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2019CH12856

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

**ELLIOTT OSBORNE, individually, and on
behalf of all others similarly situated,**

7244196

Plaintiff,

Case No. 2019CH12856

v.

**WEWORK COMPANIES INC., WEWORK
CONSTRUCTION LLC, WW 210 N GREEN
LLC d/b/a WEWORK, 332 S MICHIGAN
TENANT LLC d/b/a WEWORK GRANT
PARK, WW 111 WEST ILLINOIS LLC d/b/a
WEWORK RIVER NORTH, 20 W KINZIE
TENANT LLC d/b/a WEWORK4, 100 S STATE
STREET TENANT LLC d/b/a WEWORK5, 125
S CLARK STREET TENANT LLC d/b/a
WEWORK6, 222 S RIVERSIDE PLAZA
TENANT LLC d/b/a WEWORK8, 330 NORTH
WABASH TENANT LLC d/b/a WEWORK9,
515 N STATE STREET TENANT LLC d/b/a
WEWORK10, 1 SOUTH DEARBORN STREET
TENANT LLC d/b/a WEWORK11, 625 WEST
ADAMS STREET TENANT LLC,**

Defendants.

CLASS ACTION COMPLAINT

Plaintiff Elliott Osborne ("Osborne" or "Plaintiff"), by and through his attorneys, individually and on behalf of all others similarly situated (the "Class"), brings the following Class Action Complaint ("Complaint") pursuant to the Illinois Code of Civil Procedure, 735 ILCS §§ 5/2-801 and 2-802, against WeWork Companies Inc., WeWork Construction LLC, WW 210 N Green LLC d/b/a WeWork, 332 S Michigan Tenant LLC d/b/a WeWork Grant Park, WW 111 West Illinois LLC d/b/a WeWork River North, 20 W Kinzie Tenant LLC d/b/a WeWork4, 100 S

State Street Tenant LLC d/b/a WeWork5, 125 S Clark Street Tenant LLC d/b/a WeWork6, 222 S Riverside Plaza Tenant LLC d/b/a WeWork8, 330 North Wabash Tenant LLC d/b/a WeWork9, 515 N State Street Tenant LLC d/b/a WeWork10, 1 South Dearborn Street Tenant LLC d/b/a WeWork11, 625 West Adams Street Tenant LLC, (collectively, “WeWork” or “Defendants”), their subsidiaries and affiliates, to redress and curtail Defendants’ unlawful collection, use, storage, and disclosure of Plaintiff’s sensitive and proprietary biometric data. Plaintiff alleges as follows upon personal knowledge as to himself, his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. WeWork is a commercial real estate company that rents shared workspaces and short-term offices to startups, freelancers and, global corporations including Amazon, Facebook, Bank of America, and Starbucks.

2. WeWork markets itself as the future of white-collar labor and attracts its tenants by providing hip, fashionably-decorated office spaces that feature state-of-the-art technology.

3. Some of the high-tech features WeWork uses in its offices include sensors and facial recognition software that enable it to “track how its office space is used, down to data as granular as how [workers] adjust their desks and what parts of the office see the highest foot traffic.” *WeWork’s \$47 Billion Dream: The Lavishly Funded Startup That Could Disrupt Commercial Real Estate*, CB Insights (Oct. 22, 2019), available at <https://www.cbinsights.com/research/report/wework-strategy-teardown/>.

4. WeWork has also expressed interest in using facial recognition and sentiment analysis as “an extra level of building security or to ‘turbo-charge’ its community managers” by giving WeWork space managers notification that “someone new has just entered the building.”

Victoria Turk, *How WeWork became the most hyped startup in the world*, Wired (Oct. 22, 2019), available at <https://www.wired.co.uk/article/we-work-startup-valuation-adam-neumann-interview>.

5. When an individual, including Plaintiff, arrives at a WeWork office space, he or she is enrolled in WeWork's facial recognition database(s) using a previously provided photo or scan of his or her facial geometry. Upon information and belief, Defendants use the facial recognition database(s) to monitor individuals in their office spaces.

