

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRITTNEY FREDERICK,
ALEXANDER PRUEFER, and JINGER
SANDERS, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

EXAMSOFT WORLDWIDE, INC.,

Defendant.

Civil Action No. 1:21-CV-2190

DEFENDANT EXAMSOFT WORLDWIDE, INC.'S NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant ExamSoft Worldwide, Inc.¹ (“ExamSoft”), by and through its undersigned counsel, removes the above-captioned action from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. § 1441(a), 1446, and 1453, on the ground that federal jurisdiction exists under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d)(2)(A).

I. BACKGROUND

1. On March 17, 2021, Plaintiffs Brittney Frederick, Alexander Pruefer, and Jinger Sanders, individually and on behalf of all others similarly situated, filed this action, captioned *Frederick, et al. v. ExamSoft Worldwide, Inc.*, in the Circuit Court of Cook County, Illinois, and the case was docketed at 2021-CH-01276. A true and correct copy of Plaintiffs’ complaint and summons are attached hereto as Exhibits 2 and 3, respectively.

¹ ExamSoft Worldwide, Inc. was renamed ExamSoft Worldwide, LLC in October 2020. See Ex. 1 (Declaration of Sebastian Vos) at ¶ 2.

2. ExamSoft was served on March 23, 2021. *See* Ex. 3.

3. Plaintiffs allege that ExamSoft violated the Illinois Biometric Information Privacy Act (“BIPA”). Ex. 2 at ¶¶ 68-77.

4. Specifically, Plaintiffs seek relief on behalf of a purported class of “all Illinois residents who used ExamSoft to take an exam online and who had their facial geometry or other biometric information collected, captured, received, or otherwise obtained and/or stored by Defendant.” Ex. 2 at ¶ 56. Plaintiffs also seek relief on behalf of four purported subclasses defined as follows:

- The “Bar Exam Subclass,” which consists of “[a]ll Illinois residents who took the October 2020 Illinois Bar Exam and who had their facial geometry collected, captured, received, or otherwise obtained and/or stored by Defendant.” *Id.* at ¶ 57.
- The “John Marshall Subclass,” which consists of “[a]ll students at the John Marshall Law School in Chicago who took an online exam from August 2017 to August 2019 and who had their facial geometry collected, captured, received, or otherwise obtained and/or stored by Defendant.” *Id.* at ¶ 58.
- The “UIC John Marshall Subclass,” which consists of “[a]ll students at the UIC John Marshall Law School who took an online exam from August 2019 to May 2020 and who had their facial geometry collected, captured, received, or otherwise obtained and/or stored by Defendant.” *Id.* at ¶ 59.
- The “St. George’s Subclass,” which consists of “[a]ll students at the St. George’s School of Medicine who took an online exam from March 2020 through December 2020 and who had their facial geometry collected, captured, received, or otherwise obtained and/or stored by Defendant.” *Id.* at ¶ 60

5. Plaintiffs allege that the number of persons within the putative class “is substantial, believed to amount to thousands of persons.” *Id.* at ¶ 63.

6. The complaint seeks certification of the putative classes, declaratory relief, statutory damages of \$5,000 for any intentional and reckless violation of BIPA and \$1,000 for any negligent violation of BIPA, injunctive and other equitable relief, reasonable litigation expenses and attorneys’ fees, and pre- and post-judgment interest. Ex. 2 at 16, 18.

7. ExamSoft has not yet filed an answer or responsive pleading to the complaint.

II. JURISDICTIONAL REQUIREMENTS SATISFIED

8. CAFA sets forth three requirements to invoke federal jurisdiction: (1) a class action comprising 100 or more members, (2) in which any member of a class of plaintiffs is a citizen of a state different from any defendant, and (3) in which the amount in controversy exceeds \$5,000,000. 28 U.S.C. § 1332(d)(2), (d)(5). All three requirements are satisfied here.

A. This Case Is A Putative Class Action Comprising At Least 100 Members

9. The action is a “class action” as defined in 28 U.S.C. § 1332(A)(1)(B) and, as noted above, Plaintiffs allege that there are “thousands of persons” in the putative classes. Ex. 2 at ¶ 63.

