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

ANGELA HOGAN and B.H., a minor, by and through his guardian Angela Hogan, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC. and AMAZON.COM SERVICES LLC,

Defendants.

Case No. 2021CH02330

Hon. Caroline Kate Moreland

SECOND AMENDED CLASS ACTION COMPLAINT

[REDACTED]

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Plaintiffs Angela Hogan and B.H., a minor, by and through his guardian Angela Hogan, bring this action against Defendants Amazon.com, Inc., and Amazon.com Services LLC, individually and on behalf of all others similarly situated, and allege the following based on personal knowledge, the investigation of counsel, and information and belief.

I. INTRODUCTION

1. BIPA addresses the dangers posed by the mishandling of biometric identifiers and information (collectively, "biometric data") by providing a right of action to any person who is subjected to a violation of the Act within the State of Illinois. 740 ILCS 14/20.

2. As relevant here, a private entity in the possession of biometric identifiers or information violates BIPA when it (i) fails to develop, publicly disclose, *and comply with* "a retention schedule and guidelines for permanently destroying biometric identifiers and information." 740 ILCS 14/15(a) (emphasis added); or (ii) fails to store, transmit, and protect from disclosure biometric data "using the reasonable standard of care within the private entity's industry" or "in a manner that is the same or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information," *id.* § 15(e).

3. Amazon Photos (originally called Amazon Prime Photos) was launched in November 2014. A cloud-based photo storage, sharing, and organization platform, Amazon Photos provides all Amazon Prime subscribers—in Illinois and elsewhere—with "unlimited

photo storage" and "enhanced search and organization features,"[1] including image recognition. Amazon Photos' image-recognition features analyze billions of images daily.[2]

4. Currently, there are about 150 million Amazon Prime subscribers in the United States;[3] approximately 5.8 million of those subscribers reside in the State of Illinois.

5. An Amazon Prime subscription costs $14.99 per month or $139 per year if paid annually. Amazon therefore earns hundreds of millions of dollars a year from Illinois citizens who purchase a Prime subscription, of which Amazon Photos is one feature.

6. Consumers who use Amazon Photos can enable or disable the image-recognition feature. There are hundreds of thousands of Photos accounts of Illinois residents that have image recognition enabled.

7. When a photo taken in the State of Illinois containing an image of a person's face is stored in one of those hundreds of thousands of accounts—or in any of the other millions of Amazon Photos accounts of non-Illinois residents that have image-recognition enabled—facial-recognition technology obtains that person's biometric identifiers in the form of a "scan . . . of face geometry."[4]

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[1] *What Is Amazon Photos*, AMAZON.COM (last visited May 6, 2021), https://amzn.to/3w9Wl9 khttps://www.amazon.com/gp/help/customer/display.html?nodeId=G6PT8TMLM9NVZCSL (URL no longer available).

[2] Werner Vogels, *Bringing the Magic of Amazon AI and Alexa to Apps on AWS*, ALL THINGS DISTRIBUTED (Nov. 30, 2016) ("Amazon Rekognition is a fully managed, deep learning–based image analysis service, built by [Amazon's] computer vision scientists with the same proven technology that has already analyzed billions of images daily on Amazon Prime Photos."), https://www.allthingsdistributed.com/2016/11/amazon-ai-and-alexa-for-all-aws-apps.html.

[3] Thomas Joseph, *Amazon Prime Statistics 2022: How Many Amazon Prime Members are There?*, CHERRY PICKS REVIEWS (Aug. 24, 2022), https://www.cherrypicksreviews.com/blog/amazon-prime-statistics.

[4] 740 ILCS 14/10 (defining "biometric identifier").

8. The facial-recognition feature of Amazon Photos doesn't obtain biometric identifiers and information of only Prime subscribers who use the service ("account holders"); Amazon scans the facial geometry of *every* person who appears in an image saved to an account with image recognition enabled, regardless of whether that person is a Prime member or someone who has no idea that a photo of them has been uploaded to the platform.

9. The Amazon Photos service is operated by both Amazon.com, Inc., and its subsidiary Amazon.com Services LLC (collectively "Amazon").

10. As a private entity in the possession of biometric identifiers obtained through its facial-recognition algorithm, Amazon has violated, and continues to violate, § 15(a) of BIPA by failing to comply with its publicly available retention schedule and guidelines for permanently destroying the biometric identifiers—namely, scans of facial geometry—obtained from pictures uploaded to Amazon Photos. 740 ILCS 14/15(a).

11. Amazon represents that its policy governing the retention of biometric data is embodied in its publicly available Terms of Use and its File Retention Policy.[5] But Amazon does not comply with the retention schedule and destruction guidelines set out in those documents, as required by § 15(a).[6]

12. Amazon also has violated and continues to violate § 15(e) of BIPA by failing to ensure the security of the biometric data that it collects through Amazon Photos.

13. Section 15(e) requires that a private entity in the possession of biometric data must both **(i)** "store, transmit, and protect from disclosure all biometric identifiers and

[5] Def. Amazon.com, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss Pls.' First Am. Class Action Compl., at 8–9 (July 14, 2022).

[6] 740 ILCS 14/15(a) ("Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information **must comply** with its established retention schedule and destruction guidelines." (emphasis added)).

biometric information using the reasonable standard of care within the private entity's industry" and **(ii)** "store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information."

14. Despite having untold resources at its disposal, Amazon has failed to comply with § 15(e) on both counts: Amazon neither uses the reasonable standard of care to protect the biometric data obtained through Photos, nor does it protect that biometric data in a manner comparable to the way that it protects other confidential and sensitive information. In short, Amazon has violated § 15(e) by compromising the security of the biometric data of Plaintiffs and millions of Class Members.

II. PARTIES

15. Plaintiff Angela Hogan is a natural person and citizen of the State of Illinois.

16. Plaintiff B.H., a minor, and his parent and guardian Angela Hogan are natural persons and citizens of the State of Illinois.

17. Defendant Amazon.com, Inc. is a Delaware corporation with a principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210.

18. Defendant Amazon.com Services LLC is a Delaware corporation with a principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210.

