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8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**

11 C.H., a minor, by and through his
 Guardian, Marc Halpin, individually and
 12 on behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 TIKTOK, INC., a corporation, and
 16 BYTEDANCE, INC., a corporation,

17 Defendants.

Case No.

CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL

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1 Plaintiff C.H., a minor, by and through his guardian, (“Plaintiff), individually
2 and on behalf of all others similarly situated, allege as follows against Defendants
3 TikTok, Inc. (“TikTok”) both individually and as a successor-in-interest to
4 Musical.ly, Inc. (“musical.ly”) and ByteDance, Inc. (“ByteDance”) (collectively,
5 “Defendants”):

6 **I. INTRODUCTION**

7 1. Defendant TikTok maintains and operates one of the fastest growing
8 social media applications in the United States (“App”). The App is a video-sharing
9 network that allows users to create, view, and share short videos.

10 2. Unknown and undisclosed to its users, the App collects, stores and uses
11 private, biometric information and biometric identifiers of users and those whose
12 faces appear in users’ videos.

13 3. The App scans a user’s facial geometry and its algorithm subsequently
14 uses that information to determine an estimate of the user’s age. The App also scans
15 facial geometry of any subject that appears in a video to allow users to impose
16 animated features onto the video subject’s face or otherwise alter the video subject’s
17 face. TikTok encourages users to use these facial effects.

18 4. Defendants’ collection, storage, and use of biometric identifiers or
19 biometric information is in violation of the Illinois Biometric Information Privacy
20 Act, 740 ILCS 14/1 *et seq.* (“BIPA”).

21 5. Despite the BIPA’s requirement that private entities such as the
22 Defendants receive informed consent prior to the collection of biometric identifiers
23 or information, Defendants do not inform users that the App collects, captures,
24 receives, obtains, stores, or otherwise uses the biometric identifiers or biometric
25 information of users or the biometric identifiers or biometric information of their
26 video subjects. Given that users are not informed of Defendants’ collection of
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1 biometric identifiers or biometric information, users cannot, and have not, provided
2 informed consent.

3 6. Defendants separately violate the BIPA by failing to develop a written
4 policy, made available to the public, that establishes the retention schedule and
5 guidelines for permanently destroying biometric data. Defendants do not disclose
6 what they do with the biometric data, who has access to that biometric data, where
7 that biometric data is stored, how long that biometric data is stored, or any guidelines
8 for the destruction of biometric data.

9 7. Plaintiff brings this action individually and on behalf of a proposed
10 class to enjoin Defendants' ongoing violations of the BIPA and to recover statutory
11 damages for Plaintiff and Class members for each violation of the BIPA by the
12 Defendants.

13 **II. JURISDICTION AND VENUE**

14 8. This Court has jurisdiction pursuant to the Class Action Fairness Act,
15 28 U.S.C. § 1332(d). This is a class action in which the amount in controversy is in
16 excess of \$5,000,000, excluding interest and costs. Putative Class members and
17 Defendants are citizens of different states. There are more than 100 putative Class
18 members.

19 9. This Court has personal jurisdiction over Defendants. Both Defendants
20 regularly conduct business in the State of California, including, actions associated
21 with the misconduct described in this Complaint. Both Defendants maintain their
22 principal places of business in California, and Defendant TikTok, Inc. is
23 incorporated in California.

24 10. Venue is proper in the jurisdiction pursuant to 28 U.S.C. §§ 1391(b),
25 (c), and (d), because a substantial part of the events or omissions giving rise to
26 Plaintiff's claims occurred in this District. TikTok maintains its principal place of
27 business in this District.

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1 **III. PARTIES**

2 11. Plaintiff C.H. is a 16-year old minor and a resident and citizen of
3 Illinois. C.H. brings this action through his father and guardian, Marc Halpin, who
4 is also a resident and citizen of Illinois.

5 12. C.H. is a registered user of the TikTok App and has used the App
6 regularly to upload videos and use the App's facial filters on his own image and the
7 images of others who appeared in his videos.

8 13. Plaintiff did not know or expect that Defendants collect, store, and use
9 his biometric identifiers and biometric information when he uses the App or that
10 Defendants collect, store, and use the biometric identifiers and biometric information
11 of others whose faces appear in his videos. If Plaintiff had known, Plaintiff would
12 not have used the App.

