 40.)

7. On behalf of herself and each member of the putative class, Plaintiff seeks the following relief in addition to seeking class certification: (1) an award to Plaintiff and the class members of the greater of either liquidated damages of \$1,000 per negligent violation and \$5,000

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for each willful or reckless violation, or actual damages, for each violation of BIPA; (2) attorneys' fees and costs incurred in litigating this action; and (3) injunctive relief in the form of an order requiring L'Oréal USA Products to (i) obtain a written release from any individual prior to the capture, collection, or storage of that individual's biometric identifiers or biometric information, (ii) disclose whether it has retained Plaintiff's and class members' biometrics, how it uses those biometrics, and the identities of any third parties with which it has shared those biometrics, (iii) publicly disclose a written policy establishing any specific purpose and length of term for which consumers' biometrics have been collected, captured, stored, obtained, or used, as well as guidelines for permanently destroying such biometrics, and (iv) disclose whether Defendant has retained Plaintiff's and class members' biometrics were destroyed. (*Id.* ¶ 52, 55-56, 57(f), 64, 67-68, 69(f).)

8. L'Oréal USA Products denies any violation of BIPA. L'Oréal USA Products also denies that this matter is appropriate for certification as a class action. L'Oréal USA Products submits this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff and without conceding the Complaint's allegations, or that Plaintiff has pled claims upon which relief can be granted.

#### II. THIS COURT HAS DIVERSITY JURISDICTION OVER THIS ACTION

9. Removal is proper under 28 U.S.C. § 1332(a) because all requirements for diversity jurisdiction have been met.

10. Under 28 U.S.C. § 1332(a)(1), federal "district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States."

#### A. <u>Complete Diversity Exists In This Action</u>

11. This is an action between citizens of different states, and complete diversity exists.

*See* 28 U.S.C. § 1332(a)(1). To be sure:

- Plaintiff alleges that she is a citizen of Illinois. (Compl. ¶ 1.)
- L'Oréal USA Products is a Delaware corporation with its principal place of business at 10 Hudson Yards, New York, NY 10001. (Kinnally Decl. ¶ 3.)

12. As a corporation, L'Oréal USA Products is deemed a citizen of the States where it has been incorporated (Delaware) and where it maintains its principal places of business (New York). 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 80 (2010); (*see also* Kinnally Decl. ¶ 3.)

13. Because L'Oréal USA Products is not a citizen of Illinois and thus there are not residents of the same state on both sides of the lawsuit, complete diversity exists in this action. *See Krueger v. Cartwright*, 996 F.2d 928, 931 (7th Cir. 1993).

#### B. <u>The Matter In Controversy Exceeds the Sum or Value of \$75,000</u>

14. The amount in controversy requirement of 28 U.S.C. § 1332(a) is also satisfied. For purposes of assessing the amount in controversy, Plaintiff's allegations are accepted as true. *See, e.g., St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938) (noting it does not matter, for purposes of the amount in controversy, that "the complaint discloses the existence of a valid defense to the claim").

15. In determining whether the amount in controversy requirement is met, "at least one named plaintiff must satisfy the jurisdictional amount." *Clement v. Lau*, No. 03 C 6179, 2003 WL 22948671, at \*2 (N.D. Ill. Dec. 10, 2003). "[A] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart* 

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*Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). "[U]nless recovery of an amount exceeding the jurisdictional minimum is legally impossible, the case belongs in federal court." *Grinnell Mut. Reinsurance Co. v. Haight*, 697 F.3d 582, 585 (7th Cir. 2012) (*citing Back Doctors Ltd. v. Metro. Prop. and Cas. Ins. Co.*, 637 F.3d 827, 830 (7th Cir. 2011)).

16. Plaintiff's claims satisfy the \$75,000 minimum threshold because Plaintiff seeks statutory damages of up to \$5,000 for each alleged BIPA violation—in addition to litigation expenses, attorneys' fees, and other unspecified relief—for herself and a class in excess of 40 people. (*See* Compl., ¶¶ 40, 42, 57, 69.)

17. Although the Complaint does not allege a specific number of times that Plaintiff herself used the at-issue virtual try-on tool, her allegations suggest that she used it multiple times. (*See* Compl. ¶ 31 ("Plaintiff used the Virtual Try-On tool to see what *various products* would look like if she were to use them") (emphasis added).) Illinois federal district courts have found it plausible—for removal purposes—"that a new violation [of BIPA] occurs each time [the defendant] acquires [the plaintiff's] biometric information, which presumably happens with each scan." *See Fox v. Dakkota Integrated Sys., LLC*, No. 19 C 2872, 2020 WL 8409683, at \*3 (N.D. Ill. Jan. 24, 2020) (finding removal proper in BIPA case seeking \$5,000 in statutory damages for each alleged violation of BIPA because "[s]uch a plausible interpretation would entitle [plaintiff] to statutory damages on a per-scan basis"); *see also Peatry v. Bimbo Bakeries USA, Inc.*, 393 F. Supp. 3d 766, 769-70 (N.D. Ill. 2019) (same).

18. As it is not legally impossible for Plaintiff to recover \$5,000 per scan, Defendant has plausibly shown the amount in controversy exceeds the \$75,000 threshold under 28 U.S.C. § 1332(a)(1) based on Plaintiff's allegation that she used the tool to see what "various products" would look like if she were to use them. *See Dart Cherokee Basin Operating Co.*, 574 U.S. at 89.

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19. The Complaint also satisfies the \$75,000 minimum threshold because Plaintiff's Complaint seeks broad injunctive relief, compliance with which would necessitate incurrence of significant costs, estimated to exceed \$75,000. See Tropp v. Western-Southern Life Ins. Co., 381 F.3d 591, 595 (7th Cir. 2004); Rubel v. Pfizer Inc., 361 F.3d 1016, 1017 (7th Cir. 2004) (holding that "the cost a defendant incurs in complying with injunctive relief is a legitimate consideration in a jurisdictional inquiry"). Indeed, Plaintiff seeks an extensive and comprehensive injunction requiring Defendant to (1) obtain a written release from any individual prior to the capture, collection, or storage of that individual's biometric identifiers or biometric information, (2) disclose whether Defendant has retained Plaintiff's and class members' biometrics, how Defendant uses Plaintiff's and class members' biometrics, and the identities of any third parties with which Defendant shared those biometrics, (3) publicly disclose a written policy establishing any specific purpose and length of term for which consumers' biometrics have been collected, captured, stored, obtained, or used, as well as guidelines for permanently destroying such biometrics, and (4) disclose whether Defendant has retained Plaintiff's and class members' biometrics and if, when, and how those biometrics were destroyed. (Compl. ¶¶ 55-56, 57(e), 67-68, 69(e).) In the event that Plaintiff obtains injunctive relief, L'Oréal USA Products would have to spend considerable time, effort, and resources to comply with that injunction, and a reasonable estimate of the costs attendant to compliance with that injunction exceeds 55,000. (See Kinnally Decl. ¶ 6.)

#### III. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

20. Plaintiff filed the above-captioned case on February 15, 2022, in the Circuit Court of DeKalb County, Illinois, under Case No. 2022-LA-000016.

21. L'Oréal USA Products received copies of the Summons and Complaint from its registered agent, CSC, on February 22, 2022, but the paperwork transmitted to L'Oréal USA Products reflects that CSC received service of the Summons and Complaint on February 18, 2022.

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As L'Oréal USA Products caused this Notice of Removal to be filed within thirty (30) days after the date that it was served, this Notice of Removal is timely under 28 U.S.C. § 1446(b).