III. JURISDICTION AND VENUE

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

20. No federal question is presented by this complaint. Plaintiffs bring 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. Plaintiffs believe and alleges that a cause of action exists under state law for the conduct complained of herein.

21. This class action is brought on behalf of Illinois citizens residing within the State of Illinois whose biometric identifiers and information are stored in Amazon Photos, as well as other persons whose photograph was taken in Illinois, stored in Amazon Photos, and processed by Amazon to extract biometric identifiers and information.

22. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court's jurisdiction. This Court has personal jurisdiction over Defendants because they deliberately targeted and exploited the Illinois market by acquiring millions of Prime subscribers in the state who have paid Defendants hundreds of millions of dollars a year just for their Prime memberships, which include the Amazon Photos service. Plaintiffs' claims arise out of and relate to Amazon's selling the Amazon Photos service within Illinois. Plaintiffs' claims therefore arise out of or relate to Defendants' contacts with the state of Illinois.

23. 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, Amazon's collection of Plaintiffs' and many Class Members' biometric data occurred within Cook County, Illinois.

IV. FACTUAL ALLEGATIONS

A. Deep learning, big tech, and the road to Rekognition.

1. The rise of facial recognition through "deep learning."

24. In general, "facial recognition" refers to the scanning of a person's face and matching it against a library of facial images. Facial recognition is a type of "image recognition"—a term that refers more broadly to computer technologies that can recognize people, animals, objects, or other targeted subjects using algorithms and machine learning.

25. Many of the recent advances in image-recognition technologies rely "on deep learning technology, an advanced type of machine learning and artificial intelligence."[7] Deep learning "works by building deep neural networks that simulate the mechanism of the human brain and then interpreting and analyzing data, such as image, video and text."[8]

26. Unlike other machine-learning algorithms, "[d]eep learning networks do not require human intervention because the nested algorithms run the data through different concepts which eventually learn from their own mistakes."[9] Thus, "[d]eep learning is suitable for instances where there are boatloads of data to analyze or complex problems to solve."[10]

27. This makes deep-learning networks particularly well suited to (among other things) image recognition, including facial recognition: "Face recognition leverages computer vision to extract discriminative information from facial images and deep learning

[7] Christine Facciolo, *The future of image recognition technology is deep learning*, TECHNICAL.LY (Sept. 20, 2019), https://technical.ly/dc/2019/09/20/image-recognition-technology-artificial-intelligence/.

[8] *Id.*

[9] *Id.*

[10] *Id.*

techniques to model the appearances of faces, classify them and transmit the data. Algorithms extract facial features and compare them to a database to find the best match."[11]

2. Tech behemoths race to perfect image-recognition technology via deep learning.

28. In 2014—the year that Amazon launched Amazon Photos—image recognition was being touted as "the tech world's 'next big thing,'" in large part because of advances in deep learning.[12] At the time, image-recognition technology had been in development for decades,[13] but Silicon Valley technology companies had only recently begun devoting immense resources to the development of such technology "to make the most of the vast amounts of data [including photos] that data users share with them."[14]

29. Facebook made a "big push" into image-recognition technology by purchasing the facial-recognition startup Face.com in 2012.[15] Only two years later, Facebook unveiled DeepFace, a deep-learning network that could purportedly "determine whether two photographed faces are of the same person with 97.25 percent accuracy."[16] By

[11] *Id.*

[12] Jess Bolluyt, *Why Image Recognition Is the Tech World's 'Next Big Thing,'* CHEATSHEET.COM (Sept. 14, 2014) ("Google's focus on deep learning, and explorations of its potential for image recognition, runs parallel to what other companies in Silicon Valley are researching."), https://www.cheatsheet.com/technology/why-image-recognition-is-the-tech-worlds-next-big-thing.html/.

[13] *The History of Face Recognition*, FACEFIRST BLOG (last visited May 12, 2022), https://www.facefirst.com/blog/brief-history-of-face-recognition-software/.

[14] Bolluyt, *supra* note 12.

[15] Kate Knibbs, *Inside Facebook's freakishly accurate face recognition technology*, DAILY DOT (Mar. 2, 2020), https://www.dailydot.com/debug/facebook-facial-recognition-deepface/.

[16] Dino Grandoni, *Facebook's New 'DeepFace' Program Is Just As Creepy As It Sounds*, HUFFINGTON POST (Mar. 18, 2014), https://www.huffpost.com/entry/facebook-deepface-facial-recognition_n_4985925.

early 2015, Facebook had begun using DeepFace to identify and tag its users in photos uploaded to Facebook.[17]

30. For its part, "Google started [an] acquisition spree in late 2012 with facial recognition company Viewdle and . . . continued picking up [other] neural networks."[18] By early 2015, Google was touting its own deep-learning facial-recognition system, called FaceNet, as "the most-accurate technology available for recognizing human faces," claiming that it "achieve[d] a new record accuracy of 99.63%" in face-matching.[19]

31. In 2015, Apple acquired the startup Perception, which "focuse[d] on image-based recognition and deep learning,"[20] and in early 2016 acquired Emotient, "an artificial intelligence startup that reads people's emotions by analysing facial expressions."[21] By mid-2016, Apple had updated its Photos app to incorporate "advanced computer vision, a group of deep learning techniques that [brought] facial recognition to the iPhone."[22]

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[17] Victoria Woolaston, *Facebook can tag you in photos AUTOMATICALLY: Social network starts rolling out DeepFace recognition feature*, THE DAILY MAIL (Feb. 9, 2015), https://www.dailymail.co.uk/sciencetech/article-2946186/Facebook-soon-tag-photos-AUTOMATICALLY-Social-network-starts-rolling-DeepFace-feature.html.

[18] Dan Rowinski, *Google's Game Of Moneyball In The Age Of Artificial Intelligence*, READWRITE (Jan. 29, 2014), https://readwrite.com/2014/01/29/google-artificial-intelligence-robots-cognitive-computing-moneyball/.