13 14. Neither Plaintiff, nor his legally authorized guardian, ever received
14 notice from Defendants (written or otherwise) that Defendants would collect, store,
15 or use his biometric identifiers or biometric information or that Defendants would
16 collect, store, or use the biometric identifiers or biometric information of those
17 whose faces appeared in videos he uploaded to the App.

18 15. Neither Plaintiff, nor his legally authorized guardian, ever received
19 notice from Defendants of the specific purpose and length of time that Defendants
20 would collect, store, or use Plaintiff's biometric identifiers or biometric information
21 or the specific purpose and length of time that Defendants would collect, store, or
22 use the biometric identifiers or biometric information of those whose faces appeared
23 in Plaintiff's videos.

24 16. Neither Plaintiff, nor his legally authorized guardian, recall seeing the
25 Terms of Service or Privacy Policies upon registered for an account with the App.
26 Plaintiff does not recall seeing any notification from Defendants regarding changes
27 to these policies.

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1 17. Defendant TikTok, Inc. is, and at all relevant times, was, a California
2 corporation with its principal place of business in Culver City, California. It is sued
3 in its individual capacity and as the successor-in-interest to Musical.ly, Inc.

4 18. Defendant ByteDance Inc. is, and at all relevant times was, a Delaware
5 corporation with its principal place of business in Palo Alto, California. ByteDance
6 Ltd., a company based in China, is the parent corporation of ByteDance, Inc.

7 **IV. FACTUAL ALLEGATIONS**

8 ***A. Biometrics and Consumer Privacy***

9 19. Biometrics are unique biological measurements that can be used for
10 identification and authentication.

11 20. Common biometric identifiers include retina or iris scans, fingerprints
12 voiceprints, fingerprints, and scans of hand or face geometry.

13 21. Recent improvements in facial recognition software has resulted in the
14 growing capture, collection, and use of biometric data in commercial applications.
15 The rise in commercial applications of facial recognition technology has also
16 generated significant concern about the erosion of personal privacy and the potential
17 for abuse inherent in the collection of an individual's unique biological information.

18 22. Despite the privacy concerns raised by regulators, legislators, and
19 others, Defendants failed to obtain consent from Plaintiff and Class members before
20 it employed its facial recognition technology on their images.

21 ***B. The Illinois Biometric Information Privacy Act***

22 23. Illinois recognizes that biometrics are unlike other unique identifiers
23 such as social security numbers or a driver's license that, when compromised, can
24 be changed. Biometrics "are biologically unique to the individual"; therefore, "once
25 compromised, the individual has no resource" and "is at heightened risk of identity
26 theft." 740 ILCS 14/15. To protect the biometric identifiers and biometric
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1 information of Illinois citizens, like the Plaintiff and Class members, Illinois enacted
2 the Illinois Biometric and Information Privacy Act (“BIPA”) in 2008.

3 24. Section 15(b) of the BIPA provides that no private entity, such as the
4 Defendants, may collect, capture, or otherwise obtain a person’s or a customer’s
5 biometric identifier or biometric information, unless it first:

6 (1) informs the subject or the subject’s legally authorized representative
7 in writing that a biometric identifier or biometric information is being
collected or stored;

8 (2) informs the subject or the subject’s legally authorized representative
9 in writing of the specific purpose and length of term for which a
10 biometric identifier or biometric information is being collected, stored
and used; and

11 (3) receives a written release executed by the subject of the biometric
12 identifier or biometric information or the subject’s legally authorized
representative.

13 740 ILCS 14/15(b).

14 25. The statute defines a “written release” to mean “informed written
15 consent.” *Id.*

16 26. Section 15(a) of BIPA provides:

17 A private entity in possession of biometric identifiers or biometric
18 information must develop a written policy, made available to the public,
19 establishing a retention schedule and guidelines for permanently
20 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 comes first.

21 740 ILCS 14/15(a).

22 27. Section 15(c) of BIPA provides that no private entity, such as the
23 Defendants, in possession of biometric identifier or biometric information “may
24 disclose, redisclose, or otherwise disseminate a person’s or a customer’s biometric
25 identifier or biometric information” unless “the subject of the biometric identifier or
26 biometric information or the subject’s legally authorized representative consents to
27 the disclosure or redisclosure.” 740 ILCS 14/15(d)(1).