6. While many commercial offices use conventional methods for building security (such as ID badges), individuals entering WeWork's office spaces are required to provide their facial geometry via a photograph or facial geometry scan so that WeWork can track their movement in and out of the office.

7. Biometrics are not relegated to esoteric corners of commerce. Many businesses – such as WeWork – and financial institutions have incorporated biometric applications into their workplace in the form of biometric timeclocks or authenticators, and into consumer products, including such ubiquitous consumer products as checking accounts and cell phones.

8. Unlike ID badges – which can be changed or replaced if stolen or compromised – facial geometry features are unique, permanent biometric identifiers associated with each individual. This exposes Illinois citizens to serious and irreversible privacy risks. For example, if a database containing facial geometry or other sensitive, proprietary biometric data is hacked, breached, or otherwise exposed – like in the recent Yahoo, eBay, Equifax, Uber, Home Depot, MyFitnessPal, Panera, Whole Foods, Chipotle, Omni Hotels & Resorts, Trump Hotels, Facebook/Cambridge Analytica, and Suprema data breaches or misuses – individuals have no

means by which to prevent identity theft, unauthorized tracking or other unlawful or improper use of this highly personal and private information.

9. In 2015, a data breach at the United States Office of Personnel Management exposed the personal identification information, including biometric data, of over 21.5 million federal employees, contractors, and job applicants. U.S. Off. of Personnel Mgmt., *Cybersecurity Incidents* (2018), available at www.opm.gov/cybersecurity/cybersecurity-incidents.

10. An illegal market already exists for biometric data. Hackers and identity thieves have targeted Aadhaar, the largest biometric database in the world, which contains the personal and biometric data – including handprints, iris scans, and facial photographs – of over a billion Indian citizens. See Vidhi Doshi, *A Security Breach in India Has Left a Billion People at Risk of Identity Theft*, The Washington Post (Jan. 4, 2018), available at https://www.washingtonpost.com/news/worldviews/wp/2018/01/04/a-security-breach-in-india-has-left-a-billion-people-at-risk-of-identity-theft/?utm_term=.b3c70259f138.

11. In January 2018, an Indian newspaper reported that the information housed in Aadhaar was available for purchase for less than \$8 and in as little as 10 minutes. Rachna Khaira, *Rs 500, 10 Minutes, and You Have Access to Billion Aadhaar Details*, The Tribune (Jan. 4, 2018), available at <http://www.tribuneindia.com/news/nation/rs-500-10-minutes-and-you-have-access-to-billion-aadhaar-details/523361.html>.

12. In August 2019, it was reported that South Korean biotechnology company Suprema experienced a hack of its Biostar 2 platform, which exposed the fingerprint and facial recognition data of over one million people to Israeli hackers. Chris Baraniuk, *Biostar Security Software 'Leaked a Million Fingerprints'*, BBC News (Aug. 14, 2019), available at <https://www.bbc.com/news/technology-49343774>.

13. In the United States, law enforcement, including the Federal Bureau of Investigation and Immigration and Customs Enforcement, have attempted to turn states' Department of Motor Vehicles databases into biometric data goldmines, using facial recognition technology to scan the faces of thousands of citizens, all without their notice or consent. Drew Harwell, *FBI, ICE Find State Driver's License Photos Are a Gold Mine for Facial-Recognition Searches*, The Washington Post (July 7, 2019), available at https://www.washingtonpost.com/technology/2019/07/07/fbi-ice-find-state-drivers-license-photos-are-gold-mine-facial-recognition-searches/?noredirect=on&utm_term=.da9afb2472a9.

14. This practice has been criticized by lawmakers. Some states, including Illinois, have refused to comply with law enforcement's invasive requests. *State Denying Facial Recognition Requests*, Jacksonville Journal-Courier (July 9, 2019), available at <https://www.myjournalcourier.com/news/article/State-denying-facial-recognition-requests-14081967.php>.

15. Recognizing the need to protect its citizens from situations like these, Illinois enacted the Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.*, specifically to regulate companies that collect, store and use Illinois citizens' biometrics, such as facial features.

