

1
2 **UNITED STATES DISTRICT COURT**
3 **NORTHERN DISTRICT OF CALIFORNIA**
4 **SAN JOSE DIVISION**

5
6 STEVEN VANCE, et al.,

7 Plaintiffs,

8 v.

9 GOOGLE LLC, a Delaware limited liability
10 company

11 Defendant.

Case No. 5:20-CV-04696-BLF

**ORDER GRANTING MOTION TO
STAY AND TERMINATING MOTION
TO DISMISS**

[Re: ECF 33, 34]

United States District Court
Northern District of California

12 Before the Court is Defendant Google LLC’s (“Google”) motion to stay all proceedings in
13 this action until the resolution of *Vance v. International Business Machines, Corporation* (“IBM
14 action”), currently before the U.S. District Court for the Northern District of Illinois. No. 1:20-
15 CV-0577, ECF 1. For the reasons set forth below, the Court GRANTS Google’s motion.

16
17 **I. BACKGROUND**

18 On January 24, 2020, Plaintiffs Steven Vance and Tim Janecyk (collectively, “Vance”)
19 filed suit in the U.S. District Court for the Northern District of Illinois, alleging that International
20 Business Machines, Corporation (“IBM”) violated the Illinois Biometric Information Privacy Act
21 (“BIPA”). *See Opp.*, ECF 42 at 2. *Id.* BIPA prohibits private entities from collecting, capturing,
22 obtaining, disclosing, redisclosing, disseminating or profiting from the biometric identifiers or
23 information of an individual without providing written notice and without obtaining a written
24 release from the impacted individual or his authorized representative. 740 Ill. Comp. Stat. § 14/15.
25 BIPA defines biometric identifiers as including a scan of an individual’s facial geometry and
26 biometric information as any information “based on an individual’s biometric identifier used to
27 identify an individual.” *Id.* § 14/10. BIPA creates a private right of action that allows a plaintiff to
28 recover liquidated damages ranging from \$1,000 to \$5,000, attorney’s fees, and injunctive relief.

1 *Id.* § 740/20.

2 **A. The *IBM* Action**

3 The facts of the *IBM* action are alleged as follows. In 2008, Vance uploaded photos of
4 himself and his family members to Flickr from his computer in Illinois. Lange Declaration
5 (“Lange Decl.”), ECF 42-1, Ex. B ¶ 23 (“*IBM* Complaint”). Flickr subsequently made Vance’s
6 photos, as well as millions of other people’s photos, available to IBM in a single downloadable
7 dataset (“Flickr dataset”). *Id.* ¶ 40. IBM captured biometrics from these photographs by scanning
8 the faces and extracting geometric data relating to the contours of the faces. *Id.* It used this data to
9 create its own dataset of “frontal-facing images of human faces” (“*IBM* dataset”). *Id.* ¶¶ 41-46. In
10 2019, IBM included images from the *IBM* Dataset into a larger dataset it created known as the
11 “Diversity in Faces” dataset (“*DiF* dataset”). *Id.* ¶ 47. Vance alleges IBM used the *DiF* dataset to
12 profit “from the biometric identifiers and information of Plaintiffs and Class Members” in
13 violation of BIPA, among other things. *Id.* ¶ 52.

14 Vance brought seven causes of action against IBM: (1) violation of BIPA § 14/15(a) by
15 wrongfully possessing Vance’s biometric identifiers; (2) violation of BIPA § 14/15(b) by
16 wrongfully collecting biometric identifiers; (3) violation of BIPA § 14/15(c) by wrongfully
17 profiting from biometric identifiers; (4) violation of BIPA § 14/15(d) by wrongfully disclosing
18 biometric identifiers; (5) violation of BIPA § 14/15(e) by wrongfully failing to protect biometric
19 identifiers from disclosure; (6) unjust enrichment; and (7) injunctive relief. *IBM* Complaint ¶¶ 68-
20 118. On September 15, 2020, the Northern District of Illinois dismissed Vance’s causes of action
21 under BIPA § 14/15(a) and for injunctive relief and allowed the other claims to proceed. *Vance v.*
22 *Int’l Bus. Machines, Corp.*, No. 20 C 577, 2020 WL 5530134, *6 (N.D. Ill. Sept. 15, 2020).
23 Discovery in the *IBM* action is set to close on July 28, 2021. Lange Decl., ECF 42-1, Ex D.