1 28. Within the definition of a “biometric identifier” in the BIPA, it
2 specifically includes “a retina or iris scan, fingerprint, voiceprint, or scan of hand or
3 face geometry.” 740 ILCS 14/10. The statute defines “biometric information” to
4 mean “any information, regardless of how it is captured, converted, stored, or shared,
5 based on an individual’s biometric identifier used to identify an individual.” *Id.*

6 29. BIPA further prohibits a private entity, such as the Defendants, that
7 possess biometric identifiers or biometric information from selling, leasing, trading,
8 or otherwise profiting from a person’s or a customer’s biometric identifier or
9 biometric information. 740 ILCS 14/15(c).

10 30. Any private entity that possesses biometric identifiers or biometric
11 information is required to store, transmit, and protect the biometric identifiers and
12 biometric information using the “reasonable standard of care within the private
13 entity’s industry.” 740 ILCS 14/15(e).

14 ***C. Defendants Violate Illinois’s Biometric Information Privacy Act***

15 31. ByteDance Inc. is a Delaware corporation. Its parent company,
16 ByteDance Ltd., is based in China.

17 32. ByteDance Ltd. initially launched the TikTok App (originally called
18 “A.me” in China but now called “Douyin”) in China. In 2016, the App was launched
19 for iOS and Android in markets outside of China.

20 33. In 2017, ByteDance purchased musical.ly., a video-based social
21 network that, like the TikTok App, allowed users to create and share short videos.
22 Paul Mozur, *Musical.ly, a Chinese App Big in the U.S., Sells for \$1 Billion*, New
23 York Times (Nov. 10, 2017), available at <https://nyti.ms/2zKQtZv> (last accessed
24 May 28, 2020). The Musical.ly App collected, used, stored, and otherwise obtained
25 face scans of users and video subjects to allow the use of face filters without
26 informed consent in violation of the BIPA. TikTok merged the TikTok App with the
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1 Musical.ly App to create a single video-based social network under the “TikTok”
2 name.

3 34. The TikTok App has become one of the fastest growing social media
4 platforms worldwide and in the United States. It has been downloaded more than 1.3
5 billion times worldwide and more than 120 million times in the United States.

6 35. The TikTok App is immensely popular with a younger demographic.
7 “About 60% of TikTok’s 26.5 million monthly active users in the United States are
8 between the ages of 16 and 24.” Greg Roumeliotis, et al., *U.S. Opens National*
9 *Security Investigation into TikTok*, Reuters (Nov. 1, 2019), available at
10 <https://reut.rs/2yFv7fC> (last accessed May 28, 2020).

11 36. The TikTok App uses an artificial intelligence tool that automatically
12 scans the faces of individuals appearing in videos posted to the App to estimate the
13 subjects’ ages. See, e.g., Georgia Wells Yoree Koh, *TikTok Wants to Grow Up but*
14 *Finds it Tough to Keep Kids Out*, Wall Street Journal (Feb. 16, 2020), available at
15 <https://on.wsj.com/2ZL9uFV> (last accessed May 28, 2020).

16 37. The TikTok App also contains a feature that permits users to
17 superimpose facial features onto a subject’s moving face and which allows for
18 editing of facial features. These features work by scanning the unique facial
19 geometry of individuals, like Plaintiff and Class members, that appear in videos
20 posted to the TikTok App.

21 38. Embedded within the App is another feature that “is designed to let
22 users’ face-swap onto a selection of source videos” which “requires TikTok users to
23 create a detailed multiple-angle biometric scan of their faces.” Peter Suciu, *TikTok’s*
24 *Deepfakes Just the Latest Security Issue for the Video Sharing App* Forbes (Jan. 7,
25 2020), available at < <https://bit.ly/3ero9du> > (last accessed May 28, 2020).

26 39. TikTok’s features that result in the capture, collection, and use of scans
27 of facial geometry and facial features raise significant privacy concerns.