16. Notwithstanding the clear and unequivocal requirements of the law, each Defendant disregards individuals' statutorily protected privacy rights and unlawfully collect, store, disseminate, and use individuals' biometric data in violation of BIPA. Specifically, each Defendant has violated and continues to violate BIPA because it did not and continues not to:

- a. Properly inform Plaintiff and others similarly situated in writing of the specific purpose and length of time for which their facial geometry was being collected, stored, and used, as required by BIPA;

- b. Publish a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and other similarly-situated individuals' facial geometry, as required by BIPA;
- c. Receive a written release from Plaintiff and others similarly situated to collect, store, disseminate, or otherwise use their facial geometry, as required by BIPA; and
- d. Obtain consent from Plaintiff and others similarly situated to disclose, redisclose, or otherwise disseminate their facial geometry to a third party as required by BIPA.

17. Accordingly, Plaintiff, on behalf of himself as well as the putative Class, seeks an Order: (1) declaring that Defendants' conduct violates BIPA; (2) requiring Defendants to cease the unlawful activities discussed herein; and (3) awarding statutory damages to Plaintiff and the proposed Class.

PARTIES

18. Plaintiff Elliott Osborne is a natural person and a citizen of the State of Illinois.

19. Defendant WeWork Companies Inc. is a Delaware corporation that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

20. Defendant WeWork Construction LLC is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

21. Defendant WW 210 N Green LLC d/b/a WeWork is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

22. Defendant 332 S Michigan Tenant LLC d/b/a WeWork Grant Park is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

23. Defendant WW 111 West Illinois LLC d/b/a WeWork River North is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

24. Defendant 20 W Kinzie Tenant LLC d/b/a WeWork 4 is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

25. Defendant 100 S State Street Tenant LLC d/b/a WeWork5 is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

26. Defendant 125 S Clark Street Tenant LLC d/b/a WeWork 6 is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

27. Defendant 222 S Riverside Plaza Tenant LLC d/b/a WeWork8 is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

28. Defendant 330 North Wabash Tenant LLC d/b/a WeWork9 is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

29. Defendant 515 N State Street Tenant LLC d/b/a WeWork 10 is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

30. Defendant 1 South Dearborn Street Tenant LLC d/b/a WeWork 11 is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

31. Defendant 625 West Adams Street Tenant LLC is a New York limited liability company that is registered with the Illinois Secretary of State and conducts business in the State of Illinois, including Cook County.

JURISDICTION AND VENUE

32. This Court has jurisdiction over Defendants pursuant to 735 ILCS § 5/2-209 because Defendants conduct business transactions in Illinois, committed the statutory violations alleged herein in Cook County and throughout Illinois, and are registered to and do conduct business in Illinois.

33. Venue is proper in Cook County because Defendants conduct business in this State, conduct business transactions in Cook County, and committed the statutory violations alleged herein in Cook County.

FACTUAL BACKGROUND

I. The Biometric Information Privacy Act.

34. In the early 2000s, major national corporations started using Chicago and other locations in Illinois to test “new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias.” 740 ILCS

§ 14/5(c). Given its relative infancy, an overwhelming portion of the public became weary of this then-growing yet unregulated technology. *See* 740 ILCS § 14/5.

35. In late 2007, a biometrics company called Pay by Touch, which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions, filed for bankruptcy. That bankruptcy was alarming to the Illinois Legislature because suddenly there was a serious risk that millions of fingerprint records – which, like other unique biometric identifiers, can be linked to people’s sensitive financial and personal data – could now be sold, distributed, or otherwise shared through the bankruptcy proceedings without adequate protections for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who used that company’s fingerprint scanners were completely unaware that the scanners were not actually transmitting fingerprint data to the retailer who deployed the scanner, but rather to the now-bankrupt company, and that their unique biometric identifiers could now be sold to unknown third parties.

36. Recognizing the “very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information,” Illinois enacted BIPA in 2008. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS 14/5.

37. Additionally, to ensure compliance, BIPA provides that, for each violation, the prevailing party may recover \$1,000 or actual damages, whichever is greater, for negligent violations and \$5,000, or actual damages, whichever is greater, for intentional or reckless violations. 740 ILCS 14/20.