24 **B. Other Related Cases**

25 In addition to the *IBM* action, Vance has filed three other class action BIPA suits. On July
26 14, 2020, Vance filed a BIPA class action against Microsoft Corporation (“*Microsoft* action”) in
27 the Western District of Washington. Lange Decl., ECF 42-1, Ex. E. The *Microsoft* action alleges

1 contained therein in violation of BIPA. *Id.* ¶ 55. On July 14, 2020, Microsoft Corporation filed a
 2 motion to dismiss, which, as of February 8, 2021, has not yet been adjudicated. No. 2:20-CV-
 3 01082, ECF 25.

4 On July 14, 2020, Vance filed a BIPA class action suit against Amazon.com, Inc.
 5 (“*Amazon* action”) in the Western District of Washington. Lange Decl. ECF 42-1, Ex. F. As in the
 6 *Microsoft* action, Vance claims Amazon.com, Inc. obtained the DiF dataset from IBM and used
 7 biometric identifiers in violation of BIPA. *Id.* ¶ 61. Amazon.com, Inc. filed a motion to dismiss,
 8 which, as of February 8, 2021, has not yet been adjudicated. No. 2:20-CV-01084, ECF 18.

9 Finally, also on July 14, 2020, Vance filed a class action BIPA suit against FaceFirst, Inc.
 10 (“*FaceFirst* action”) in the Central District of California. Lange Decl., ECF 42-1, Ex. G. As in the
 11 *Microsoft* and *Amazon* actions, Vance claims FaceFirst, Inc. obtained the DiF dataset from IBM
 12 and used biometric identifiers in violation of BIPA. *Id.* ¶ 55. Facefirst, Inc. filed a motion to
 13 dismiss and a motion to stay, neither of which have been adjudicated as of February 8, 2021. No.
 14 2:20-CV-06244, ECF 53, 54.

15 Neither Amazon.com, Inc. nor Microsoft Corporation has requested a stay in their
 16 respective action, but FaceFirst, Inc. has requested a stay in the *FaceFirst* action.

17 **C. The Instant Case**

18 On July 14, 2020, Vance filed the instant suit against Google. *See* Compl., ECF 1. Vance
 19 seeks to represent a class of “all Illinois residents” whose faces are in or depicted in the DiF
 20 dataset photo sharing service which it alleges was passed from IBM to Google in violation of
 21 BIPA. *See* Compl. ¶¶ 29, 40, 55, 82; Lange Decl., ECF 42-1, Ex. A ¶ 44. The complaint alleges
 22 four causes of action against Google: (1) violation of BIPA § 14/15(b); (2) violation of BIPA §
 23 14/15(c); (3) unjust enrichment; and (4) injunctive relief. Compl. ¶¶ 92, 99, 106, 116.

24 **II. JUDICIAL NOTICE**

25 Google requests the Court judicially notice four documents filed in federal courts outside
 26 of the Northern District of California: (A) Vance’s second amended class action complaint in the
 27 *IBM* action; (B) a print out of the docket in the *IBM* action; (C) Vance’s class action complaint in
 28