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1 40. Upon information and belief, Defendant TikTok shares its users’
2 private information, including biometric identifiers and information, with other
3 members of its corporate family during the Class period, including Defendant
4 ByteDance., and with its advertising partners. *See, e.g.* TikTok Privacy Policy (as of
5 May 28, 2020), available at <https://www.tiktok.com/legal/privacy-policy?lang=en>
6 (last accessed May 28, 2020). According to a ByteDance representative “that people
7 made their faces available to other platforms, too.” Jay Tolentino, *How TikTok Holds*
8 *Our Attention* (Sept. 23, 2019), *The New Yorker*, available at <
9 <https://bit.ly/3dcku2N>> (last accessed May 28, 2020).

10 41. Defendants’ capture, collection and use of Plaintiff’s and Class
11 members’ biometric identifiers or biometric information, including but not limited
12 to scans of facial geometry and/or facial landmarks, violates all three prongs of
13 Section 15(b) of the BIPA.

14 42. First, Defendants do not inform Plaintiff or Class members or their
15 legally authorized representatives that it collects, captures, receives, obtains, stores,
16 shares or uses their biometric identifiers or biometric information, as required by
17 Section 15(b)(1).

18 43. Second, Defendants do not inform Plaintiff or Class members or their
19 legally authorized representatives in writing (or otherwise) of the specific purpose
20 and length of term for which a biometric identifier or biometric information is being
21 collected, stored, or used, as required by Section (b)(2).

22 44. Third, Defendants have never obtained a written release or consent
23 from Plaintiff or Class members or their legally authorized representatives before
24 the collection, capture, storage, and/or use of their biometric identifiers and
25 biometric information, as required by Section 15(b)(3).

26 45. Defendants also violate Section 15(a) of BIPA, by failing to develop a
27 written policy, made available to the public, establishing a retention schedule and
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1 guidelines for permanently destroying biometric identifiers and biometric
2 information when the initial purpose for collecting or obtaining such identifiers or
3 information has been satisfied or within 3 years of the individual's last interaction
4 with the TikTok App, whichever occurs first.

5 46. Defendants' violation of the BIPA have harmed Plaintiff by, among
6 other things, violating their privacy and taking away their right to maintain and
7 control their biometric identifiers and biometric information. Defendants' privacy
8 invasions are especially troubling given that many of its users are minors.

9 **V. CLASS ACTION ALLEGATIONS**

10 47. Plaintiff brings this lawsuit pursuant to Rule 23(a), (b)(1), (b)(2), and
11 (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class:

12 48. All individuals who had their biometric identifiers or biometric
13 information, including scans of face geometry, collected, captured, received, or
14 otherwise obtained by the Defendants through the Musical.ly or the TikTok App,
15 while residing in Illinois.

16 49. Excluded from the Class are Defendants, as well as its legal
17 representatives, officers, employees, assigns and successors, as well as all past and
18 present employees, officers, and directors of Defendants. Also excluded from the
19 Class is any judge or judicial officer who presides over this action and members of
20 their immediate families and judicial staff.

21 50. Plaintiff reserves the right to amend the class definition based on
22 information obtained through discovery or further investigation.

23 51. ***Numerosity***: The number of Class members is so numerous that joinder
24 is impracticable. Plaintiff will be able to determine the exact number of Class
25 members and identify each Class member through appropriate discovery, including
26 discovery of Defendants' business records. Class members can be ascertained by
27 objective criteria, such as use and geographic information. At a minimum, the Class
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1 contains thousands of persons. The disposition of Class members' claims in a single
2 action will benefit the parties and the Court.

3 52. **Commonality:** There are questions of law and fact common to Plaintiff
4 and all Class members that predominate over any questions that affect any individual
5 Class member, including but not limited to:

- 6 a. Whether Defendants collected, stored, or otherwise used
7 Plaintiff's and Class members' biometric identifiers or biometric
8 information;
- 9 b. Whether Defendants properly informed Plaintiff and Class
10 members that it collected, stored, or otherwise used their
11 biometric identifiers or biometric information;
- 12 c. Whether Defendants informed Plaintiff and Class members of
13 the specific purpose and length of term for which their biometric
14 identifier or biometric information would be collected, stored,
15 and/or used;
- 16 d. Whether Defendants obtained written release (as defined in 740
17 ILCS 14/10) from Plaintiff and Class members to collect, store,
18 and/or use their biometric identifiers or biometric information;
- 19 e. Whether Defendants developed a written policy, made available
20 to the public, including Plaintiff and Class members, that
21 established a retention schedule and guidelines for permanently
22 destroying biometric identifiers and biometric information;
- 23 f. Whether Defendants' violations of the BIPA were committed
24 intentionally, recklessly, or negligently;
- 25 g. Whether Plaintiff and Class members are entitled to statutory
26 damages under the BIPA; and
- 27 h. Whether Plaintiff and Class members are entitled to declaratory
28 and injunctive relief.