22. Removal to this Court is proper because the United States District Court for the Northern District of Illinois, Western Division, is the federal judicial district and division embracing the Circuit Court of DeKalb, Illinois, where this suit was originally filed. 28 U.S.C. § 1441(a); 28 U.S.C. § 93(b).

23. In accordance with 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the Circuit Clerk of DeKalb County, Illinois.

24. As required by 28 U.S.C. §1446(d), written notice of this Notice of Removal will be sent promptly to Plaintiff's counsel by email and by U.S. Mail, and promptly filed with the Circuit Clerk of DeKalb County, Twenty-Third Judicial Circuit.

25. For the foregoing reasons, this Court has jurisdiction over this matter.

WHEREFORE, Defendant L'Oréal USA Products hereby removes Case Number 2022-LA-000016 from the Circuit Court of DeKalb County, Illinois, Twenty-Third Judicial Circuit, to

the United States District Court for the Northern District of Illinois, Western Division.

Dated: March 18, 2022

Respectfully submitted,

#### /s/ Aaron D. Charfoos

Aaron D. Charfoos (Bar No. 6277242) Adam M. Reich (Bar No. 6329295) Emma Lanzon (Bar No. 6329995) PAUL HASTINGS LLP 71 S. Wacker Drive, Suite 4500 Chicago, IL 60606 Telephone: 312.499.6000 aaroncharfoos@paulhastings.com adamreich@paulhastings.com

*Counsel for Defendant,* L'ORÉAL USA PRODUCTS, INC.

#### **CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2022, a copy of the foregoing was served on the following parties by electronic mail and arrangements were made for courtesy copies to be sent out by pre-paid, first-class U.S. Mail at the addresses listed below:

Elizabeth C. Chavez, Esq. (6323726) ecc@fmco.com Bret K. Pufahl, Esq. (6325814) bkp@fmco.com Kathleen C. Chavez, Esq. (6255735) kcc@fmco.com Robert Foote, Esq. (3124325) rmf@fmco.com FOOTE, MIELKE, CHAVEZ & O'NEIL, LLC 10 W. State Street, Suite 200 Geneva, IL 60134

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Counsel for the Plaintiff and the Putative Class

/s/ Heather Copeland

Heather Copeland

#### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

# MORGAN KUKOVEC, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

Case No.

V.

L'ORÉAL USA PRODUCTS, INC. D/B/A L'ORÉAL PARIS,

Defendant.

# DECLARATION OF ROBERT G. KINNALLY IN SUPPORT OF DEFENDANT'S NOTICE OF REMOVAL

I, Robert G. Kinnally, declare and state as follows:

1. I am Vice President and Associate General Counsel for L'Oréal USA, Inc. ("L'Oréal USA"), the parent company of L'Oréal USA Products, Inc. ("L'Oréal USA Products"). I have been in that position since January 1, 2013. I have worked at L'Oréal USA since 2000. I reside in Yonkers, New York and work in New York, New York. I make this declaration in support of Defendant's Notice of Removal. The statements set forth in this declaration are based on my personal knowledge of the facts set forth herein, review of the books and records of L'Oréal USA Products that are kept in the ordinary course of business, and information provided to me by persons upon whom I have regularly relied in the course of my duties and, if called upon to testify under oath, I could and would competently testify thereto.

2. In my capacity as Vice President and Associate General Counsel for L'Oréal USA, and subject to paragraph 1 above, I am familiar with and have personal knowledge of the named

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Defendant's current and historic corporate organization, the nature of its business operations, and the nature of its business relationships, and I am generally familiar with the "Virtual Try-On" technology that I understand this case to involve.

 L'Oréal USA Products is a Delaware corporation with its principal place of business at 10 Hudson Yards, New York, NY 10001.

4. I have reviewed the underlying Complaint filed by Plaintiff Morgan Kukovec ("Plaintiff") against "L'Oréal USA Products, Inc. d/b/a L'Oréal Paris."

5. L'Oréal USA Products is a wholly-owned subsidiary of L'Oréal USA, which focuses on manufacturing. L'Oréal USA Products does not do business as "L'Oréal Paris."

6. Based on my review of the Complaint, I understand that, among other things, Plaintiff seeks injunctive relief, which, if granted, would likely require L'Oréal USA to spend considerable time, effort, and resources to fully comply. For example, L'Oréal USA would need to identify, contact and get consent from each Illinois resident who used the alleged technology available on the L'Oréal Paris USA website, potentially dating back five years from the Complaint, and also potentially multiple other L'Oréal USA brand websites, a time-consuming project. In addition, to the extent that the challenged current policies (including the affirmative consent requirement) are found to be insufficient, an injunction requiring revision of those policies would be a timeintensive process that would require significant organizational discussion and approvals. Based on my 21 years of experience at L'Oréal USA and my experience with its subsidiary L'Oréal USA Products, I estimate that the costs attendant to complying with the injunction requested by Plaintiff would exceed \$75,000.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 17th day of March, 2022 in New York, New York.

Robert G. Kinnally

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# **Exhibit** A

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2/15/2022 12:53 PM 2022LA000016

#### IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT **DEKALB COUNTY, ILLINOIS** Lori Grubbs

Clerk of the Circuit Court **DeKalb County, Illinois** 

#### MORGAN KUKOVEC, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff.

v.

L'ORÉAL USA PRODUCTS, INC. D/B/A L'ORÉAL PARIS,

2022LA000016 Case No.:

Judge:

JURY TRIAL DEMANDED

Defendant.

#### CLASS ACTION COMPLAINT

NOW COMES Plaintiff, Morgan Kukovec (hereinafter, "Plaintiff"), who brings this Class Action Complaint individually and on behalf of all other similarly situated individuals against Defendant L'ORÉAL USA PRODUCTS, INC., d/b/a L'ORÉAL PARIS (hereinafter, "Defendant"), pursuant to the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1 et seq. Plaintiff files suit to remedy Defendant's unlawful collection, storage, and use of Plaintiff's and the proposed class's biometrics without their informed written consent through the Virtual Try-On tool offered on Defendant's websites.

#### PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Morgan Kukovec resides in West Chicago, Illinois.

2. Defendant L'ORÉAL USA PRODUCTS, INC., is incorporated in the State of Delaware with its principal place of business in New York, New York.

3. Jurisdiction is proper in this Court because Plaintiff is a citizen of Illinois and Defendant purposefully availed itself of the laws, protections, and advantages of Illinois by conducting business in this State, and within every County in this State, with consumers like NOTICE Plaintiff.

BY ORDER OF COURT THIS CASE IS HEREBY SET FOR CASE MANAGEMENT CONFERENCE TO BE CONDUCTED AT THE DEKALB COUNTY COURTHOUSE. SYCAMORE, IL IN ACCORDANCE WITH SUPREME/CALINT IN P 218 BEFORE 9.00 AM <u>109/03/2022</u> ΟŇ FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN **ORDER OF DEFAULT BEING ENTERED** 

4. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because the transactions or some part thereof out of which this cause of action arose occurred in this county.

#### THE BIPA LEGAL FRAMEWORK

5. The Illinois General Assembly enacted BIPA to protect the privacy rights of consumers in Illinois.

6. In enacting BIPA, the General Assembly found that the sensitivity of biometric information and identifiers warrants heightened protection of this information when companies collect it from consumers like Plaintiff. Specifically, the General Assembly found that "[b]iometrics are unlike other unique identifiers" like social security numbers because they are "biologically unique to the individual" and cannot be changed if compromised. 740 ILCS 14/5(c). Thus, an individual whose biometrics are compromised "has no recourse" and "is at heightened risk for identify theft." *Id.* Moreover, said the General Assembly, "[t]he full ramifications of biometric technology are not fully known." *Id.* § 14/5(e). Therefore, "[t]he public welfare, security, and safety will be served by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." *Id.* § 14/5(f).