B. Minimal Diversity Exists Pursuant To 28 U.S.C. § 1332(d)(2)(A)

10. ExamSoft is a Delaware limited liability company with its principal place of business at 5001 LBJ Freeway, Suite 700, Dallas, Texas, 75244. Ex. 1 at ¶¶ 3-4. For purposes of minimal diversity under CAFA, ExamSoft is a citizen of Delaware and Texas. 28 U.S.C. § 1332(d)(10); *see Aliano v. Louisville Distilling Co., LLC*, 115 F. Supp. 3d 921, 927 n.3 (N.D. Ill. 2015).

11. Plaintiffs allege that they and the putative class members are Illinois residents. Ex. 2 at ¶¶ 14-16, 56.

12. Based on the foregoing, minimal diversity exists because at least one member of the putative class is a citizen of a different state than ExamSoft. *See* 28 U.S.C. § 1332(d)(2)(A).

C. The Amount In Controversy Exceeds \$5,000,000

13. Under CAFA, the claims of the individual class members are aggregated to determine whether the amount in controversy exceeds the required “sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2), (d)(6). A party removing under CAFA need only establish that the amount in controversy exceeds the jurisdictional minimum by a preponderance of the evidence. *See Roppo v. Travelers Commercial Ins. Co.*, 869 F.3d 568, 579 (7th Cir. 2017). The question is not whether damages *will be* greater than \$5 million, but only whether “a fact-finder *might* conceivably lawfully award” damages greater than \$5 million. *Id.* at 583 (emphasis in original). The removing party’s burden is a mere “pleading requirement, not a demand for proof.” *Blomberg v. Serv. Corp. Int’l*, 639 F.3d 761, 763 (7th Cir. 2011).

14. While ExamSoft denies the claims alleged in Plaintiffs’ complaint and further denies that Plaintiffs, or any putative class member, are entitled to any monetary or other relief, on a classwide basis or otherwise, the amount in controversy here satisfies the jurisdictional threshold. Plaintiffs seek statutory damages of up to \$5,000 per violation from ExamSoft for each putative class member (*see* Ex. 2 at 16, 18), and allege that there are “thousands of persons” in the class. *Id.* at ¶ 63. Multiplying \$5,000 for each putative class member by just two “thousand[]” putative class members (the bare minimum putative class size alleged based on Plaintiffs’ allegation that there are “thousands” of class members) yields an amount in controversy of \$10 million—well in excess of \$5 million. And, if the putative class size is larger, as Plaintiffs’ allegation allows, the amount in controversy would exceed the CAFA threshold by an even wider margin.

15. Thus, ExamSoft has made a showing that, if Plaintiffs prevail, recovery in this action “*might conceivably*” exceed the mandatory minimum threshold for jurisdiction under CAFA. *Roppo*, 869 F.3d 583.

16. Because this is (1) a putative class action comprising 100 or more members, (2) in which any member of the putative class is a citizen of a state different from the defendant’s state of citizenship, and (3) the aggregate amount of damages sought is in excess of \$5 million, this case falls within the subject matter jurisdiction of this Court pursuant to 28 U.S.C. § 1332 and is therefore removable pursuant to 28 U.S.C. § 1441.

III. OTHER STATUTORY REQUIREMENTS FOR REMOVAL ARE SATISFIED

17. Plaintiffs filed this action in the Circuit Court of Cook County, Illinois. Venue is proper in the United States District Court for the Northern District of Illinois, Eastern Division, because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

18. No previous application has been made for the relief requested herein.

19. As required by 28 U.S.C. § 1446(a), copies of all process and pleadings served upon ExamSoft are attached as exhibits hereto.

20. This notice of removal is timely pursuant to 28 U.S.C. § 1446(b)(1).

21. As required by 28 U.S.C. § 1446(d), ExamSoft will promptly file a copy of this Notice of Removal with the Circuit Court of Cook County, Illinois, County Department, Chancery Division and serve copies of the same on all parties to this action.

WHEREFORE, ExamSoft respectfully removes this action from the Circuit Court of Cook County, Illinois, docketed at 2021-CH-01276, to this Court.

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