38. BIPA is an informed consent statute which achieves its goal by making it unlawful for a company to, among other things, collect, capture, purchase, receive through trade, or

otherwise obtain a person's or a customer's biometric identifiers or biometric information, unless it first:

- a. Informs the subject in writing that a biometric identifier or biometric information is being collected, stored or used;
- b. Informs the subject 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. Receives a written release executed by the subject of the biometric identifier or biometric information.

See 740 ILCS 14/15(b).

39. BIPA specifically applies to employees who work in the State of Illinois. BIPA defines a "written release" specifically "in the context of employment [as] a release executed by an employee as a condition of employment." 740 ILCS 14/10.

40. Biometric identifiers include retina and iris scans, voiceprints, fingerprints and handprints, and – most importantly here – facial geometry. *See* 740 ILCS 14/10. Biometric information is separately defined to include any information based on an individual's biometric identifier that is used to identify an individual. *Id.*

41. BIPA also establishes standards for how companies must handle Illinois citizens' biometric identifiers and biometric information. *See, e.g.,* 740 ILCS 14/15(c)-(d). For example, BIPA prohibits private entities from disclosing a person's or customer's biometric identifier or biometric information without first obtaining consent for such disclosures. *See* 740 ILCS 14/15(d)(1).

42. BIPA also prohibits selling, leasing, trading, or otherwise profiting from a person's biometric identifiers or biometric information (740 ILCS 14/15(c)) and requires companies to develop and comply with 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 such identifiers or information has been satisfied or within three years of the individual's last interaction with the company, whichever occurs first. 740 ILCS 14/15(a).

43. The Illinois legislature enacted BIPA due to the increasing use of biometric data in financial and security settings, the general public's hesitation to use biometric information, and – most significantly – the unknown ramifications of biometric technology. Biometrics are biologically unique to the individual and, once compromised, an individual is at a heightened risk for identity theft and left without any recourse.

44. BIPA provides individuals with a private right of action, protecting their right to privacy regarding their biometrics. BIPA also protects individuals' rights to know the precise nature for which their biometrics are used and how they are being stored and ultimately destroyed, allowing individuals to make a truly informed choice. Unlike other statutes that only create a right of action if there is a qualifying data breach, BIPA strictly regulates the manner in which entities may collect, store, use, and disseminate biometrics and creates a private right of action for lack of statutory compliance.

45. Plaintiff, like the Illinois legislature, recognizes how imperative it is to keep biometric information secure. Biometric information, unlike other personal identifiers such as a social security number, cannot be changed or replaced if hacked or stolen.

II. Defendants Violate the Biometric Information Privacy Act.

46. By the time BIPA passed through the Illinois Legislature in mid-2008, most companies who had experimented with using employees' biometric data stopped doing so.

47. However, WeWork failed to take note of the shift in Illinois law governing the collection, use, storage, and dissemination of biometric data. As a result, each Defendant continues to collect, store, use and disseminate individuals' biometric data in violation of BIPA.

48. Specifically, when individuals arrive at a WeWork office space, each Defendant requires them to have their facial geometry scanned to enroll them in WeWork's database(s).

49. Upon information and belief, WeWork uses this facial geometry data to monitor individuals in its offices.

50. Each Defendant fails to inform individuals of the purposes and duration for which it collects, stores, and uses their facial geometry data; fails to inform individuals that it discloses or disclosed their facial geometry data to at least one out-of-state third-party vendor that supplied WeWork with and maintains its biometric database(s), as well as currently unknown third parties, which host the biometric data in their data centers; and, fails to obtain written releases from individuals before collecting their facial geometry, as required by BIPA.

51. At no time did WeWork secure written releases from individuals before collecting their facial geometry.

52. Furthermore, each Defendant fails to publish a written, publicly available policy identifying their retention schedule and guidelines for permanently destroying individuals' facial geometry data when the initial purpose for collecting or obtaining their facial geometry is no longer relevant, as required by BIPA.