7. BIPA defines "biometric identifiers" as "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." *Id.* § 14/10.

8. "Biometric information" is identified 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." *Id.* Biometric information does not include information derived from items or procedures excluded under the definition of biometric identifiers. *Id.* 

9. Accordingly, BIPA requires "private entities" like corporations that collect certain biometric identifiers or biometric information to take a number of specific steps to safeguard

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consumers' data; inform consumers of the entities' uses, retention of, and destruction of their biometrics; and obtain informed consent before collecting such data.

10. With respect to safeguarding biometrics, BIPA requires that private entities in possession of biometric identifiers or biometric information must:

[D]evelop 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.

*Id.* § 14/15(a).

11. Further, BIPA requires that any private entity in possession of biometric identifiers or biometric information must safeguard such data "using the reasonable standard of care within the private entity's industry" and must "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." *Id.* § 14/15(e).

12. With respect to informed consent, BIPA 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.

Id. § 14/15(6).

13. Further, BIPA 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." *Id.* § 14/l1(c).

14. Under BIPA, a private entity is prohibited from disclosing, redisclosing, or otherwise disseminating a consumer's biometric identifier or biometric information unless the consumer has consented to the disclosure or redisclosure. *Id.* § 14/15(d).

15. BIPA provides for statutory damages, injunctive relief, reasonable attorney's fees and costs, and other relief "as the State or federal court may deem appropriate" when a private entity violates a consumer's rights under the statute. *Id.* § 14/20. Where a violation is the result of negligence, BIPA provides for the greater of actual damages or \$1,000 in liquidated damages per violation, and if the violation was intentional or reckless, the greater of actual damages and liquidated damages of \$5,000 per violation. *Id.* 

#### DEFENDANT COLLECTS BIOMETRICS THROUGH THE VIRTUAL TRY-ON TOOL

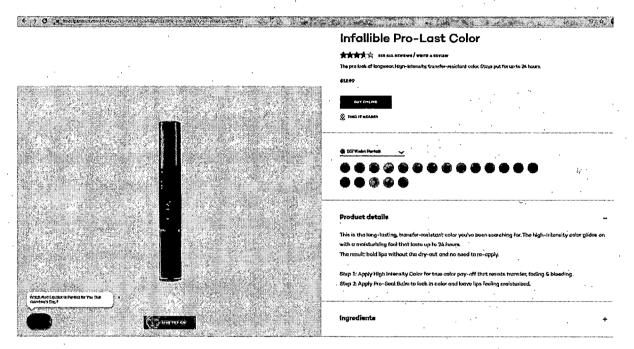
16. Defendant is a makeup company that markets a variety of products, alone and through its subsidiaries including, as relevant here, the "L'ORÉAL PARIS," Maybelline, NYX Cosmetics, Yves Saint Laurent, Shu Uemura, Lancome, Urban Decay, Giorgio Armani, and Garnier brands.

17. Defendant sells its makeup products in brick-and-mortar retail shops and drugstores and through its many websites, including lorealparisusa.com, maybelline.com, nyxcosmetics.com, https://www.yslbeautyus.com, https://www.shuuemura-usa.com, https://www.lancome-usa.com, https://www.urbandecay.com, https://www.giorgioarmanibeauty-usa.com, and https://www.garnierusa.com.

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18. On its websites, Defendant offers a virtual try-on tool to consumers who visit the site.<sup>1</sup>

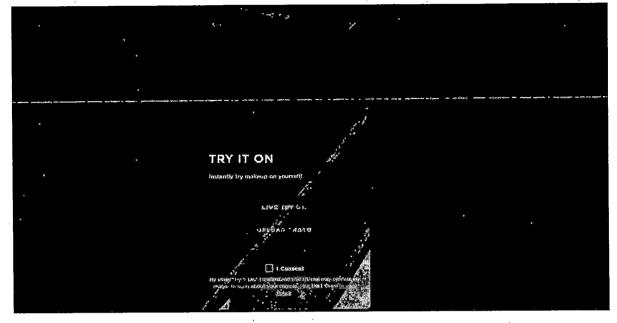
19. When consumers view a product for which the virtual try-on tool is available, Defendant invites them to access the virtual try-on tool by presenting a "Try It On" button that appears under the photo of the product being viewed.



20. When consumers click "Try It On" from a specific product's page, a pop-up appears in which they can use their web or phone camera to display a real-time photograph of themselves or upload a photo previously saved to their device.

<sup>&</sup>lt;sup>1</sup> <u>https://www.lorealparisusa.com/virtual-try-on-makeup</u> (last visited Feb. 7, 2022)

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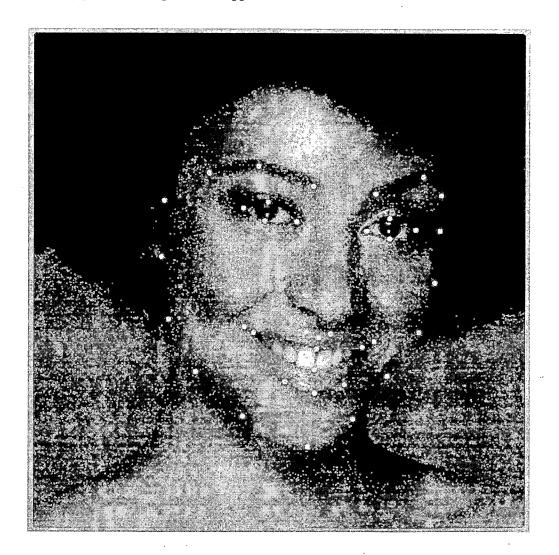
21. If the user clicks "Live Camera," the virtual try-on tool activates their webcam automatically, so that their real-time image appears immediately. Once the webcam is on, users have two ways to "try-on" the products. Users may allow the virtual try-on tool to overlay the product on the user's entire face or, in the alternative, choose a split-screen option in which the product is shown on only half of the user's face to see a before and after effect.

22. From there, consumers can download or post to social media websites the photo showing the product applied to their face.

23. The Virtual Try-On tool on Defendant's website is powered by an application called "ModiFace." This application operates by capturing the facial geometry of users' photos, regardless of whether the photo is taken by web or phone camera while using the Virtual Try-On tool, uploaded to the tool, or captured via a live web or phone camera feed. These facial-geometry scans are used to identify the shape and features of the user's face in order to accurately overlay the virtual makeup product onto the image provided. According to the developer of ModiFace, the

application uses "highly accurate 3D facial micro-feature tracking" and "is one of the most precise real-time facial micro-features video tracking and analysis technologies in the world."<sup>2</sup>

24. The photo below, taken from the ModiFace developer's website, illustrates the facial-geometry patterns that power the application.



25. Defendant does not inform consumers who use the Virtual Try-On tool in writing that it is capturing or collecting facial geometry or the specific purpose and length of term for which it is collecting, storing, or using such data, which is a biometric identifier specifically

<sup>&</sup>lt;sup>2</sup> <u>https://modiface.com/#product</u> (last visited Feb. 7, 2022)

protected by BIPA, nor does Defendant obtain consumers' informed written consent before capturing or collecting such data.

26. Defendant's only attempt at providing any kind of disclosure to Plaintiff and the Class comes in the form of a link to Defendant's standard "privacy policy.<sup>3</sup>" The policy does not inform the user how the user's *facial geometry* (a biometric identifier protected by BIPA) is collected, used, or retained in order to allow the Virtual Try-On tool to operate or otherwise. Indeed, the policy only references "[p]hotographs that you upload or share with us" without discussing the company's capturing, collection, or use of biometrics at all.