53. **Typicality:** All of Plaintiff's claims are typical of the claims of the
proposed Class he seeks to represent. His claims arise from the same conduct and
practices that give rise to the claims of all Class members and are based on the same
legal theories. Plaintiff, like all Class members, has had his biometric identifiers or
biometric information collected, stored, and/or used by Defendants without his
knowledge and without his informed consent.

1 59. In violation of 740 ILCS 14/15(b)(1), Defendants did not inform
2 Plaintiff and Class members or their legally authorized representatives in writing
3 that their biometric identifiers or biometric information would be collected or stored.

4 60. In violation of 740 ILCS 14/15(b)(2), Defendants did not inform
5 Plaintiff and Class members or their legally authorized representative in writing of
6 the specific purpose and length of term for which a biometric identifier or biometric
7 information is being collected, stored, and used.

8 61. In violation of 740 ILCS 14/15(b)(3), Defendants collected, captured,
9 received, otherwise obtained, stored, and/or used Plaintiff's and Class members'
10 biometric identifiers and information without first obtaining a written release.

11 62. By collecting, capturing, receiving, otherwise obtaining, storing, and/or
12 using Plaintiff's and the other Class members' biometric identifiers and biometric
13 information, Defendants violated the rights of Plaintiff and Class members to keep
14 private these biometric identifiers and biometric information.

15 63. These privacy violations already have harmed Plaintiff and the other
16 Class members and will continue to harm, in an amount to be proven at trial.

17 64. Upon information and belief, Defendants' violations of 740 ILSC
18 14/15(b) were intentional or reckless. Defendants deliberately designed and
19 implemented the artificial intelligence tools and facial filters in the TikTok App that
20 collect, capture, receive, otherwise obtain, store, and/or use biometric identifiers and
21 biometric information. In addition, Defendants intentionally or recklessly did not
22 obtain informed consent before it collected, captured, received, or otherwise
23 obtained, stored, and/or used Plaintiff's and Class members' biometric identifiers or
24 biometric information. In the alternative, Defendants acted negligently by failing
25 ensure that TikTok App users were informed of and consented to Defendants'
26 collecting, capturing, receiving, otherwise obtaining, storing, and/or using their
27 biometric information and biometric identifiers.

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1 70. Defendants possess the biometric identifiers or information of Plaintiff
2 and the other Class members but do not publicly provide a retention schedule or
3 guidelines for permanently destroying such identifiers or information, as required by
4 740 ILCS 2313/15(a).

5 71. Upon information and belief, Defendants do not maintain retention
6 schedules and guidelines for permanently destroying Plaintiff's and the other Class
7 members' biometric data. Each Defendant has failed or does not intend to destroy
8 Plaintiff's and the other Class members' biometric data when the initial purpose for
9 collecting or obtaining such data has been satisfied or within three years of the
10 individual's last interaction with the company.

11 72. Upon information and belief, Defendants' BIPA violations were
12 intentional and reckless because Defendants deliberately failed to publicly disclose
13 a retention schedule or guidelines for permanently destroying biometric identifiers
14 or biometric information, as required by 740 ILCS 2313/15(a).

15 73. Alternatively, Defendants' BIPA violations were negligent because
16 Defendants breached the applicable standard of care by failing to publicly provide a
17 retention schedule or guidelines for permanently destroying such identifiers or
18 information, as required by 740 ILCS 2314/15(a).

19 74. Individually and on behalf of the Class, Plaintiff seeks: (1) injunctive
20 and equitable relief as is necessary to protect the interests of Plaintiff and Class
21 members by requiring Defendants to comply with BIPA's requirements for the
22 collection, capture, storage, and use of biometric identifiers and biometric
23 information; (2) statutory damages of \$5,000 for each intentional and reckless
24 violation of BIPA pursuant to 740 ILSC 14/20(2) or, alternatively, statutory damages
25 of \$1,000 for each negligent violation pursuant to 740 ILCS 14/20(1); and (3)
26 reasonable attorneys' fees and costs and other litigation expenses pursuant to 740
27 ILCS 14/20(3).