53. The Pay by Touch bankruptcy that catalyzed the passage of BIPA, as well as the recent data breaches, highlight why such conduct – where individuals are aware that they are providing biometric data, but not aware of to whom or for what purposes they are doing so – is dangerous. This bankruptcy spurred Illinois citizens and legislators into realizing that it is crucial

for individuals to understand when providing biometric identifiers, such as one's facial geometry, who exactly is collecting their biometric data, where it will be transmitted, for what purposes, and for how long. Defendants disregard these obligations and their employees' statutory rights and instead unlawfully collect, store, use and disseminate their employees' biometric identifiers and information, without ever receiving the individual's informed written consent required by BIPA.

54. Upon information and belief, each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and other similarly-situated individuals' biometric data and has not and will not destroy Plaintiff's and other similarly-situated individuals' biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the individual's last interaction with the company.

55. Plaintiff and others similarly situated are not told what might happen to their biometric data if and when any Defendant merges with another company, or worse, if and when Defendants' businesses fold, or when the other third parties that have received individuals' biometric data businesses fold.

56. Since Defendants neither publish a BIPA-mandated data retention policy nor disclose the purposes for their collection and use of biometric data, individuals have no idea the extent to whom any Defendant sells, discloses, rediscloses, or otherwise disseminates their biometric data. Moreover, Plaintiff and others similarly situated are not told to whom Defendants currently disclose their biometric data, or what might happen to their biometric data in the event of a merger or a bankruptcy.

57. These violations have raised a material risk that Plaintiff's and other similarly-situated individuals' biometric data will be unlawfully accessed by third parties.

58. By and through the actions detailed above, Defendants disregarded Plaintiff's and other similarly-situated individuals' legal rights in violation of BIPA.

III. Plaintiff Elliott Osborne's Experience

59. Plaintiff Elliott Osborne worked for SpotHero in 2017 out of a WeWork office space located at 125 South Clark Street, Chicago, Illinois 60603.

60. WeWork required Plaintiff to have a photograph of his face taken to use as a method for monitoring him in WeWork's office space.

61. WeWork subsequently stored Plaintiff's facial geometry data in their database(s).

62. Plaintiff was never informed of the specific limited purposes or length of time for which any Defendant collects, stores, uses and/or disseminates his biometric data.

63. Plaintiff has no knowledge of any biometric data retention policy developed by any Defendant and made available to the public, nor does he know whether WeWork will ever permanently delete his biometric data.

64. Plaintiff has never been provided with nor ever signed a written release allowing any Defendant to collect, store, use or disseminate his biometric data.

65. Plaintiff has continuously and repeatedly been exposed to the risks and harmful conditions created by Defendants' multiple violations of BIPA alleged herein.

66. No amount of time or money can compensate Plaintiff if his biometric data is compromised by the lax procedures through which Defendants captured, stored, used, and disseminated his and other similarly-situated individuals' biometrics. Moreover, Plaintiff would not have provided his biometric data to Defendants if he had known that Defendants would retain such information for an indefinite period of time without his consent.

67. A showing of actual damages is not necessary in order to state a claim under BIPA. *See Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186, ¶ 40 (“[A]n individual need not allege some actual injury or adverse effect, beyond violation of his or her rights under the Act, in order to qualify as an “aggrieved” person and be entitled to seek liquidated damages and injunctive relief pursuant to the Act”).

68. As Plaintiff is not required to allege or prove actual damages in order to state a claim under BIPA, he seeks statutory damages under BIPA as compensation for the injuries caused by Defendants. *Rosenbach*, 2019 IL 123186, ¶ 40.

CLASS ALLEGATIONS

69. Pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-801, Plaintiff brings claims on his own behalf and as a representative of all other similarly-situated individuals pursuant to BIPA, 740 ILCS 14/1, *et seq.*, to recover statutory penalties, prejudgment interest, attorneys’ fees and costs, and other damages owed.

70. As discussed *supra*, Section 14/15(b) of BIPA prohibits a company from, among other things, collecting, capturing, purchasing, receiving through trade, or otherwise obtaining a person’s or a customer’s biometric identifiers or biometric information, unless it *first* (1) informs the individual in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the individual in writing of the specific purpose(s) and length of time 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. 740 ILCS 14/15.