27. Thus, Defendant's "consent" button fails to provide the proper and relevant disclosures as required by BIPA. Specifically, Defendant's pop-up notification does not:

- a. inform the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored;
- b. inform 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
- c. provide a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.

28. Further, Defendant does not make publicly available a written policy establishing a retention schedule and guidelines for permanently destroying biometric identifiers or biometric information obtained from consumers, as required by BIPA.

<sup>&</sup>lt;sup>3</sup> <u>https://www.lorealparisusa.com/privacy-policy</u> (last visited Feb. 7, 2022)

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29. Upon information and belief, Defendant has not developed a written policy establishing retention schedules and guidelines for permanently destroying consumers' biometrics and does not destroy such data within the timeframes established by BIPA.

#### PLAINTIFF-SPECIFIC ALLEGATIONS

30. Plaintiff is a resident of West Chicago, Illinois.

31. On or around December 20, 2021 Plaintiff visited the "L'Oreal Paris" website. While on the website, Plaintiff used the Virtual Try-On tool to see what various products would look like if she were to use them.

32. Specifically, Plaintiff tested a lipstick—"Infallible Pro-Last Color, 107 Violet Parfait."

33. After trying on the product, Plaintiff decided not to purchase it. As such, Plaintiff did not set up an account on the website.

34. When Plaintiff used the Virtual Try-On tool, Defendant captured and collected her facial geometry. The Virtual Try-On tool could not have provided the advertised experience if Defendant did not capture and collect Plaintiff's facial geometry.

35. Upon information and belief, Defendant also stored her facial geometry for an unspecified period of time after Plaintiff used the Virtual Try-On tool.

36. When Plaintiff accessed the Virtual Try-On tool on Defendant's website, she received the pop-up notification described above regarding the use of the tool.

37. As discussed above, Defendant's pop-up notification failed to meet the requirements of BIPA, as it did not inform Plaintiff in writing that it was capturing, collecting, storing, or using scans of her facial geometry; did not inform her in writing of the specific purpose and length of time for which her facial geometry was being collected, stored, or used; and did not

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obtain a written release from Plaintiff authorizing Defendant to collect, store, or use her facial geometry.

38. Plaintiff has never been informed of the specific purposes or length of time for which Defendant collected, stored, or used her facial geometry; any biometric data retention policy developed by Defendant; or whether Defendant will ever permanently delete her biometrics. Defendant has not made any of this information available to the public.

39. Plaintiff does not know whether Defendant has destroyed—or will destroy—the biometrics collected from her.

#### CLASS ALLEGATIONS

40. Plaintiff brings this action on behalf of himself and, pursuant to 735 ILCS 5/2-801,

on behalf of a class of similarly situated individuals (hereinafter "the Class") defined as follows:

All persons whose biometric identifiers were captured by Defendant through use of Defendant's websites. including the Virtual Try-On tool on www.lorealparisusa.com, www.maybelline.com, www.nyxcosmetics.com, https://www.yslbeautyus.com, https://www.shuuemura-usa.com, https://www.lancome-usa.com, https://www.urbandecay.com, https://www.giorgioarmanibeauty-usa.com, https://www.garnierusa.com, and while residing in Illinois from five years preceding the date of the filing of this action to the present.

41. Excluded from the class are Defendant's officers and directors, Plaintiff's counsel, and any member of the judiciary presiding over this action.

42. Numerosity: Upon information and belief, there are more than forty class members, and individual joinder in this case is impracticable.

43. Commonality and predominance: Multiple questions of law and fact are common to the class and predominate over any individualized questions. Common questions include, but are not limited to, whether Defendant has a practice of capturing, collecting, storing, or distributing consumer biometrics obtained through consumers' use of the Virtual Try-On tool on Defendant's

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websites; whether Defendant has developed and made publicly available a written policy establishing a retention schedule and guidelines for destroying consumer biometrics; whether Defendant obtained an executed written release from consumers whose faces were scanned using the Virtual Try-On tool on Defendant's websites before capturing their biometrics; whether Defendant's practices violate BIPA; and whether Defendant's conduct was willful, reckless, or negligent.

44. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of all Class members. She has retained counsel with significant experience and achievements in complex class action litigation, she has no interests that are antagonistic to those of any Class members, and Defendant has no unique defenses unique to her.

45. Appropriateness: A class action is an appropriate method for the fair and efficient adjudication of the controversy because it will resolve multiple issues common to the Class in a single stroke. Moreover, a class action would reduce the time and expense of litigation and promote judicial economy by jointly resolving a large number of individual claims that would otherwise be litigated separately in duplicative proceedings.

#### COUNT 1

#### VIOLATION OF 740 ILCS 14/15(b) Failure to Inform in Writing and Obtain Written Release from Consumers Prior to Capturing, Collecting, or Storing Biometric Identifiers Damages and Injunctive Relief Alleged on Behalf of Plaintiff Individually and on Behalf of the Class

46. Plaintiff re-alleges and incorporates the allegations in the preceding paragraphs.

47. The Virtual Try-On tool operates by capturing the facial geometry of consumers

like Plaintiff and Class members.

48. Facial geometry is a biometric identifier protected by BIPA.

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49. BIPA prohibits private entities like Defendant from collecting, capturing, purchasing, receiving through trade, or otherwise obtaining consumers' biometric identifiers or biometric information without first informing them in writing of such activities; informing them in writing of the specific purpose and length of term for which biometric identifiers or biometric information are being collected, stored, and used; and obtaining a written release executed by consumers whose biometric identifiers or biometric information is being collected.

50. Defendant did not provide any of these required written disclosures or obtain the required written release from Plaintiff or Class members prior to collecting, storing, or using their facial geometry data obtained through use of the Virtual Try-On tool.

51. As a result, Defendant has invaded the privacy of Plaintiff and Class members and unlawfully collected, used, and benefitted from their biometric identifiers while failing to provide them with the lawfully required notice of such collection and use.

52. Accordingly, Defendant has violated BIPA. These violations have harmed Plaintiff and Class members; accordingly, Plaintiff and Class members are entitled to liquidated damages of \$1,000 per negligent violation, \$5,000 per willful or reckless violation, or actual damages if greater than the liquidated damages provided for by BIPA.

53. Moreover, an injunction is warranted pursuant to 740 ILCS 14/20(4). Upon information and belief, Defendant currently possesses Plaintiff's and Class members' biometrics and may be using or distributing them to third parties without Plaintiff's or Class members' permission. Such a violation of privacy constitutes irreparable harm for which there is no adequate remedy at law.

54. Absent injunctive relief, Defendant is likely to continue storing Plaintiff's and Class members' biometrics.

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55. Accordingly, Plaintiff seeks an order requiring Defendant to obtain a written release from any individual prior to the capture, collection, or storage of that individual's biometric identifiers or biometric information.

56. Further, Plaintiff seeks an order requiring Defendant to disclose whether Defendant has retained Plaintiff's and Class members' biometrics, how Defendant uses Plaintiff's and Class members' biometrics, and the identities of any third parties with which Defendant shared those biometrics.

