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

GERMAN MENDOZA, individually and on
behalf of other persons similarly situated,

      Plaintiff,

v.

SAGE SOFTWARE, INC.,

      Defendant.

Case No.:**2023CH07782**

CLASS ACTION COMPLAINT

Plaintiff German Mendoza ("Plaintiff") brings this Class Action Complaint against Defendant Sage Software, Inc. ("Sage Software" or "Defendant") for its unlawful collection, use, disclosure, dissemination, and storage of Plaintiff's and the putative Class members' sensitive biometric data.

NATURE OF THE ACTION

1. BIPA defines a "biometric identifier" as any personal feature that is unique to an individual, including fingerprints and hand geometry. 740 ILCS 14/10.

2. "Biometric information" is any information based on a biometric identifier, regardless of how it is converted or stored. 740 ILCS 14/10. Collectively, biometric identifiers and biometric information are known as "biometrics."

3. Under BIPA, biometric information is treated and regulated the same as biometric identifiers.

4. Defendant is a vendor of time and attendance solutions to Illinois employers, and provides its clients with biometrically-enabled devices and technology in order to perform

workforce management services on their behalf, such as timekeeping and work-scheduling services.

5.   Defendant's technology captures the biometric identifiers of its clients' employees and transmits information and data derived from those biometric identifiers directly to Defendant's cloud-based time and attendance systems. This information that Defendant receives and possesses is generated and derived from the scanning of Plaintiff's and other Class members' biometric identifiers. Thus, Defendant obtains and possesses biometric information.

6.   BIPA provides, *inter alia*, that private entities, such as Defendant, may not collect, capture, purchase, or otherwise obtain an individual's biometric identifiers, such as fingerprints and hand scans, or any biometric information, including any data regardless of the manner from which it was converted, or is converted or stored, unless they first:

> (a)   inform that person in writing that biometric identifiers or biometric information will be collected or stored;
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> (b)   inform that person in writing of the specific purpose and the length of term for which such biometric identifiers or biometric information is being collected, stored and used; and
>
> (c)   receive a written release from the person for the collection of their biometric identifiers or biometric information. 740 ILCS 14/15(b)(1)-(3).

7.   BIPA also requires private entities in possession of biometric information to develop a publicly-available written policy outlining the storage and destruction policies of such biometric identifiers, and/or any biometric information derived from such identifiers. 740 ILCS 14/15(a).

8.   Finally, private entities are prohibited from profiting from an individual's biometric identifiers or biometric information. 740 ILCS 14/15(c).

9.   BIPA recognizes that "biometrics are unlike other unique identifiers that are used to access finances or other sensitive information," 740 ILCS 14/5, and therefore require special treatment compared to other types of personal information. For example, even sensitive information like Social Security numbers, when compromised, can be changed. "Biometrics, however, are biologically unique to each individual and therefore, once compromised, such individual has no recourse, is at a heightened risk for identity theft in, and is likely to withdraw from biometric facilitated transactions." 740 ILCS 14/5.

10.   Plaintiff brings this action for statutory damages and other remedies as a result of Defendant's conduct in violating his biometric privacy rights under BIPA.

11.   On behalf of himself and the proposed Class defined below, Plaintiff seeks an injunction requiring Defendant to comply with BIPA, as well as an award of statutory damages to the Class members and monetary damages to be determined at trial, together with costs and reasonable attorneys' fees.

PARTIES

12.   Plaintiff is a natural person and citizen of the State of Illinois.

13.   Defendant Sage Software is a Virginia corporation. Defendant is a vendor of cloud-based timekeeping and attendance tracking products and services, and sells such products and services to clients located in Illinois.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over Sage Software because Sage Software conducts business and scanned Plaintiff's fingerprint and collected and stored Plaintiff's fingerprint data in Illinois.

15. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois and has committed tortious acts in Illinois.

16. Venue is proper in Cook County because Defendant operates throughout this County and "resides" in Cook County within the meaning of 735 ILCS 5/2-102(a).

FACTUAL BACKGROUND

17. Defendant provides cloud-based time and attendance workforce management solutions to employers. This includes providing its client employers with biometric-enabled timekeeping hardware, such as fingerprint scanners, which are linked to cloud-based systems hosted on Defendant's servers.