71. Plaintiff seeks class certification under the Illinois Code of Civil Procedure, 735 ILCS 5/2-801, for the following class of similarly-situated individuals under BIPA:

All individuals who entered a WeWork space in the State of Illinois and had their facial geometry collected, captured, received, otherwise obtained, maintained, stored, or disclosed by any Defendant during the applicable statutory period.

72. This action is properly maintained as a class action under 735 ILCS 5/2-801 because:

- A. The class is so numerous that joinder of all members is impracticable;
- B. There are questions of law or fact that are common to the class;
- C. Plaintiff's claims are typical of the claims of the class; and,
- D. Plaintiff will fairly and adequately protect the interests of the class.

Numerosity

73. The total number of putative class members exceeds fifty (50) individuals. The exact number of class members can easily be determined from WeWork's records.

Commonality

74. There is a well-defined commonality of interest in the substantial questions of law and fact concerning and affecting the Class in that Plaintiff and all members of the Class have been harmed by Defendants' failure to comply with BIPA. The common questions of law and fact include, but are not limited to the following:

- A. Whether any Defendant collected, captured, maintained, stored or otherwise obtained Plaintiff's and the Class's biometric identifiers or biometric information;
- B. Whether any Defendant properly informed Plaintiff and the Class of their purposes for collecting, using, storing and disseminating their biometric identifiers or biometric information;
- C. Whether any Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, store and disseminate Plaintiff's and the Class's biometric identifiers or biometric information;
- D. Whether any Defendant has disclosed or redisclosed Plaintiff's and the Class's biometric identifiers or biometric information;

- E. Whether any Defendant has sold, leased, traded, or otherwise profited from Plaintiff's and the Class's biometric identifiers or biometric information;
 - F. Whether any Defendant developed 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 three years of their last interaction with the individual, whichever occurs first;
 - G. Whether any Defendant complies with any such written policy (if one exists);
 - H. Whether any Defendant's violations of BIPA have raised a material risk that Plaintiff's and the putative Class' biometric data will be unlawfully accessed by third parties;
 - I. Whether any Defendant used Plaintiff's and the Class's facial geometry to identify them;
 - J. Whether the violations of BIPA were committed negligently; and
 - K. Whether the violations of BIPA were committed intentionally or recklessly.
75. Plaintiff anticipates that Defendants will raise defenses that are common to the class.

Adequacy

76. Plaintiff will fairly and adequately protect the interests of all members of the class, and there are no known conflicts of interest between Plaintiff and class members. Plaintiff, moreover, has retained experienced counsel who are competent in the prosecution of complex litigation and who have extensive experience acting as class counsel.

Typicality

77. The claims asserted by Plaintiff are typical of the class members he seeks to represent. Plaintiff has the same interests and suffers from the same unlawful practices as the class members.

78. Upon information and belief, there are no other class members who have an interest individually controlling the prosecution of his or her individual claims, especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against one's employer. However, if any such class member should become known, he or she can "opt out" of this action pursuant to 735 ILCS 5/2-801.

Predominance and Superiority

79. The common questions identified above predominate over any individual issues, which will relate solely to the quantum of relief due to individual class members. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense if these claims were brought individually. Moreover, as the damages suffered by each class member are relatively small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it difficult for individual class members to vindicate their claims.

80. Additionally, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantially more than if claims are treated as a class action. Prosecution of separate actions by individual class members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of class members to protect their interests. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to fashion methods to efficiently manage this action as a class action.

FIRST CAUSE OF ACTION

Violation of 740 ILCS § 14/15(a): Failure to Institute, Maintain and Adhere to Publicly-Available Retention Schedule

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

82. BIPA mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention – and, importantly, deletion – policy. Specifically, those companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data (at most three years after the company’s last interaction with the individual); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS 14/15(a).