[19] Matt Prigg, *Google claims its 'FaceNet' system has almost perfected recognising human faces – and is accurate 99.96% of the time*, THE DAILY MAIL (Mar. 19, 2015), https://www.dailymail.co.uk/sciencetech/article-3003053/Google-claims-FaceNet-perfected-recognising-human-faces-accurate-99-96-time.html.

[20] Nathan Eddy, *Apple Acquires Perception, A Deep Learning, AI Specialist*, INFORMATIONWEEK (Oct. 6, 2015), https://www.informationweek.com/mobile/mobile-applications/apple-acquires-perceptio-a-deep-learning-ai-specialist/d/d-id/1322502.

[21] *Apple Buys Artificial Intelligence Startup Emotient: Report*, GADGETS 360 (Jan. 8, 2016), https://gadgets.ndtv.com/internet/news/apple-buys-artificial-intelligence-startup-emotient-report-787123.

[22] Bryan Clark, *Apple brings Google-style machine learning to 'Photos,'* TNW (June 13, 2016), https://thenextweb.com/apple/2016/06/13/apple-brings-google-style-machine-learning-to-photos/.

3. Amazon makes facial-recognition technology available to consumers through Amazon Photos and to businesses and governmental entities through Rekognition.

32. Amazon lagged slightly behind other tech giants in its development of facial-recognition technology but caught up quickly. In the fall of 2015, Amazon acquired the deep-learning startup Orbeus, Inc.—which had developed the PhotoTime app for both Apple's iOS and Google's Android operating system—and hired nearly all of its personnel.[23]

33. The PhotoTime app developed by Orbeus could "detect, tag, and sort features in photos, including objects, faces, scenes, and time."[24] PhotoTime was "based on Orbeus' ReKognition API [application-programming interface], which allowed other developers to build apps that use[d] the same photo-recognition technology."[25] Once Orbeus was acquired by Amazon, however, ReKognition was no longer available to new customers.[26]

34. By late 2016—a year after its acquisition of Orbeus—Amazon had further developed and integrated the image-recognition technology it had acquired into Amazon Photos.[27] Users of Amazon Photos were now able to find images of family members and

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[23] Rob Thubron, *Amazon quietly acquired AI image analysis startup Orbeus late last year*, TECHSPOT (Apr. 6, 2016), https://www.techspot.com/news/64358-amazon-quietly-acquired-ai-image-analysis-startup-orbeus.html; Jordan Novet, *Amazon hires team behind deep learning startup Orbeus*, VENTUREBEAT (Apr. 5, 2016), https://venturebeat.com/2016/04/05/amazon-orbeus-deep-learning/.

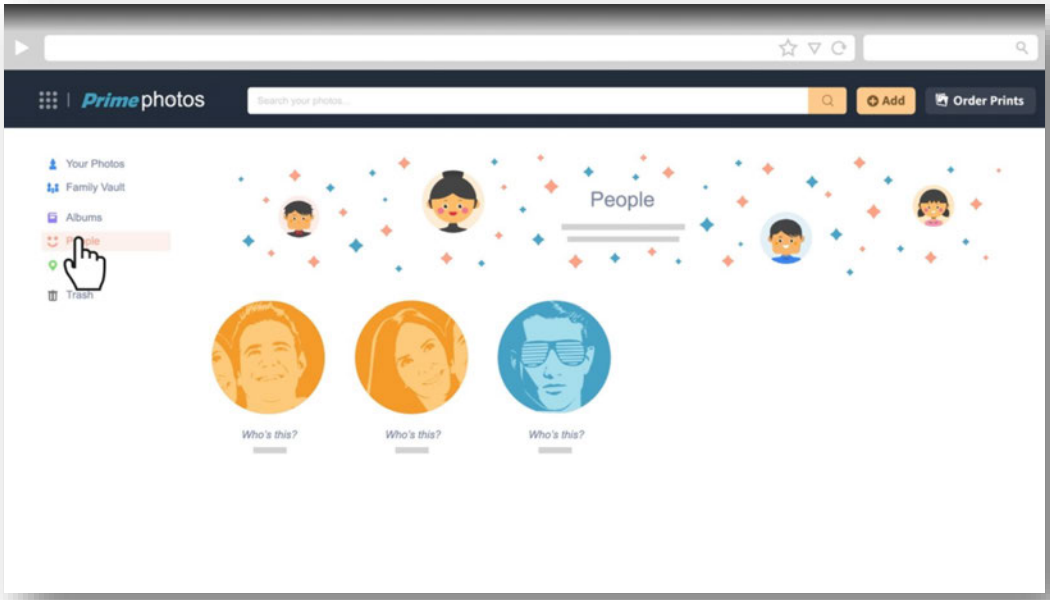
[24] Thubron, *supra* note 23.

[25] Thubron, *supra* note 23.

[26] Thubron, *supra* note 23.

[27] Ken Yeung, *Amazon's Prime Photos service now lets you share storage with 5 family members*, VENTUREBEAT (Oct. 18, 2016), https://venturebeat.com/2016/10/18/amazons-prime-photos-service-now-lets-you-share-storage-with-5-family-members/.

friends in their uploaded photos,[28] as images of the same person are grouped together automatically using facial recognition:[29]



35. Then, in January 2017, Amazon launched Rekognition—an updated version of the ReKognition (with a capital *K*) deep-learning application-programming interface it had acquired in 2015. Amazon markets and sells Rekognition technology to businesses, governmental entities, and other organizations through Amazon Web Services,[30] a cloud-based platform that today offers 200 services globally[31]—including, among other

[28] *Id.*

[29] *Video: How Does Image Recognition Work*, AMAZON (last visited May 12, 2022), available at https://www.amazon.com/gp/help/customer/display.html?nodeId=G3BC9SVPPEVSB9T8.

[30] Kent Weare, *Amazon Introduces Rekognition for Image Analysis*, INFOQ (Jan. 8, 2017), https://www.infoq.com/news/2017/01/AWS-Rekognition/.