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THIRD CAUSE OF ACTION

Violations of 740 ILCS 14/15(d)

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3 75. Plaintiff incorporates the foregoing allegations as if fully set forth
4 herein.

5 76. Defendants are “private entities” as defined by 740 ILCS 14/10 because
6 Defendant TikTok is a California corporation and Defendant ByteDance, Inc. is a
7 Delaware corporation.

8 77. Plaintiff and Class members are individuals who had their biometric
9 identifiers or biometric information collected, captured, received, obtained, stored,
10 and/or used by Defendants through the TikTok App.

11 78. BIPA prohibits private entities from disclosing, redisclosing, or
12 otherwise disseminating a person’s or a customer’s biometric identifiers or biometric
13 information without first obtaining consent for that disclosure. 740 ILCS
14 14/15(d)(1).

15 79. Defendants disclosed, redisclosed, or otherwise disseminated Plaintiff
16 and Class members’ biometric identifiers and biometric information without the
17 required consent pursuant to 740 ILCS 14/15(d)(1).

18 80. By disclosing, redisclosing, or otherwise disseminating Plaintiff’s and
19 other Class members’ biometric identifiers and biometric information, Defendants
20 violated Plaintiff’s and Class members’ right to maintain control over their biometric
21 identifiers and/or biometric information as codified in BIPA. 740 ILCS 14/11, et seq.

22 81. Upon information and belief, Defendants’ BIPA violations were
23 intentional and reckless because Defendants deliberately disseminated Plaintiff’s
24 and Class members’ biometric identifiers and biometric information without first
25 obtaining the required consent.

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1 82. Alternatively, Defendants' BIPA violations were negligent because
2 Defendants negligently disseminated Plaintiff's and Class members' biometric
3 identifiers and biometric information without first obtaining the required consent.

4 83. Individually and on behalf of the Class, Plaintiff seeks: (1) injunctive
5 and equitable relief as is necessary to protect the interests of Plaintiff and Class
6 members by requiring Defendants to comply with BIPA's requirements for the
7 collection, capture, storage, and use of biometric identifiers and biometric
8 information; (2) statutory damages of \$5,000 for each intentional and reckless
9 violation of BIPA pursuant to 740 ILCS 14/20(2) or, alternatively, statutory damages
10 of \$1,000 for each negligent violation pursuant to 740 ILCS 14/20(1); and (3)
11 reasonable attorneys' fees and costs and other litigation expenses pursuant to 740
12 ILCS 14/20(3).

13 **VI. PRAYER FOR RELIEF**

14 84. WHEREFORE, Plaintiff, individually and on behalf of all other
15 similarly situated, requests that the Court enter the following judgment against
16 Defendants:

- 17 a. That this action and the proposed class be certified and
18 maintained as a class action, appointing Plaintiff as a proper
19 representative of the Class herein, and appointing the attorneys
20 and law firm representing Plaintiff as counsel for the Class;
- 21 b. Enter judgment against Defendants on Plaintiff's and Class
22 members' asserted causes of action;
- 23 c. Award statutory damages of \$5,000 for each intentional and
24 reckless violation of BIPA pursuant to 740 ILCS 14/20(2), award
25 statutory damages of \$1,000 for each negligent violation of BIPA
26 pursuant to 740 ILCS 14/20(1);
- 27 d. Award injunctive and other equitable relief as is necessary to
28 protect the interests of the Class, including, *inter alia*, an order
requiring TikTok to collect, store, and use biometric identifiers
or biometric information in compliance with BIPA;
- e. Award Plaintiff and the Class their reasonable litigation expenses
and attorneys' fees;
- f. Pre-judgment and post-judgment interest as provided by law; and

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g. Such additional and equitable relief that this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable pursuant to Federal Rule of Civil Procedure 38(b).

Dated: June 5, 2010

Respectfully submitted,
SUSMAN GODFREY L.L.P.

/s/ Steven Sklaver

Steven Sklaver
Kalpana Srinivasan
Michael Gervais

Attorneys for Plaintiff and Proposed Class