

Exhibit 1

12-Person Jury

Return Date: No return date scheduled
Hearing Date: 1/21/2020 9:30 AM - 9:30 AM
Courtroom Number: 2301
Location: District 1 Court
Cook County, IL

FILED
9/20/2019 9:24 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2019CH10873
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

FILED DATE: 9/20/2019 9:24 AM 2019CH10873

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| <p>BRADLEY ACALEY, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>VIMEO, INC., a Delaware corporation,</p> <p>Serve Registered Agent: [The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801]</p> <p style="text-align: center;">Defendant.</p> |
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Case No.
(JURY TRIAL DEMANDED)

CLASS ACTION COMPLAINT

Plaintiff Bradley Acaley ("Plaintiff"), individually and on behalf of all others similarly situated, brings this Class Action Complaint for violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* ("BIPA"), against Vimeo, Inc. ("Vimeo"), and alleges as follows based on personal knowledge as to himself, on the investigation of his counsel and the advice and consultation of certain third-party agents as to technical matters, and on information and belief as to all other matters, and demands trial by jury:

NATURE OF ACTION

1. Plaintiff brings this action for damages and other legal and equitable remedies resulting from the illegal actions of Vimeo in collecting, storing, and using Plaintiff's and other

similarly situated individuals' biometric identifiers¹ and biometric information² (collectively, "biometrics") without informed written consent, in direct violation of BIPA.

2. The Illinois Legislature has found that "[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information." 740 ILCS 14/5(c). "For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions." *Id.*

3. In recognition of these concerns over the security of individuals' biometrics—particularly in the City of Chicago, which was recently selected by major national corporations as a "pilot testing site[] for new applications of biometric-facilitated financial transactions, including finger-scan technologies at grocery stores, gas stations, and school cafeterias" (740 ILCS 14/5(b))—the Illinois Legislature enacted the BIPA, which provides, *inter alia*, that a private entity like Vimeo may not obtain and/or possess an individual's biometrics unless it: (1) informs that person in writing that biometric identifiers or information will be collected or stored, *see id.*; (2) informs that person in writing of the specific purpose and length of term for which such biometric identifiers or biometric information is being collected, stored and used, *see id.*; (3) receives a written release from the person for the collection of his or her biometric identifiers or information, *see id.*; and (4) publishes publicly available written retention schedules and guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a).

¹ A "biometric identifier" is any personal feature that is unique to an individual, including fingerprints, iris scans, DNA and "face geometry," among others.

² "Biometric information" is any information captured, converted, stored, or shared based on a person's biometric identifier used to identify an individual.

4. In direct violation of each of the foregoing provisions of § 15(a) and § 15(b) of the BIPA, Vimeo is actively collecting, storing, and using—without providing notice, obtaining informed written consent or publishing data retention policies—the biometrics of thousands of unwitting individuals throughout the country whose faces appear in photographs and/or videos uploaded to the Magisto “smart video editor” application in Illinois.

5. Specifically, Vimeo has created, collected and stored, in conjunction with its cloud-based Magisto service, thousands of “face templates” (or “face prints”)—highly detailed geometric maps of the face—from thousands of Magisto users. Vimeo creates these templates using sophisticated facial recognition technology that extracts and analyzes data from the points and contours of faces that appear in photos and videos taken on mobile devices and uploaded to the Magisto app. Each face template that Vimeo extracts is unique to a particular individual, in the same way that a fingerprint or voiceprint uniquely identifies one and only one person.

6. Plaintiff brings this action individually and on behalf of all others similarly situated to prevent Vimeo from further violating the privacy rights of Magisto users, and to recover statutory damages for Vimeo’s unauthorized collection, storage, and use of these individuals’ biometrics in violation of the BIPA.

PARTIES

7. Plaintiff is, and has been at all relevant times, a resident and citizen of Illinois.

8. Vimeo is a Delaware corporation with its headquarters at 555 West 18th Street, New York, New York 10011. Accordingly, Vimeo is a citizen of the states of Delaware and New York.

JURISDICTION AND VENUE

9. This is a class action complaint for violations of BIPA (740 ILCS 14/1, *et seq.*), seeking statutory and actual damages.

10. No federal question is presented by this complaint. Plaintiff brings this complaint solely under state law and not under federal law, and specifically not under the United States Constitution, nor any of its amendments, nor under 42 U.S.C. § 1981 or 1982, nor any other federal statute, law, rule, or regulation. Plaintiff believes and alleges that a cause of action exists under state law for the conduct complained of herein.

11. This class action is brought on behalf of only Illinois citizens residing within the State of Illinois whose biometric information was uploaded to Vimeo within the State of Illinois.

12. Venue is proper under 735 ILCS 5/1-108 and 2-101 of the Illinois Code of Civil Procedure, as a substantial portion of the transactions giving rise to the causes of action pleaded herein occurred in Cook County. Specifically, upon information and belief, Vimeo's collection of Plaintiff's and numerous other class members' biometric information occurred within Cook County, Illinois.

FACTUAL BACKGROUND

I. Biometric Technology Implicates Consumer Privacy Concerns

13. "Biometrics" refers to unique physical characteristics used to identify an individual. One of the most prevalent uses of biometrics is in facial recognition technology, which works by scanning a human face or an image thereof, extracting facial feature data based on specific "biometric identifiers" (*i.e.*, details about the face's geometry as determined by facial points and contours), and comparing the resulting "face template" (or "faceprint") against the face templates stored in a "face template database." If a database match is found, an individual may be identified.

14. The use of facial recognition technology in the commercial context presents numerous consumer privacy concerns. During a 2012 hearing before the United States Senate Subcommittee on Privacy, Technology, and the Law, U.S. Senator Al Franken stated that "there is nothing inherently right or wrong with [facial recognition technology, but] if we do not stop and

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