[31] *What is AWS*, AWS (last visited May 12, 2021), https://aws.amazon.com/what-is-aws/.

things, cloud-based storage, analytics, management tools, security, and various "enterprise applications."[32]

36. Amazon publicly acknowledged at the time that it had "been using Rekognition within its Amazon Prime Photo service."[33]

B. Amazon's collection, storage, and transmission of the biometric data obtained through Amazon Photos does not comply with its publicly available data-retention policy, and the security measures Amazon has employed when handling this highly sensitive data are woefully adequate.

37. Amazon is the world's largest online retailer and recently became the largest retailer (online or otherwise) in the world, surpassing Walmart. The company offers consumers membership to its Amazon Prime service for $14.99 a month. Prime members have access to faster and cheaper shipping options, exclusive discounts, and a host of Amazon's online services, including Prime Video, Amazon Music, and Prime Photos.

38. Amazon Photos is a cloud-based platform that provides members with unlimited online storage of full-resolution photos. The Photos app—available on Windows, Android, and iOS devices—enables members to automatically upload all of their digital photos to the cloud (namely, Amazon's servers).[34]

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[32] *Cloud Products,* AWS (last visited July 16, 2021), https://aws.amazon.com/products/.

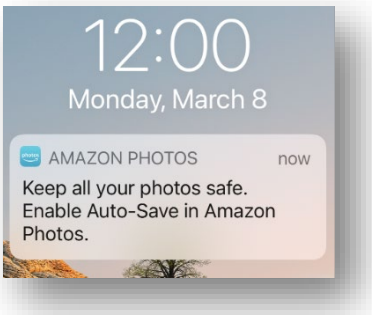
[33] Weare, *supra* note 30; *see also* Shudeep Chandrasekhar, 1REDDROP (Dec. 4, 2016) (explaining that Rekognition "is a technology that Amazon itself uses – for Prime Photos"), https://1reddrop.com/2016/12/04/amazons-biggest-contribution-artificial-intelligence-application-developers/; Nancy Cohen, *Amazon improves face analysis tech, adds fear*, TECH XPLORE (Aug. 15, 2019) ("'Rekognition Image is based on the same proven, highly scalable, deep learning technology developed by Amazon's computer vision scientists to analyze billions of images daily for Prime Photos,' said the company [Amazon]."), https://techxplore.com/news/2019-08-amazon-analysis-tech.html.

[34] *What is Amazon Photos?*, AMAZON (May 8, 2019), https://www.amazon.com/primeinsider/tips/prime-photos-qa.html.

1. Through the Amazon Photos service, Amazon collects and stores the biometric identifiers and information of persons who have been photographed in the State of Illinois.

39. A Prime member who has installed the Photos app on their mobile phone can take a picture with their phone's camera and have that picture instantaneously stored on Amazon's servers, making the picture accessible from any internet-enabled device anywhere in the world.

40. Users who don't have the "auto-save" feature enabled are continually prodded by the app to do so:



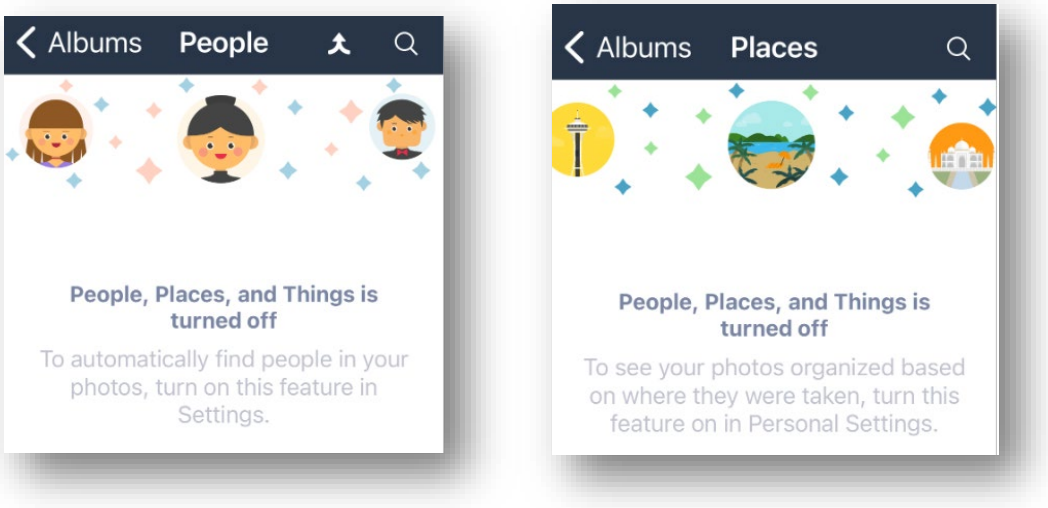
41. Image- and facial-recognition technology is integrated into Amazon Photos, so that "the app organizes your photos automatically. You can quickly find any specific photo by searching for a particular date, or by people and things in their images, like 'dog' or 'sunset.' You can also organize your photos in albums."[35] Amazon represents that "[t]he best part is that all this organization happens automatically, without you lifting a finger."[36]

[35] *Id.*

[36] *Id.*

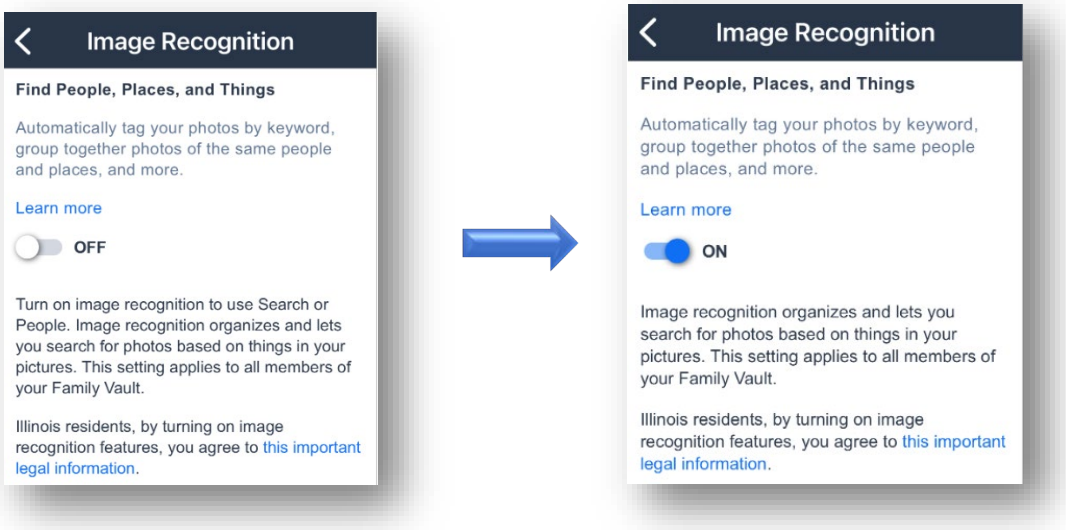
42. The Amazon Photos terms of use state that "[i]mage recognition features are enabled automatically when you begin using the Services unless the billing information associated with your account indicates that you may be an Illinois resident, in which case the image recognition features will be disabled and must be enabled by you."[37]