57. WHEREFORE, Plaintiff, individually and on behalf of the Putative Class, requests an order granting the following relief:

- a. Finding that this action satisfies the requirements for maintenance as a class action as set forth in 735 ILCS 5/2-801, et seq. and certifying the class defined herein;
- b. Appointing Plaintiff as representative of the Class and the undersigned counsel as class counsel;
- c. Entering judgment in favor of Plaintiff and the Class against Defendant;
- d. Awarding Plaintiff and the Class liquidated damages of \$1,000 per negligent violation, \$5,000 per willful or reckless violation, or actual damages, whichever is greater, for: each violation of BIPA;
- e. Issuing an injunction ordering Defendant to comply with BIPA going forward and disclose to Plaintiff and Class members whether Defendant possesses their biometrics, Defendant's uses of their biometrics; and Defendant's retention and destruction policies regarding their biometrics;
- f. Awarding reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses, as provided for in 740 ILCS 14/20; and
- g. Granting further relief as the Court deems appropriate.

#### COUNT II

#### VIOLATION OF 740 ILCS 14/15(a) Failure to Develop and Make Publicly Available a Written Policy for Retention and Destruction of Biometric Identifiers Damages and Injunctive Relief

#### Alleged on Behalf of Plaintiff Individually and on Behalf of the Class

58. Plaintiff re-alleges and incorporates the allegations in the paragraphs above.

59. The Virtual Try-On tool operates by capturing the facial geometry of consumers like Plaintiff and Class members.

60. Facial geometry is a biometric identifier protected by BIPA.

61. BIPA requires private entities, like Defendant, in possession of biometric identifiers or biometric information to 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.

62. Upon information and belief, Defendant did not develop or possess such a written policy at any time during its collection, storage, and use of Plaintiff's and Class members' facial geometry data obtained through use of the Virtual Try-On tool on Defendant's websites.

63. As a result, Defendant denied Plaintiff and Class members their right under BIPA to be made aware of Defendant's retention and destruction policies as to their biometric identifiers. Additionally, Defendant's failure to develop the required retention and destruction policies placed Plaintiff and Class members' sensitive biometric identifiers at risk of compromise or illicit use.

64. Accordingly, Defendant has violated BIPA. These violations have harmed Plaintiff and Class members; accordingly, Plaintiff and Class members are entitled to liquidated damages of \$1,000 per negligent violation, \$5,000 per willful or reckless violation, or actual damages if greater than the liquidated damages provided for by BIPA.

65. Moreover, an injunction is warranted pursuant to 740 ILCS 14/20(4). Upon information and belief, Defendant currently possesses Plaintiff's and Class members' biometrics

and have not developed a BIPA-compliant policy for the retention and destruction of those biometrics. This failure to maintain a proper policy could place Plaintiff's and Class members' sensitive biometric identifiers at risk of compromise or illicit use on a continuing basis. It also deprives Plaintiff's and Class members' right under BIPA to be apprised of Defendant's policy for retaining and destroying biometrics.

66. Absent injunctive relief, Defendant is likely to continue storing Plaintiff's and Class members' biometrics without implementing a retention and destruction policy for those biometrics that satisfies BIPA's requirements.

67. Accordingly, Plaintiff seeks an order requiring Defendant to publicly disclose a written policy establishing any specific purpose and length of term for which consumers' biometrics have been collected, captured, stored, obtained, or used, as well as guidelines for permanently destroying such biometrics 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.

68. Plaintiff further seeks an order requiring Defendant to disclose whether Defendant has retained Plaintiff's and Class members' biometrics and if, when, and how those biometrics were destroyed.

69. WHEREFORE, Plaintiff, individually and on behalf of the Putative Class, requests an order granting the following relief:

- a. Finding that this action satisfies the requirements for maintenance as a class action as set forth in 735 ILCS 5/2-801, et seq. and certifying the class defined herein;
- b. Appointing Plaintiff as representative of the Class and the undersigned counsel as class counsel;
- c. Entering judgment in favor of Plaintiff and the Class against Defendant;

- d. Awarding Plaintiff and the Class liquidated damages of \$1,000 per negligent violation, \$5,000 per willful or reckless violation, or actual damages, whichever is greater, for: each violation of BIPA;
- e. Issuing an injunction ordering Defendant to comply with BIPA going forward and disclose to Plaintiff and Class members whether Defendant possesses their biometrics, Defendant's uses of their biometrics; and Defendant's retention and destruction policies regarding their biometrics;
- f. Awarding reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses, as provided for in 740 ILCS 14/20; and
- g. Granting further relief as the Court deems appropriate.

#### **DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all claims so triable.

Dated: February 15, 2022

Respectfully submitted,

By: Elizabeth C. Chavez, Esq. Elizabeth C. Chavez, Esq. (6323726) Bret K. Pufahl, Esq. (6325814) Kathleen C. Chavez, Esq. (6255735) Robert Foote, Esq. (3124325) FOOTE, MIELKE, CHAVEZ & O'NEIL, LLC 10 W. State Street, Suite 200 Geneva, IL 60134 Tel. No.: (630) 232-7450 Fax No.: (630) 232-7452 Email: ecc@fmcolaw.com <u>bkp@fmcolaw.com</u> <u>kcc@fmcolaw.com</u> rmf@fmcolaw.com

Hassan A. Zavareei (*Pro Hac Vice* application forthcoming) hzavareei@tzlegal.com Glenn E. Chappell (*Pro Hac Vice application* forthcoming) gchappell@tzlegal.com Allison W. Parr (*Pro Hac Vice application* forthcoming) aparr@tzlegal.com TycKo & ZAVAREEI LLP 1828 L Street NW, Suite 1000 Washington, DC 20036 Case: 1:22-cv-01453 Document #: 1-2 Filed: 03/18/22 Page 18 of 24 PageID #:30

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(202) 973-0900 (telephone) (202) 973-0950 (facsimile)

 $\begin{array}{c} Counsel \ \text{for the Plaintiff and the} \\ Putative \ Class \end{array}$ 