18. Accordingly, when an end-user of Defendant's biometric -enabled technology interacts with the technology, for example by scanning his fingerprint using one of Defendant's biometric collecting timeclocks, the data generated is transmitted to Defendant for storage and authentication purposes.

19. By the time BIPA passed through the Illinois legislature in mid-2008, many companies who had experimented using employees' biometric data as an authentication method stopped doing so.

20. However, Sage Software failed to respond to the change in Illinois law governing the collection and use of biometric data despite that it had been in effect for over a decade. As a

result, Sage Software continued to collect, store, use, and disseminate Illinois employees' biometric data in reckless and/or willful violation of BIPA.

21.   For example, in 2017 and 2018, Defendant provided biometric timekeeping technology and services, including cloud-based services, to Oxford Hotels & Resorts, LLC, a Delaware limited liability company.

22.   During the relevant time period, further described below, Plaintiff was employed by Oxford Hotels and used Defendant's biometric technology by scanning his fingerprint.

23.   Specifically, Sage Software's biometric systems required users to have their fingerprints captured and stored to be enrolled in Sage Software's equipment, systems, and database(s).

24.   Defendant collects, stores, and otherwise uses information and data generated from the biometric timekeeping systems it provided to Oxford Hotels, as well as other clients in Illinois, in order to conduct employee management, authentication, and timekeeping services for them.

25.   Each time Plaintiff scanned his fingerprint into Defendant's timeclock, the timeclock collected his biometric identifiers, and converted them to an electronic format derived from those identifiers, *i.e.* biometric information. Defendant's timeclock then transmitted Plaintiff's biometric information to Defendant and/or Defendant's servers used to operate Defendant's cloudbased employee-management services.

26.   Despite collecting and storing Plaintiff's biometrics, Defendant failed to provide any written disclosures describing its purpose for using Plaintiff's biometrics, or the duration of such use, it failed to make publicly available any biometric retention or destruction policy, and it failed to obtain informed written consent from Plaintiff to use his biometrics, all in violation of BIPA.

27.   By failing to comply with BIPA, Defendant has violated Plaintiff's substantive state rights to biometric privacy.

CLASS ALLEGATIONS

28.   **Class Definition**: Plaintiff brings this action on behalf of Plaintiff and a Class of similarly situated individuals, defined as follows:

> All persons who had their fingerprints, handprints, or faceprints collected, captured, stored, transmitted, disseminated, or otherwise used by or on behalf of Defendant within the State of Illinois during the applicable limitations period.

The following people are excluded from the Class: (1) any Judge presiding over this action and members of their families; (2) Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

29.   **Numerosity**: The exact number of Class members is unknown to Plaintiff at this time, but it is clear that individual joinder is impracticable. Sage Software has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from at least hundreds of individuals who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Sage Software's records.

30.   **Commonality and Predominance**: There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

a) whether Defendant collected, captured, or otherwise obtained Plaintiff's and the Class' biometric identifiers or biometric information;

b) whether Defendant properly informed Plaintiff and the Class of its purposes for collecting, using, and storing their biometric identifiers or biometric information;

c) whether Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's and the Class' biometric identifiers or biometric information;

d) whether Defendant has sold, leased, traded, or otherwise profited from Plaintiff's and the Class's biometric identifiers or biometric information;

e) whether Defendant developed 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 three years of their last interaction, whichever occurs first;

f) whether Defendant complies with any such written policy (if one exists);

g) whether Defendant used Plaintiff's and the Class' fingerprints to identify them;

h) Whether Defendant's conduct violates BIPA;

i) Whether Defendants BIPA violations are willful or reckless; and

j) Whether Plaintiff and the Class are entitled to damages and injunctive relief.

31. **Adequate Representation**: Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel have any interests adverse to those of the other members of the Class.

32. **Appropriateness**: This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Sage Software's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Sage Software's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in their Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

33. Plaintiff and his counsel will fairly and adequately protect the interests of the Class.

34. Plaintiff retained counsel experienced in complex class action litigation.

COUNT I
Violation of the Biometric Information Privacy Act (740 ILCS 14/15(b))
(Class Action)

35. Plaintiff realleges and incorporates the previous allegations of this Complaint.

36. Defendant is a "private entity" under the Biometric Information Privacy Act. 740 ILCS 14/10.

37. Plaintiff's and the Class's fingerprints and/or hand geometry scans qualify as "biometric identifier[s]" as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

38. Defendant has "biometric information" from Plaintiff and the Class through its acquisition and retention of information based on Plaintiff's and the Class's hand geometry scans.