43. The image-recognition features of Amazon Photos are enabled by default for the vast majority of accounts, with the exception being accounts belonging to Illinois residents. Although the image-recognition features of Photos are not automatically enabled for Prime members who are Illinois residents, the Amazon Photos app prompts Illinois residents to enable image recognition:



[37] *Amazon Photos Terms of Use*, AMAZON (last updated June 1, 2020), https://www.amazon.com/gp/help/customer/display.html?nodeId=201376540.

44. Moreover, a user can readily enable the image-recognition feature with one tap of a finger:



45. As these images show, there is a statement at the bottom of the screen telling Illinois residents that, "by turning on image recognition features, you agree to this important legal information." While the user has the option of clicking on a hyperlink to visit a page with the "important legal information," the user can enable image recognition without doing so.

46. Users who do click on the hyperlink are taken to a page stating that "an Illinois state law *may* require the informed written consent from an Illinois resident before performing image recognition on photos that include his or her face."[38] The page also falsely represents that it is the responsibility of the Prime subscriber—not Amazon—to obtain

[38] *Notice to Illinois Residents*, AMAZON (last visited May 12, 2022) (emphasis added), https://www.amazon.com/gp/help/customer/display.html?nodeId=202094310.

consent from "the individuals in the photos stored in [their] account" before collecting those individuals' biometric identifiers or information:[39]

> Image recognition features are disabled initially for Illinois residents because an Illinois state law may require the informed written consent from an Illinois resident before performing image recognition on photos that include his or her face.
>
> **Enabling Image Recognition on Photos.** By enabling image recognition features for your account, you understand that image recognition analysis will be performed on the photos stored in your account, and you represent to us that you have obtained the consent of the individuals in the photos stored in your account permitting us to use image recognition analysis on photos of them.

47. Of course, Amazon knows that very few, if any, account holders go through the trouble of confirming that every friend, family member, or other person who is in their photos provides consent to have their biometric data collected and used by Amazon—let alone the informed written consent that is necessary for Amazon to collect their biometric identifiers and information.

48. Moreover, Amazon does nothing to confirm that Prime subscribers are in fact legally authorized representatives of the non-account holders whose images are saved to Amazon Photos and scanned using facial-recognition technology.

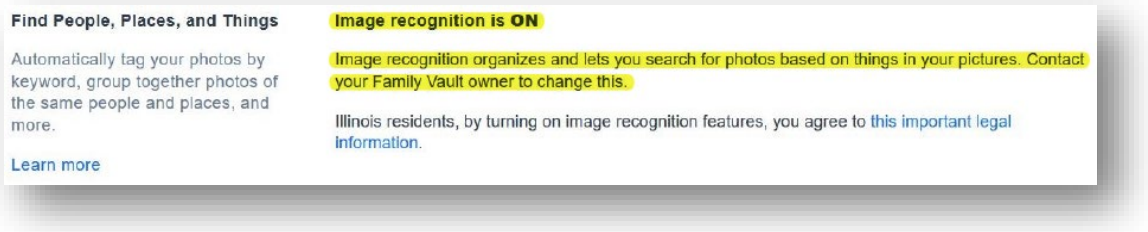
49. Prime members are not the only consumers with access to the Amazon Photos service. Any Prime subscriber based in the United States can provide free Amazon Photos accounts to up to five people by inviting them to a "Family Vault."

50. A person who accepts an invitation to join a Family Vault receives a free Amazon Photos account even if they are not a Prime member. Like the Prime member who

[39] *Id.*

invited them, the "Vault member" can store unlimited full-resolution photos in their Amazon Photos account and has full access to many features such as auto-save.

51. There is one important Photos feature that a Vault member does *not* have access to. If the Prime member who invited them to a Family Vault has image recognition enabled, the Vault member *cannot* disable the image-recognition feature in their own Amazon Photos account:



52. Image recognition is enabled by default for Prime members who do not reside in Illinois,[40] and most users never disable the feature (many because they are unaware of it).

53. Image recognition is therefore permanently enabled for most Vault members' accounts—including many accounts of Vault members who reside in Illinois.

54. Again, Amazon collects not only the biometric data of Prime subscribers and Vault members: the company also collects the biometric identifiers and information of millions of people who do not use Amazon Photos. Indeed, a person's biometric data is collected through Amazon photos regardless of whether that person has purchased anything from Amazon, is aware that their image is stored by Amazon Photos, or has ever even heard of Amazon Photos.

[40] *See How Does Image Recognition Work?*, AMAZON (last visited May 6, 2021) ("Image recognition in Amazon Photos is enabled by default, unless you are a resident of Illinois."), https://www.amazon.com/gp/help/customer/display.html?nodeId=G3BC9SVPPEVSB9T8 (URL no longer available).