# Case: 1:22-cv-01453 Document #: 1-2 Filed: 03/18/22 Page 19 of 24 PageID #:31

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Enter the names of all people you are suing as Defendants'       2022LA000016         Defendant' Respondent (First, middle, last name)       Case Number         Part the Case Number given by the Circuit       Alias Summons (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)       Case Number         Import the Circuit       Alias Summons (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)       Case Number         Import the Circuit       Alias Summons (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)       Case Number         Import the Circuit       Alias Summons (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)       Case Number         Import the Circuit       E-filing is now mandatory with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Yisit efficie. If you cannot e-file, you may be able to get an exemption that allows you to file in-person or by mail. Ask your circuit clerk for more information or visit illinois/egalaid.org.         Call or text Illinois Court Help at 833-411-1121 for information abut how to go to court including how to fill out and file forms. You can also get free legal information and legal referrals at Illinois/egalaid.org.         Plaintiff/Petitioner       If you are suing more than 1 Defendant/Respondent, fill you case is a detinue or replevin case. Use the Eviction Summons, Small Claims, Semmons, your Summons Petitor hor Summons form for each Defendant/Respondent.         In la, enter the name and address for belp.       If Defendant/Respondent's addres					
people you are suing as Defendants'       PCrofed USA Products, Inc. db/a L'Ordel Paris       Case Number         Defendants'       Defendant (First, middle, last name)       Case Number         Inter the Case Number given by the Circuit       Alias Summons (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)       Case Number         INPORTANT       There may be court fees to start or respond to a case. If you are unable to pay your court fees, you can apply for a fee waiver, You can find the fee waiver application at: <u>allinoiscourts.gov/documents-and-forms/approved-forms/</u> .       E-fling is now mandatory with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit effici. Information or e.file, you may be able to get an exemption that allows you to file in-person or by mail. Ask your circuit clerk for more information or visit illinoislegalaid org.         Ora tuse this form in an eviciton, small claims, detime, divorce, or replevin case. Use the Eviciton Summons, Small Claims, detime, divorce, or replevin case. Use the Eviciton Summons, Small claims, detime, divorce, or replevin case. Use the Eviciton Summons, Small claims, detime, divorce, or replevin case. Use the Eviciton Summons, Small claims, detime, divorce, or replevin case. Use the Eviciton Summons, Small claims, detime, divorce, or replevin case. Use the Eviciton Summons, Small claims, detime, divorce, or replevin case. Use the Eviciton Summons, Small claims, detime, divorce, or replevin case. Use the Eviciton Summons, Small claims, detime, divorce, or replevin case. Use the Eviciton Summons, Small claims, detime, divorce, or replevin case. Use the Eviciton Summons Protein for Disobutation of Marriage IC-Di Union available at illinoiscealaid.org.		$\mathbf{X}^{\mathbf{n}}$	N	20221 000016	
Defendants/ Respondents/ Bitter the Case Number given by the Circuit Clerk.         Defendant / Respondent (First, middle, last norme)         Case Number           Image: Clerk in the clear Number given by the Circuit Clerk.         Image: Clear Number Summons issued for this Defendant)         Case Number           Image: Clerk in the clear Number given by the Circuit Clerk.         There may be court fees to start or respond to a case. If you are unable to pay your court fees, you can apply for a fee waiver. You can find the fee waiver application at: <u>illinoiscourts.gov/documents-and:</u> forms/approved-forms/.           ImpORTANT INFORMATION:         E-filing is now mandatory with limited exemptions. To e-file, you must first create an account with an e- filing service provider. If you need additional help or have trouble e-filing, you may be able to get an exemption that allows you to file in-person or by mail. Ask your circuit clerk for more information or visit illinoislegalaid.org.           Plaintiff/Petitioner         Do not use this form in an eviction, small claims, detime, divorce, or replevin case. Use the <i>Eviction</i> Summons, Small Claims Summons, or Summons Patiton for Disolution of Marriage / Cluit Union available at <u>illinoislegalaid.org</u> for help.           In la, enter the name and address of and address of address for Defendant/Respondent's address and service information.                  Defendant/Respondent's address and service information address for Defendant/Respondent's name, if any: <u>llinois Corporation Service</u> : Name ( <i>First, Middle, Last</i> ): <u>D'Oreal USA Products, Inc. Respondent.                  Defendant/Respondent's grimary address/information for service: Name (<i>First, Middle, Last</i>): <u>D'Oreal USA Products, Inc. Respondent.     </u></u>		1 Oréal USA	Products, Inc. d/b/a L'Oréal Paris	202221 (000010	
Respondents.         Enter the Case Number given by the Circuit <pre>             Alias Summons (Check this box if this is not the 1<sup>#</sup> Summons issued for this Defendant.)         </pre> IMPORTANT INFORMATION:              There may be court fees to start or respond to a case. If you are unable to pay your court fees, you can apply for a fee waiver, you can find the fee waiver application at: <u>illinoiscourts.gov/documents-and-forms/approved-forms/</u> E-fling is now mandatory with limited exemptions. To e-flie, you must first create an account with an e- fling service provider. Vist gellinoiscourts.gov/factice-providers.htm to lear more and to select a service provider. If you need additional help or have trouble e-fling, visit <u>illinoiscourts.gov/faqethelp.asp</u> or talk with your local circuit clerk's office. If you cannot e-file, you must first create an account with an e- fling service provider. Wist <u>illinoiscourts.gov/faqethelp.asp</u> or talk with your local circuit clerk's office. If you cannot e-file, you must first create an account with an e- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- for text Illinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and- flinoiscents.gov/documents-and-forms/approved-forms.	Defendants/			Case Number	
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Clerk.       Summons issued for this Defendant.)         IMPORTANT INFORMATION:       There may be court fees to start or respond to a case. If you are unable to pay your court fees, you can apply for a fee waiver. You can find the fee waiver application at: <u>illinoiscourts.gov/decuments-and-forms/approved-forms/</u> .         E-filing is now mandatory with limited exemptions. To e-file, you must first create an account with an e- filing service provider. If you need additional help or have trouble e-filing, visit <u>illinoiscourts.gov/ag/gethelp.asp</u> or talk with your local circuit clerk's office. If you cannot e-file, you may be able to get an exemption that allows you to file in-person or by mail. Ask your circuit clerk for more information or visit <u>illinoislegalaid.org</u> .         Plaintiff/Petitioner       Call or text Illinois Court Help at 833-411-1121 for information about how to go to court including how to fill out and file forms. You can also get free legal information and legal referals at <u>illinoislegalaid.org</u> .         Plaintiff/Petitioner       Do not use this form in an eviction, small claims, detinue, divorce, or replevin case. Use the <i>Eviction</i> Summons, Small Claims Summons, or Summons Petition for Dissolution of Marriage / Civil Union available at <u>illinoislegalaid.org</u> for help.         In 1a, enter the name and address of a Defendant/Respondent's primary address/information for service: Name ( <i>First, Middle, Last</i> ): L'Oreal USA Products, Inc.         Registered Agent's name and address here.       1. Defendant/Respondent's address where Defendant/Respondent might be found, list that here: Name ( <i>First, Middle, Last</i> ): L'Oreal USA Products, Inc.         Registered Agent's name, if any: IllinoisCourporation Service Company Street Address, Unit #	Enter the Case Number				
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Plaintiff/Petitioner:       Summons, Small Claims Summons, or Summons Petition for Dissolution of Marriage / Civil Union available at illinoiscourts.gov/documents-and-forms/approved-forms. If your case is a detinue or replevin, visit illinoislegalaid.org for help.         If you are suing more than 1 Defendant/Respondent, fill out a Summons form for each Defendant/         Defendant/Respondent.         In 1a, enter the name and address of a Defendant/Respondent's address and service information:         a.       Defendant/Respondent's address and service information for service: Name (First, Middle, Last): L'Oreal USA Products, Inc.         Respondent If you are serving a Registered Agent's name, if any: Illinois Corporation Service Company Agent, include the Registered Agent's name, and address here.         In 1b, enter a second address for Defendant/         Respondent, if you have more than one address where Defendant/Respondent might be found, list that here: Street Address, Unit #:         Name (First, Middle, Last):         Street Address, Unit #:         City, State, ZIP: Springfield, IL 62703         Telephone:         Lif you have more than one address where Defendant/Respondent might be found, list that here:         Name (First, Middle, Last):         Street Address, Unit #:         City, State, ZIP:         Telephone:         Email:         City, State, ZIP:         Telephone:         Email:         City, State, ZI			•		
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Plaintiff/Petitioner:       illinoislegalaid.org for help.         If you are suing more than 1 Defendant/Respondent, fill out a Summons form for each Defendant/Respondent.         In 1a, enter the name and address of a Defendant/Respondent's address and service information:         a. Defendant/Respondent's primary address/information for service:         Name (First, Middle, Last):       L'Oreal USA Products, Inc.         Registered Agent's name and address here.       801 Adlais Stevenson Drive         In 1b, enter a second address for Defendant/       Ethological (Legz03)         Telephone:       Email:         b.       If you have more than one address where Defendant/Respondent might be found, list that here:         Name (First, Middle, Last):       Street Address, Unit #:         City, State, ZIP:       Street Address where Defendant/Respondent might be found, list that here:         Name (First, Middle, Last):       Street Address, Unit #:         City, State, ZIP:       Telephone:         In 1c, check how you are sending your documents to Defendant//       C. Method of service on Defendant/Respondent:         C. Method of service on Defendant//       Sheriff outside Illinois:         County & State       State					
In 1a, enter the name and address of a Defendant/ Respondent. If you are serving a Registered Agent, include the Registered Agent's name and address here.       1. Defendant/Respondent's address and service information: a. Defendant/Respondent's primary address/information for service: Name ( <i>First, Middle, Last</i> ): L'Oreal USA Products, Inc.         In 1b, enter a second address for Defendant/ Respondent, if you have one.       2. Defendant/Respondent's address where Defendant/Respondent might be found, list that here: Name ( <i>First, Middle, Last</i> ): Defendant/ Respondent, if you are sending your documents to Defendant/ Respondent.         In 1c, check how you are sending your documents to Defendant/ Respondent.       1. Defendant/Respondent's address and service information: L'Oreal USA Products, Inc.         In 1c, check how you are sending your documents to Defendant/       1. Defendant/Respondent: Defendant/ Respondent.	Plaintiff/Petitioner:				
In 1a, enter the name and address of a Defendant/ Respondent. If you are serving a Registered Agent, include the Registered Agent's name and address here.       1. Defendant/Respondent's address and service information: a. Defendant/Respondent's primary address/information for service: Name ( <i>First, Middle, Last</i> ): L'Oreal USA Products, Inc.         In 1b, enter a second address for Defendant/ Respondent, if you have one.       2. Defendant/Respondent's address where Defendant/Respondent might be found, list that here: Name ( <i>First, Middle, Last</i> ): Defendant/ Respondent, if you are sending your documents to Defendant/ Respondent.         In 1c, check how you are sending your documents to Defendant/ Respondent.       1. Defendant/Respondent's address and service information: L'Oreal USA Products, Inc.         In 1c, check how you are sending your documents to Defendant/       1. Defendant/Respondent: Defendant/ Respondent.		If you are suing more than 1 Defendant/Respondent. fill out a Summons form for each			
and address of a       Defendant/         Defendant/       Name ( <i>First, Middle, Last</i> ):       L'Oreal USA Products, Inc.         Respondent. If you are serving a Registered Agent's name, if any:       Illinois Corporation Service Company         Agent, include the Registered Agent's name, and address here.       Registered Agent's name, if any:       Illinois Corporation Service Company         In 1b, enter a second address for Defendant/       Email:       Email:       Email:         In 1b, enter a second address for Defendant/       If you have more than one address where Defendant/Respondent might be found, list that here:         Name ( <i>First, Middle, Last</i> ):       Street Address, Unit #:       City, State, ZIP:         In 1c, check how you are sending your documents to Defendant/       Email:       Email:         C.       Method of service on Defendant/Respondent:       Email:         Defendant/       Sheriff       Sheriff outside Illinois:       County & State		-			
and address of a       Defendant/         Defendant/       Name ( <i>First, Middle, Last</i> ):       L'Oreal USA Products, Inc.         Respondent. If you are serving a Registered Agent's name, if any:       Illinois Corporation Service Company         Agent, include the Registered Agent's name, and address here.       Registered Agent's name, if any:       Illinois Corporation Service Company         In 1b, enter a second address for Defendant/       Email:       Email:       Email:         In 1b, enter a second address for Defendant/       If you have more than one address where Defendant/Respondent might be found, list that here:         Name ( <i>First, Middle, Last</i> ):       Street Address, Unit #:       City, State, ZIP:         In 1c, check how you are sending your documents to Defendant/       Email:       Email:         C.       Method of service on Defendant/Respondent:       Email:         Defendant/       Sheriff       Sheriff outside Illinois:       County & State				· · · · · · · · · · · · · · · · · · ·	
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Agent, include the Registered Agent's name and address here.       Street Address, Unit #: <u>801 Adlai Stevenson Drive</u> In 1b, enter a second address for Defendant/ Respondent, if you have one.       Email:		Registered Agent's name, if any: Illinois Corporation Service Company			
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In 1b, enter a second address for Defendant/         Respondent, if you have more than one address where Defendant/Respondent might be found, list that here:         Name (First, Middle, Last):         Street Address, Unit #:         City, State, ZIP:         Telephone:       Email:         City, State, ZIP:         Telephone:       Email:         Cournents to       Defendant/         Defendant/       Sheriff         Sheriff outside Illinois:       County & State					
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address for Defendant/       list that here:         Respondent, if you       Name (First, Middle, Last):         have one.       Street Address, Unit #:         City, State, ZIP:		, Т	elephone: Email:		
Respondent, if you       list that here:         have one.       Name (First, Middle, Last):         Street Address, Unit #:	, ,	In 1b, enter a second address for Defendant/ list that here			
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Street Address, Unit #:		Name (First, Middle, Last):			
In 1c, check how you are sending your documents to Defendant/       City, State, ZIP:		S	treet Address, Unit #:		
In 1c, check how you are sending your documents to       Telephone:       Email:         Defendant/       .       Method of service on Defendant/Respondent:         Respondent.       .       Sheriff       Sheriff outside Illinois:		, c	ity, State, ZIP:		
are sending your       c.       Method of service on Defendant/Respondent:         documents to       Image: Sheriff method of service on Defendant/Respondent:         Defendant/       Image: Sheriff method of service on Defendant/Respondent:         Respondent.       Image: Sheriff method of service on Defendant/Respondent:	In 1c, check how you	т	elephone: Email:		
Defendant/     Sheriff     Sheriff outside Illinois:       Respondent.     County & State	are sending your				
Respondent. County & State					
Special process server  Licensed private detective					
		V	Special process server 🗌 License	ed private detective	