83. Each Defendant fails to comply with these BIPA mandates.

84. Defendant WeWork Companies Inc. is a corporation registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

85. Defendant WeWork Construction LLC is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

86. Defendant WW 210 N Green LLC d/b/a WeWork is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

87. Defendant 332 S Michigan Tenant LLC d/b/a WeWork Grant Park is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

88. Defendant WW 111 West Illinois LLC d/b/a WeWork River North is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

89. Defendant 20 W Kinzie Tenant LLC d/b/a WeWork 4 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

90. Defendant 100 S State Street Tenant LLC d/b/a WeWork5 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

91. Defendant 125 S Clark Street Tenant LLC d/b/a WeWork 6 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

92. Defendant 222 S Riverside Plaza Tenant LLC d/b/a WeWork8 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

93. Defendant 330 North Wabash Tenant LLC d/b/a WeWork9 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

94. Defendant 515 N State Street Tenant LLC d/b/a WeWork 10 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

95. Defendant 1 South Dearborn Street Tenant LLC d/b/a WeWork 11 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

96. Defendant 625 West Adams Street Tenant LLC is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

97. Plaintiff and the Class are individuals who have had their “biometric identifiers” collected by Defendants (in the form of their facial geometry), as explained in detail in Sections II and III, *supra*. *See* 740 ILCS 14/10.

98. Plaintiff’s and the Class’s biometric identifiers were used to identify them and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS 14/10.

99. Each Defendant failed to publish a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified by BIPA. *See* 740 ILCS § 14/15(a).

100. Upon information and belief, each Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff’s and the Class’s biometric data and have not and will not destroy Plaintiff’s or the Class’s biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the individual’s last interaction with the company.

101. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with BIPA’s requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to

740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

SECOND CAUSE OF ACTION

Violation of 740 ILCS § 14/15(b): Failure to Obtain Informed Written Consent and Release Before Obtaining Biometric Identifiers or Information

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

103. BIPA requires companies to obtain informed written consent from individuals before acquiring their biometric data. Specifically, BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a 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 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..." 740 ILCS 14/15(b) (emphasis added).

104. Each Defendant fails to comply with these BIPA mandates.

105. Defendant WeWork Companies Inc. is a corporation registered to do business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

106. Defendant WeWork Construction LLC is a limited liability company registered to do business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

107. Defendant WW 210 N Green LLC d/b/a WeWork is a limited liability company registered to do business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

108. Defendant 332 S Michigan Tenant LLC d/b/a WeWork Grant Park is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

109. Defendant WW 111 West Illinois LLC d/b/a WeWork River North is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

110. Defendant 20 W Kinzie Tenant LLC d/b/a WeWork 4 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

111. Defendant 100 S State Street Tenant LLC d/b/a WeWork5 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

112. Defendant 125 S Clark Street Tenant LLC d/b/a WeWork 6 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

113. Defendant 222 S Riverside Plaza Tenant LLC d/b/a WeWork8 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

114. Defendant 330 North Wabash Tenant LLC d/b/a WeWork9 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

115. Defendant 515 N State Street Tenant LLC d/b/a WeWork 10 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

116. Defendant 1 South Dearborn Street Tenant LLC d/b/a WeWork 11 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

117. Defendant 625 West Adams Street Tenant LLC is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

118. Plaintiff and the Class are individuals who have had their “biometric identifiers” collected by Defendants (in the form of their facial geometry), as explained in detail in Sections II and III, *supra*. *See* 740 ILCS § 14/10.

119. Plaintiff’s and the Class’s biometric identifiers were used to identify them and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS § 14/10.

120. Each Defendant systematically and automatically collected, captured, received through trade, or otherwise obtained Plaintiff’s and the Class’s biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS 14/15(b)(3).

121. No Defendant informed Plaintiff and the Class in writing that their biometric identifiers and/or biometric information were being collected, captured, received through trade, or otherwise obtained, nor did any Defendant inform Plaintiff and the Class in writing of the specific purpose(s) and length of term for which their biometric identifiers and/or biometric information were being collected, stored, and used as required by 740 ILCS 14/15(b)(1)-(2).