55. There are numerous ways that this can occur, including:

a. An Amazon Photos account holder (whether a Prime member or Vault member) takes a street photo that captures pedestrians the account holder doesn't know, and the photo is automatically stored in Amazon Photos via the Photos app on the account holder's phone.

b. An account holder takes a picture at a family reunion. Again, the picture is automatically stored in Amazon Photos without the knowledge or consent of the persons in the photo.

c. An account holder takes numerous photos at their child's birthday party. Numerous children are in the photos, and the photos are stored automatically in Amazon Photos without the knowledge of the children or their parents.

d. An account holder takes a selfie at a bar, with several strangers in the background. Those strangers' images are automatically stored in Amazon Photos.

56. In each of the above examples, if image recognition is enabled in the Photos account, the persons who unwittingly appear in the uploaded photos have their facial geometry scanned by Amazon without their knowledge.

2. Amazon collects and stores several types of biometric data from images of persons in Amazon Photos accounts, regardless of whether the person in the photograph is a Prime subscriber, a Vault member, or a non-user.

57. There are many different applications of facial-recognition technology, several of which are employed by Amazon Photos. Two primary applications are "face detection and face comparison."[41] These two applications require different programs or "models," and generate different biometric data because they are designed to answer different questions:

> A face detection system is designed to answer the question: is there a face in this picture? A face detection system determines the presence, location, scale, and (possibly) orientation of any face present in a still

[41] *Overview of face detection and face comparison*, AMAZON REKOGNITION DEVELOPER GUIDE (last visited Dec. 19, 2022), https://docs.aws.amazon.com/rekognition/latest/dg/face-feature-differences.html.

> image or video frame. This system is designed to detect the presence of faces regardless of attributes such as gender, age, and facial hair.
>
> A face comparison system is designed to answer the question: does the face in an image match the face in another image? A face comparison system takes an image of a face and makes a prediction about whether the face matches other faces in a provided database. Face comparison systems are designed to compare and predict potential matches of faces regardless of their expression, facial hair, and age.[42]

58. Rekognition is thus not a single computer model or program, but rather a collection of models that perform different facial-recognition functions.

59. For example, Rekognition has an operation titled DetectFaces. The model for that operation "looks for key facial features such as eyes, nose, and mouth to detect faces in an input image," and "detects the 100 largest faces in an image."[43]

60. When a face is detected in an image, yet another model extracts biometric data from the image in the form of a "face feature vector," "face print," or "facial embedding"—all different terms for a mathematical representation of the facial geometry of the face detected the image.

61. These feature vectors can then be used by other models to match images of the same person and store images that match in a "collection," as described in the Amazon Rekognition Developers Guide:

> [T]he underlying detection algorithm first detects the faces in the input image, extracts facial features into a feature vector for each face,

[42] *Id.*

[43] *Detecting Faces in an Image*, AMAZON REKOGNITION DEVELOPERS GUIDE (last visited Dec. 19, 2022), https://docs.aws.amazon.com/rekognition/latest/dg/faces-detect-images.html.

and then stores it in the collection. Amazon Rekognition uses these feature vectors when performing face matches.[44]

62. [redacted]

63. [redacted]

64. From the images stored in Amazon Photos accounts, [redacted] generate a variety of biometric data that is subject to BIPA's requirements.

3. Amazon has violated § 15(a) of BIPA by not complying with its own publicly available policy governing the retention of biometric data.

65. As "[a] private entity in possession of biometric identifiers or biometric information," Amazon had a duty under § 15(a) of BIPA 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 or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first." 740 ILCS 14/15(a).

[44] *Searching faces in a collection*, AMAZON REKOGNITION DEVELOPERS GUIDE (last visited Dec. 19, 2022), https://docs.aws.amazon.com/rekognition/latest/dg/collections.html.

66. Amazon represents that its policy for retaining biometric data obtained through Amazon Photos is embodied in its publicly available Terms of Use and its File Retention Policy.[45]

67. Amazon has stated that, read together, the Terms of Use and the File Retention Policy make three representations to consumers regarding Amazon's retention of their biometric data:

i. That Amazon immediately deletes all image-recognition data associated with a user's Photos account when the user disables image recognition.[46]

ii. That Amazon immediately deletes all image-recognition data associated with a user's Photos account when the user's account is deactivated (e.g., when a user deletes the account).[47]

iii. That Amazon deletes all image-recognition data associated with a user's Photos account after 2 years of the Photos account being inactive (i.e., not accessed by the user).[48]

68. Contrary to Amazon's representations, the company has violated and continues to violate § 15(a) by not complying with the publicly available retention schedule set out in the Terms of Use and the File Retention Policy.

69. To understand Amazon's violations of § 15(a), it is necessary to understand the infrastructure of Amazon Photos.

70. [redacted]

[redacted]

[45] Def. Amazon.com, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss Pls.' First Am. Class Action Compl., at 8–9 (July 14, 2022).

[46] Def. Amazon.com, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss Pls.' First Am. Class Action Compl., at 8 (July 14, 2022) (citing Def.'s Ex. A at § 1.1).

[47] *Id.* (citing Def.'s Ex. A at § 1.1).

[48] *Id.* at 9 (citing Def.'s Ex. C at 1).

[redacted]

71. [redacted]

[redacted]

[redacted]

[redacted]

72. [redacted]

73. [redacted]

74. [redacted][49]

75. [redacted]

76. [redacted]

[49] "Class and object are basic building blocks in object-oriented programming languages. A class is written by a programmer in a defined structure to create an object … in an object oriented programming language. It defines a set of properties and methods that are common to all objects of one type." *Class (programming)*, *SIMPLE ENGLISH WIKIPEDIA* (last edited May 14, 2021), https://simple.wikipedia.org/wiki/Class_(programming).

77. [redacted]

78. This can be analogized to a person backing up all of the files on their laptop to an external hard drive. When the user then deletes files from their laptop, the files appear to be gone, but are in fact still stored—or retained—on the external hard drive.

79. [redacted]

81. [redacted][50]

[50] Def. Amazon.com, Inc.'s Mem. of Law in Supp. of Its Mot. to Dismiss Pls.' First Am. Class Action Compl., at 8 (July 14, 2022) (citing Def.'s Ex. A at § 1.1).