# Case: 1:22-cv-01453 Document #: 1-2 Filed: 03/18/22 Page 20 of 24 PageID #:32

Enter the Case Number given by the Circuit Clerk:\_

In 2, enter the amount	2. Information about the lawsuit:			
of money owed to you.	Amount claimed: > <u>\$ 50,000.00</u>			
In 3, enter your	3. Contact information for the Plaintiff/Petitioner:			
complete address, telephone number, and	3. Contact information for the Plaintiff/Petitioner: Name (First, Middle, Last): Bret Pufahl, Esq., counsel for Plaintiff			
email address, if you	Street Address, Unit #: 10 West State Street, Suite 200			
have one.	City, State, ZIP: Geneva, IL 60134			
	Telephone: (630) 232-7450 Email: <u>bkp@fmcolaw.com</u>			
GETTING COURT DO every day. If you do not	OCUMENTS BY EMAIL: You should use an email account that you do not share with anyone else and that you check check your email every day, you may miss important information, notice of court dates, or documents from other parties.			
Important	You have been sued. Read all of the documents attached to this Summons.			
information for the person getting this form	To participate in the case, you must follow the instructions listed below. If you do not, the court may decide the case without hearing from you and you could lose the case. <i>Appearance</i> and <i>Answer/Response</i> forms can be found at: <u>illinoiscourts.gov/documents-and-forms/approved-forms/</u> .			
Check 4a or 4b. If	4. Instructions for person receiving this Summons (Defendant):			
Defendant/Respondent	a. To respond to this Summons, you must file Appearance and Answer/Response			
only needs to file an Appearance and	forms with the court within 30 days after you have been served (not counting the day			
Answer/Response	of service) by e-filing or at:			
within 30 days, check	Address: 133 W. State Street			
box 4a. Otherwise, if the clerk gives you a	City, State, ZIP: Sycamore, IL 60178			
court date, check box <b>4b</b> .				
	b. Attend court:			
In 4a, fill out the	On:ata.mp.m. in DateTimea.mp.m. in			
address of the court building where the Defendant may file or	In-person at:			
e-file their	Courthouse Address City State ZIP			
Appearance and Answer/ Response.	OR			
In <b>4b</b> , fill out:	Remotely (You may be able to attend this court date by phone or video conference.			
•The court date and	This is called a "Remote Appearance"):			
time the clerk gave				
<ul><li>you.</li><li>The courtroom and</li></ul>	By telephone:			
address of the court	By video conference:			
building.	Video conference website			
•The call-in or video information for				
remote appearances	Video conference log-in information (meeting ID, password, etc.)			
(if applicable).	Call the Circuit Clerk at: or visit their website			
•The clerk's phone number and website.	Call the Circuit Clerk at: or visit their website			
All of this information	to find out more chout how to do this			
is available from the	at: to find out more about now to do this			
Circuit Clerk.				
	UDICIAL CA			
STOP!	2/15/2022 12:53 PM			
The Circuit Clerk will	Witness tills Date.			
fill in this section.	Clerk of the Court:			
STOP!	This <i>Summons</i> must be served within 30 days of the witness date.			
The officer or process	I his summons must be served within so days of the withess date.			
server will fill in the Date of Service.	Date of Service:			