1 Exs. A-D.

2 Vance requests the Court judicially notice documents filed in federal courts outside of the
3 Northern District of California as well as six documents filed in state court in Cook County,
4 Illinois: (A) Vance's class action complaint in the *IBM* action; (B) Vance's second amended class
5 action complaint in the *IBM* action; (C) IBM's memorandum in support of its motion to dismiss
6 Vance's complaint in the *IBM* action; (D) the October 12, 2020 scheduling order in the *IBM*
7 action; (E) Vance's class action complaint in the *Microsoft* action; (F) Vance's class action
8 complaint in the *Amazon* action; (G) Vance's class action complaint in the *FaceFirst* action; (H)
9 an October 23, 2020 copy of the docket for the *Microsoft* action; (I) an October 23, 2020 copy of
10 the docket for the *Amazon* action; (J) the October 21, 2020 scheduling order for the *Microsoft*
11 action; and (K) which includes: (1) an order from *Mutnick v. Clearview AI, Inc., et al.*, No. 1:20-
12 CV-00512 (N.D. Ill May 19, 2020), ECF 61; (2) *Grabawska v. The Millard Group, LLC*, No. 2017
13 CH 13730 (Cir. Ct. Cook Cty. Apr. 3, 2018) (Flynn, J.), Order Denying Stay; (3) *Fields v. ABRA*
14 *Auto Body & Glass LP*, No. 2017 CH 12271 (Cir. Ct. Cook Cty. Mar. 3, 2018) (Mitchell, J.), Case
15 Management Order; (4) *Sharrieff v. Raymond Mgmt. Co., Inc. et al.*, No. 2018 CH 01496 (Cir. Ct.
16 Cook Cty. May 8, 2018) (Cohen, J.), Order Granting Motion to Submit Excess Pages and Denying
17 Motion to Stay; (5) *Thome v. Flexicorps, Inc.*, No. 2018 CH 01751 (Cir. Ct. Cook Cty. May 8,
18 2018) (Demacopoulos, J.), Order Denying Motion to Stay; (6) *Freeman v. Alliance Ground Int'l*,
19 No. 2017 CH 13636 (Cir. Ct. Cook Cty. May 8, 2018) (Demacopoulos, J.), Order Denying Motion
20 to Stay; and (7) *Morris v. Wow Bao LLC*, No. 2017 CH 12029 (Cir. Ct. Cook Cty. May 8, 2018),
21 (Valderrama, J.), Order Granting Defendant's Motion for Leave to Respond to Motion for Stay.
22 See ECF 42-1, Exs. A-K.

23 Courts may properly take judicial notice of other court filings and matters of public record.
24 *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (citing *Burbank-*
25 *Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998)). The
26 parties have neither opposed the requests for judicial notice nor disputed the authenticity of the
27 documents. The Court GRANTS both requests for judicial notice.

III. LEGAL STANDARD

District courts have the “discretionary power to stay proceedings.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005) (citing *Landis v. No. American Co.*, 299 U.S. 248, 254 (1936)). The power to stay is “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, counsel, and for litigants.” *Landis*, 299 U.S. at 254. The Court may “find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quoting *Leyva v. Certified Grocers of Cal. Ltd.*, 593 F.2d 863-64 (9th Cir. 1979)). “This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court.” *Leyva*, 593 F.2d at 863-64.

Courts in this district have routinely granted stays where there are overlapping issues of fact or law with a case before different district courts or on appeal. *See, e.g., McElrath v. Uber Techs., Inc.*, No. 16-CV-07241-JSC, 2017 WL 1175591 (N.D. Cal. Mar. 30, 2017) (granting a stay pending appeal of another case with similar factual and legal issues); *Robledo v. Randstad US, L.P.*, No. 17-CV-01003-BLF, 2017 WL 4934205 (N.D. Cal. Nov. 1, 2017) (same); *Zurich Am. Ins. Co. v. Omnicell, Inc.*, No. 18-CV-05345-LHK, 2019 WL 570760 (N.D. Cal. Feb 12, 2019) (granting a stay pending resolution of another underlying action).

In determining whether to grant a stay, “the competing interests which will be affected by the granting or refusal to stay must be weighed.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254-55). “Among these competing interests are [1] the possible damage which may result from the granting of the stay, [2] the hardship or inequity which a party must suffer in being required to go forward, and [3] the orderly course of justice measured in terms of the simplifying or complicating the issues, proof, and questions of law which could be expected to result from the stay.” *Id.* (brackets in original). In addition, the “proponent of a stay bears the burden establishing its need.” *Clinton v. Jones*, 520 U.S. 681, 708 (1997) (citing *Landis*,

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