39.   Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiff's and the Class's fingerprints and/or hand geometry scans and personal identifying information based on their hand geometry scans without first informing them in writing that Defendant was doing so.

40.   Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiff's and the Class's fingerprints and/or hand geometry scans and personal identifying information based on their fingerprints and/or hand geometry scans without first informing them in writing of the purpose of Defendant doing so and the length of time Defendant would store and use Plaintiff's and the Class's biometric identifiers and/or biometric information.

41.   Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiff's and the Class's fingerprints and/or hand geometry scans and personal identifying information based on their fingerprints and/or hand geometry scans without first obtaining their written consent or other release authorizing Defendant to capture or collect Plaintiff's and the Class's biometric identifiers and/or biometric information.

42.   Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

WHEREFORE, Plaintiff and the Class pray for a judgment against Defendant as follows:

A.   Awarding liquidated or actual monetary damages, whichever is higher, to Plaintiff and each member of the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);

B.   Enjoining Defendant from committing further violations of the Biometric Information Privacy Act as authorized by 740 ILCS 14/20(4);

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C.   Awarding Plaintiff's reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by 740 ILCS 14/20(3); and

D.   Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

COUNT II
Violation of the Biometric Information Privacy Act (740 ILCS 14/15(a))
(Class Action)

43.   Plaintiff realleges and incorporates the previous allegations of this Complaint.

44.   Defendant is a "private entity" under the Biometric Information Privacy Act. 740 ILCS 14/10.

45.   Plaintiff's and the Class's hand geometry scans qualify as "biometric identifier[s]" as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

46.   Defendant has "biometric information" from Plaintiff and the Class through its acquisition and retention of information based on Plaintiff's and the Class's fingerprints and/or hand geometry scans.

47.   Defendant violated the Biometric Information Privacy Act by possessing Plaintiff's and the Class's fingerprints and/or hand geometry scans and personal identifying information based on their fingerprints and/or hand geometry scans without creating and following a written policy, made available to the public, establishing a retention schedule and destruction guidelines for its possession of biometric information derived from Plaintiff's and the Class's hand geometry scans.

48.   Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

49. As a result, Defendant's violations of the Biometric Information Privacy Act were reckless or, in the alternative, negligent.

WHEREFORE, Plaintiff and the Class pray for a judgment against Defendant as follows:

A. Awarding liquidated or actual monetary damages, whichever is higher, to Plaintiff and each member of the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);

B. Enjoining Defendant from committing further violations of the Biometric Information Privacy Act as authorized by 740 ILCS 14/20(4);

C. Awarding Plaintiff's reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by 740 ILCS 14/20(3); and

D. Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

COUNT III
Violation of the Biometric Information Privacy Act (740 ILCS 14/15(d))
(Class Action)

50. Plaintiff realleges and incorporates the previous allegations of this Complaint.

51. Defendant is a "private entity" under the Biometric Information Privacy Act. 740 ILCS 14/10.

52. Plaintiff's and the Class's hand geometry scans qualify as "biometric identifier[s]" as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

53. Defendant has "biometric information" from Plaintiff and the Class through its acquisition and retention of information based on Plaintiff's and the Class's fingerprints and/or hand geometry scans.

54. Defendant violated the Biometric Information Privacy Act by disclosing or otherwise disseminating Plaintiff's and the Class's fingerprints and/or hand geometry scans and personal identifying information based on their fingerprints and/or hand geometry scans to Defendant's timekeeping vendor without first obtaining their consent for that disclosure or

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dissemination.

55.   Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

56.   As a result, Defendant's violations of the Biometric Information Privacy Act were reckless or, in the alternative, negligent.

WHEREFORE, Plaintiff and the Class pray for a judgment against Defendant as follows:

A.   Awarding liquidated or actual monetary damages, whichever is higher, to Plaintiff and each member of the Class for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);

B.   Enjoining Defendant from committing further violations of the Biometric Information Privacy Act as authorized by 740 ILCS 14/20(4);

C.   Awarding Plaintiff's reasonable attorneys' fees and costs incurred in filing and prosecuting this action as provided by 740 ILCS 14/20(3); and

D.   Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

Respectfully submitted,

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sage Software Hit with Biometric Information Privacy Class Action in Illinois](#)