,

# Case: 1:22-cv-01453 Document #: 1-2 Filed: 03/18/22 Page 21 of 24 PageID #:33 This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT		PROOF OF SERVICE OF SUMMONS AND	For Court Use Only
DeKalb		COMPLAINT/PETITION	
Instructions			_
Enter above the county name where the case was filed.	Morgan Kukovec, et. al. Plaintiff / Petitioner (First, middle, last name)		
Enter your name as Plaintiff/Petitioner.			
Enter the names of all people you are suing	v.		
as Defendants/	L'Oréal USA F	roducts, Inc. d/b/a L'Oréal Paris	
Respondents.	Defendant / R	espondent (First, middle, last name)	
Enter the Case Number given by the Circuit Clerk.	<b>Alias Summons</b> (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)		Case Number

my name is _	and I state
	First, Middle, Last
I served the	e Summons and Complaint/Petition on the Defendant/Respondent
	as follows:
First, Middle, Las	it .
	onally on the Defendant/Respondent:
Male	Female Non-Binary Approx. Age: Race:
On th	nis date: at this time: a.mp.m.
	ess, Unit#:
	State, ZIP:
	omeone else at the Defendant/Respondent's home who is at least 13 years old and is a family
	ber or lives there:
	is date: at this time: a.m p.m.
	ess, Unit#:
	State, ZIP:
And le	eft it with:
	First, Middle, Last
	🗌 Female 🔲 Non-Binary 🔲 Approx. Age: Race:
	by sending a copy to this defendant in a postage-paid, sealed envelope to the
	e address on, 20
∐ On th	e Corporation's agent,
Male	
	is date: at this time: a.m p.m.
Addre	
City, S	State, ZIP:

	Enter the	Case Number given by the C	Circuit Clerk:	lent:
I was not able	o serve the Summons and Co			
rst, Middle, Last				
nade the followir	g attempts to serve the Summor	s and Complaint/Petitio	n on the Defenda	nt/Respondent:
On this date:	at th	is time:	a.mp.m	
Address:	· · · · · · · · · · · · · · · · · · ·			
City, State, Z	IP:			
	ation about service attempt:	·	· · · · · · · · · · · · · · · · · · ·	
. On this date	at th	nis time:	a.mp.m	1.
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3. On this date	: at t	his time:	a.mp.n	٦.
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City, State,	ZIP:			· · · · · · · · · · · · · · · · · · ·
Other inforr	nation about service attempt:			
				· · · · · · · · · · · · · · · · · · ·
NOT complete	If you are a special process	server, sheriff outside	e Illinois, or licen	sed private detective
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	this form could be perjury.			
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cing a statement this form that you		side Illinois: Total		φ0.00
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	detective Print Name			
		nsed private detective o	r private detective	e agency:

#### Case: 1:22-cv-01453 Document #: 1-2 Filed: 03/18/22 Page 23 of 24 PageID #:35 FILED

2/15/2022 12:53 PM 2022LA000016

#### IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT DEKALB COUNTY, ILLINOIS

Lori Grubbs Clerk of the Circuit Court DeKalb County, Illinois

#### MORGAN KUKOVEC, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

Case No.:

Judge:

2022LA000016

V.

L'ORÉAL USA PRODUCTS, INC. D/B/A L'ORÉAL PARIS, JURY TRIAL DEMANDED

Defendant.

#### AFFIDAVIT PURSUANT TO SUPREME COURT RULE 222 (b)

The undersigned, one of the attorneys for the Plaintiff herein, being first duly sworn upon

oath, states that to the best of his knowledge, information and belief formed after a reasonable

inquiry, to the extent such inquiry is possible based upon current facts and circumstances, that

the total money damages sought herein exceed Fifty Thousand Dollars (\$50,000.00).

FOOTE, MIELKE, CHAVEZ & O'NEIL, LLC

Bret K. Pufahl, Esq., One of Plaintiffs' Attorneys

Subscribed and Sworn to before me on February 15, 2022.

Notary Publicoccoccocco "OFFICIAL SEAL" ANA L SANCHEZ Notary Public, State of Illinois My Commission Expires Sept. 23, 2025 0000000000000000000000000 Bret K. Pufahl, Esq. (6325814) FOOTE, MIELKE, CHAVEZ & O'NEIL, LLC 10 W. State Street, Suite 200 Geneva, IL 60134 Tel. No.: (630) 232-7450 Fax No.: (630) 232-7452 Email: bkp@fmcolaw.com

#### CERTIFICATE OF SERVICE

2/18/2022 1:51 PM 2022LA000016

#### IN THE CIRCUIT COURT OF DEKALB COUNTY, ILLINOIS

Case #: 2022LA000016

Lorr Grubbs Clerk of the Circuit Court Plaintiff DeKalb County, Illinois

VS.

Morgan Kukovec, Individually and on Behalf of all others similarly situated

L'Oreal USA Products, Inc. d/b/a L'Oreal Paris

Defendant

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all the times herein mentioned was a citizen of the United States, over the age of 18, not a party to nor interested in the above entitled action, is competent to be witness therein, and that I served copies of the:

Summons & Class Action Complaint; Exhibit(s)

PARTY SERVED:	L'OREAL USA PRODUCTS, INC. D/B/A L'OREAL PARIS C/O ILLINOIS CORPORATIO SERVICE COMPANY			ARIS C/O ILLINOIS CORPORATION	
PERSON SERVED:	ETHAN SMITH, DOCUMENT PROCESSOR				
METHOD OF SERVICE:	<b>Corporate</b> - By leaving copies with the person identified above, apparently in charge at the office or usual place of business. I informed him/her of the general nature of the papers.				
DATE & TIME OF DELIVERY:	02/18/2022 at 12:01 PM				
ADDRESS, CITY AND STATE:	801 ADLAI STEVENSON DR, SPRINGFIELD, IL 62703				
DESCRIPTION:	Race: <b>White</b> Height: <b>5'7''</b>	Sex: <b>Male</b> Weight: <b>170</b>	Age: <b>19</b> Hair: <b>Brown</b>	Glasses: <b>No</b>	



Judicial Attorney Services, Inc. 2100 Manchester Rd., Ste 503-2 Wheaton, IL 60187 (630) 221-9007 Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true. Executed on 2/18/2022.

Signature

Barbara A West Registration No: 117-001119

# **ClassAction.org**

This complaint is part of ClassAction.org's searchable <u>class action lawsuit database</u>