122. By collecting, capturing, receiving through trade, or otherwise obtaining Plaintiff's and the Class's biometric identifiers and biometric information as described herein, each Defendant violated Plaintiff's and the Class's rights to privacy in their biometric identifiers or biometric information as set forth in BIPA. *See* 740 ILCS 14/1, *et seq.*

123. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

THIRD CAUSE OF ACTION

Violation of 740 ILCS § 14/15(d): Disclosure of Biometric Identifiers and Information Before Obtaining Consent

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

125. BIPA prohibits private entities from disclosing a person's or customer's biometric identifier or biometric information without first obtaining consent for that disclosure. *See* 740 ILCS 14/15(d)(1).

126. Each Defendant fails to comply with this BIPA mandate.

127. Defendant WeWork Companies Inc. is a corporation registered to do business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

128. Defendant WeWork Construction LLC is a limited liability company registered to do business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

129. Defendant WW 210 N Green LLC d/b/a WeWork is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

130. Defendant 332 S Michigan Tenant LLC d/b/a WeWork Grant Park is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

131. Defendant WW 111 West Illinois LLC d/b/a WeWork River North is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

132. Defendant 20 W Kinzie Tenant LLC d/b/a WeWork 4 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

133. Defendant 100 S State Street Tenant LLC d/b/a WeWork5 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

134. Defendant 125 S Clark Street Tenant LLC d/b/a WeWork 6 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

135. Defendant 222 S Riverside Plaza Tenant LLC d/b/a WeWork8 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

136. Defendant 330 North Wabash Tenant LLC d/b/a WeWork9 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

137. Defendant 515 N State Street Tenant LLC d/b/a WeWork 10 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

138. Defendant 1 South Dearborn Street Tenant LLC d/b/a WeWork 11 is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

139. Defendant 625 West Adams Street Tenant LLC is a limited liability company registered to do business in Illinois and thus qualifies as a “private entity” under BIPA. *See* 740 ILCS § 14/10.

140. Plaintiff and the Class are individuals who have had their “biometric identifiers” collected by Defendants (in the form of their facial geometry), as explained in detail in Sections II and III, *supra*. *See* 740 ILCS § 14/10.

141. Plaintiff’s and the Class’s biometric identifiers were used to identify them and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS § 14/10.

142. Each Defendant systematically and automatically disclosed, redisclosed, or otherwise disseminated Plaintiff’s and the Class’s biometric identifiers and/or biometric information without first obtaining the consent required by 740 ILCS 14/15(d)(1).

143. By disclosing, redisclosing, or otherwise disseminating Plaintiff’s and the Class’s biometric identifiers and biometric information as described herein, each Defendant violated

Plaintiff's and the Class's rights to privacy in their biometric identifiers or biometric information as set forth in BIPA. *See* 740 ILCS 14/1, *et seq.*

144. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendants to comply with BIPA's requirements for the collection, storage, use and dissemination of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each intentional and/or reckless violation of BIPA pursuant to 740 ILCS § 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS § 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS § 14/20(3).

PRAYER FOR RELIEF

Wherefore, Plaintiff Elliott Osborne respectfully requests that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff Elliott Osborne as Class Representative, and appointing Stephan Zouras, LLP, as Class Counsel;
- B. Declaring that Defendants' actions, as set forth above, violate BIPA;
- C. Awarding statutory damages of \$5,000 for *each* intentional and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for *each* negligent violation of BIPA pursuant to 740 ILCS 14/20(1);
- D. Declaring that Defendants' actions, as set forth above, were intentional and/or reckless;
- E. Awarding injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Class, including an Order requiring Defendants to collect, store, use and disseminate biometric identifiers and/or biometric information in compliance with BIPA;
- F. Awarding Plaintiff and the Class their reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);

- G. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and,
- H. Awarding such other and further relief as equity and justice may require.

Date: November 5, 2019

Respectfully Submitted,

/s/ Haley R. Jenkins

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James B. Zouras

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**ATTORNEY FOR PLAINTIFF
AND THE PUTATIVE CLASS**

CERTIFICATE OF SERVICE

I, the attorney, hereby certify that on November 5, 2019, I electronically filed the attached with the Clerk of the Court using the electronic filing system which will send such filing to all attorneys of record.

/s/ Haley R. Jenkins

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [WeWork Facing Biometric Privacy Class Action Over Use of Facial Recognition Scans at Chicago Office Spaces](#)