82. [redacted]

83. [redacted]

[redacted]

84. [redacted]

85. [redacted]

86. [redacted]

87. [redacted]

88. [redacted]

89. [redacted]

90. In sum, Amazon has for years violated § 15(a) by failing to comply with its publicly available policy regarding retention of biometric data obtained from images stored in customers' Amazon Photos accounts.

91. Despite knowing that it was misrepresenting its retention policy to consumers who were entrusting the company with their most personal data, Amazon for years did nothing to bring their retention practices in line with the publicly available policy that its customers believed governed the retention of their biometric data.

4. Amazon has violated § 15(e) of BIPA by failing to properly ensure for the security of the biometric data collected through Amazon Photos.

92. Section 15(e) requires that a private entity in the possession of biometric data must both **(i)** "store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within the private entity's industry" and **(ii)** "store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information." 740 ILCS 41/15(e)

93. Amazon has failed to satisfy either of § 15(e)'s requirements with respect to consumer data—including biometric data—collected and stored within Amazon Photos, despite the company being well aware that "Amazon Photos houses some of the most sensitive and critical data that could be captured from a customer."

94. [redacted]

95. [redacted]

[redacted]

100. [redacted]

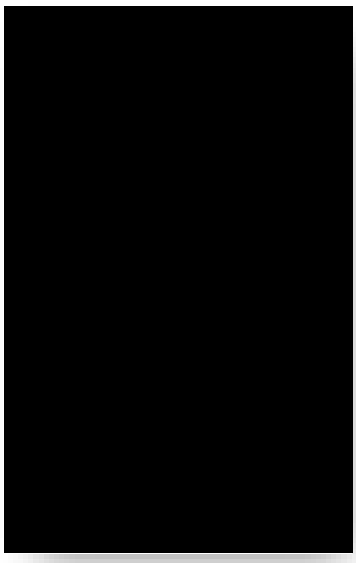
[redacted]

[redacted].

[51] Syed Jaffry and Masudur Rahaman Sayem, Applying best practices for securing sensitive data in Amazon DynamoDB, AWS (Nov. 11, 2019), https://aws.amazon.com/blogs/database/applying-best-practices-for-securing-sensitive-data-in-amazon-dynamodb/.

[52] DynamoDB (or "DDB" for short) is one of the database services offered by Amazon Web Services ("AWS"). *Amazon DynamoDB Overview*, AWS (last visited Dec. 20, 2022) (describing DynamoDB as a "[f]ast, flexible NoSQL database service for single-digit millisecond performance at any scale"). DynamoDB is a NoSQL database, which is a type of database that is designed for handling "massive amounts of disorganized, stored data, collected from multiple sources." Keith D. Foote, *NoSQL Databases: Advantages and Disadvantages*, DATAVERSITY (Nov. 17, 2022), https://www.dataversity.net/nosql-databases-advantages-and-disadvantages/.

101. [redacted]



102. The documents referenced above make plain that Amazon violated § 15(e) because it did not store, transmit, and protect from disclosure biometric data in a manner that **(i)** employed the standard of care within its industry or **(ii)** that is the same as or more protective than the manner in which Amazon stores, transmits, and protects other confidential and sensitive data.

C. Amazon unlawfully collected and stored Plaintiffs' biometric identifiers and information through Amazon Photos.

103. Plaintiff Angela Hogan gave her minor daughter (the sister of Plaintiff B.H.) an Amazon Fire tablet as a Christmas gift in December 2020.

104. When the tablet was first activated, it was linked to Plaintiff Angela Hogan's Amazon Prime account. The Amazon Photos application was pre-installed on the tablet, and in January 2021 both Plaintiff Angela Hogan and her daughter began using Amazon Photos through Plaintiff's Prime account.

105. Numerous images of Plaintiffs Angela Hogan and B.H. are stored in Ms. Hogan's Amazon Photos account. Because the image-recognition feature on the account is enabled, Amazon has scanned Plaintiffs' facial geometries, thereby collecting and storing Plaintiffs' biometric identifiers and information.

106. Amazon does not comply with the publicly available policy regarding the handling of biometric data obtained through Amazon Photos, while misrepresenting to Plaintiffs that it does comply with said policy.

107. Amazon also failed to store, transmit, and protect from disclosure Plaintiffs' biometric data in a manner that **(i)** employed the standard of care within its industry or **(ii)** that is the same as or more protective than the manner in which Amazon stores, transmits, and protects other confidential and sensitive data.

V. CLASS ACTION ALLEGATIONS

108. Plaintiff Angela Hogan and Plaintiff B.H., a minor, by and through his guardian Angela Hogan, bring this action on behalf of themselves and under 735 ILCS 5/2-801, as representatives of a Class defined as follows:

> Any person who during the Class Period had their biometric identifiers, including scans of facial geometry and related biometric information, collected, captured, received, or otherwise obtained by Amazon from any photograph stored in an Amazon Photos account, where (1) the person was an Illinois resident or (2) such photograph was taken in the State of Illinois. [53]

109. For purposes of this action, the Class Period is defined as May 12, 2016, through the present.

[53] Amazon Photos was previously named Amazon Prime Photos.

110. Excluded from the Class are Defendant Amazon and any entity in which Defendant has a controlling interest, as well as any of Defendant's legal representatives, officers, directors, assignees, and successors.

111. Members of the Class are so numerous that joinder of all Class Members is impractical. Currently, there are about 150 million Amazon Prime subscribers in the United States,[54] approximately 5.8 million of those subscribers reside in the State of Illinois, and hundreds of thousands of those subscribers use Amazon Photos with image recognition enabled. In addition, there are numerous persons whose images appear in photos taken in Illinois and stored in an Amazon Photos accounts of Illinois residents and non-residents alike, while image-recognition was enabled for those accounts. Thus, by conservative estimates Class Members number in the hundreds of thousands or millions. Class Members are readily identifiable from information and records in Amazon's possession.

112. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and Class Members were aggrieved by the same wrongful conduct of Amazon: their substantive privacy interests were harmed by Amazon's failure to comply with its own publicly available policy regarding the retention of biometric data and by Amazon's failure to protect their biometric data in a manner required by § 15(e) of BIPA.[55]

113. Plaintiffs will fairly and adequately protect and represent the interests of the Class. The interests of Plaintiffs are coincident with, and not antagonistic to, those of the other members of the Class.

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[54] *Number of Amazon Prime users in the United States from 2017 to 2022*, STATISTA (Dec. 1, 2020), https://www.statista.com/statistics/504687/number-of-amazon-prime-subscription-households-usa/.

[55] 740 ILCS 14/15(a), (e).

114. Plaintiffs are represented by counsel with experience in the prosecution of class actions and with particular experience with class actions raising claims under BIPA.

115. Questions of law and fact common to the members of the Class predominate over questions that may affect only individual Class Members because Amazon has acted on grounds generally applicable to the entire Class, thereby making damages with respect to the Class as a whole appropriate. Such generally applicable conduct is inherent in Amazon's wrongful actions.

116. Questions of law and fact common to the Class include:

a. Whether Amazon complied with its publicly available policy for retention of biometric identifiers and information.

b. Whether Amazon stored, transmitted, and protected from disclosure biometric data obtained through Amazon Photos in a manner that employed the standard of care within its industry

c. Whether Amazon stored, transmitted, and protected from disclosure biometric data obtained through Amazon Photos in a manner that is the same as or more protective than the manner in which Amazon stores, transmits, and protects other confidential and sensitive data.

d. Whether Amazon's treatment of the biometric identifiers and information collected via Amazon Photos was negligent, intentional, or reckless.

e. Whether persons who had their biometric identifiers and information collected, stored, or transmitted via Amazon Photos are entitled to damages and, if so, in what amount.

f. Whether Amazon should be enjoined from collecting biometric identifiers and information through the Amazon Photos service.

117. Class-action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that

numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action.

118. Plaintiffs know of no special difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

VI. CLAIMS FOR RELIEF

Claim 1: Violation of Section 15(a) of Illinois's Biometric Information Privacy Act (740 ILCS 14/15(a)) by Failing to Comply with Publicly Available Policy Governing the Retention of Biometric Identifiers and Information Stored by Amazon Photos Service

119. Plaintiffs repeat and incorporate by reference all preceding paragraphs and allegations.

120. Section 15(a) of BIPA provides that "[a] private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information . . . ." 740 ILCS 14/15(a). The biometric identifiers and information must be permanently destroyed "when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first." *Id.*

121. Both Defendant Amazon.com, Inc. and Defendant Amazon.com Services LLC are Delaware corporations and are therefore private entities under BIPA. *Id.* § 14/10.

122. The facial geometries of Plaintiffs and Class Members are "biometric identifiers" under the Act, and the information that Amazon derived from these identifiers is "biometric information" covered by the Act. *Id.*

123. As explained in paragraphs 65 to 91 above, Amazon did not comply with its publicly available written policy governing the retention of biometric identifiers and information.

124. By improperly retaining the biometric information of Plaintiffs and Class Members, Amazon violated the very privacy interests that BIPA was intended to protect.

125. On behalf of themselves and the Class, Plaintiffs seek:

(a) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Amazon to comply with a retention policy that satisfies the requirements of BIPA's § 15(a);

(b) the greater of liquidated damages of $5,000 or actual damages for each of Amazon's intentional or reckless violations of § 15(a);

(c) the greater of liquidated damages of $1,000 or actual damages for each of Amazon's negligent violations of § 15(a); and

(d) reasonable attorneys' fees and costs and other litigation expenses.

Claim 2: Violation of Section 15(e) of Illinois's Biometric Information Privacy Act (740 ILCS 14/15(e)) by Failing to Securely Store and Transfer Biometric Identifiers and Biometric Information Obtained Through Amazon Photos

126. Plaintiffs repeat and incorporate by reference all preceding paragraphs and allegations.

127. Section 15(e) requires that a private entity in the possession of biometric data must both (i) "store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within the private entity's industry" and (ii) "store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information." 740 ILCS 41/15(e).

128. As explained in paragraphs 92 through 102 above, Amazon has failed to satisfy either of § 15(e)'s requirements with respect to consumer data—including biometric data—collected and stored within Amazon Photos. Such biometric data includes the data of Plaintiffs and Class Members.

129. By failing to properly secure Plaintiffs' and Class Members' biometric identifiers and information, Amazon violated the substantive privacy interests that BIPA protects.

130. On behalf themselves and the Class, Plaintiffs seek:

(a) injunctive and equitable relief as is necessary to protect the interests of Plaintiffs and the Class by requiring Amazon to handle their biometric data in a manner that complies with § 15(e) of BIPA;

(b) the greater of liquidated damages of $5,000 or actual damages for each of Amazon's intentional or reckless violations of § 15(e);

(c) the greater of liquidated damages of $1,000 or actual damages for each of Amazon's negligent violations of § 15(e); and

(d) reasonable attorneys' fees and costs and other litigation expenses.

VII. PRAYER FOR RELIEF

131. WHEREFORE, on behalf of themselves and the Class, Plaintiffs respectfully request that this Court enter an Order:

a. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff Angela Hogan and Plaintiff B.H., by and through his guardian Angela Hogan, as representatives of the Class, and appointing their counsel as Class Counsel;

b. Declaring that Amazon's actions, as set out above, violate § 15(a) and (e) of BIPA;

c. Awarding the greater of actual damages or statutory damages of $5,000 per intentional or reckless violation of BIPA, and the greater of actual damages or statutory damages of $1,000 per negligent violation of the BIPA;

d. Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, among other things, an order requiring Amazon to collect, store, and use biometric identifiers in compliance with BIPA;

e. Awarding Plaintiffs and the Class their reasonable litigation expenses and attorneys' fees;

f. Awarding Plaintiffs and the Class pre- and post-judgment interest, to the extent allowable; and

g. Awarding such other and further relief as equity and justice may require.

Dated: January 31, 2023

/s/ Kenneth A. Wexler

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CERTIFICATE OF SERVICE

I, the attorney, hereby certify that on January 31, 2023, I 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/ Catherine T. Mitchell