

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

<p>Charles Hines, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>Proctor.io Incorporated,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 1:21-CV-03597</p> <p style="text-align: center;">STIPULATION OF DISMISSAL</p>
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Plaintiff Charles Hines and Defendant Proctor.io Incorporated, stipulate as follows:

1. Hines filed this putative class action on June 3, 2021, alleging three claims against Proctorio for violating the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1 et seq. In particular, Hines and the putative class members alleged that Proctorio:

- a. Failed to obtain informed written consent and release before obtaining biometric identifiers or biometric information, in violation of 740 ILCS 14/15(b);
- b. Sold, leased, traded, or otherwise profited from a person’s biometric identifiers or biometric information, in violation of 740 ILCS 14/15(c); and
- c. Disclosed, redisclosed, or otherwise disseminated a person’s biometric identifiers or biometric information, in violation of 740 ILCS 14/15(d).

2. Hines' and the putative class members' claims allegedly are based on their use of remote exam-proctoring software that Proctorio develops and sells. Hines and the putative class members allege that when they took exams using Proctorio's software, their biometric information and biometric identifiers were obtained.

3. In response to the complaint, Proctorio denied Hines' and the putative class members' allegations, denied any violation of BIPA, and denied any liability to Hines or the putative class.

4. Throughout this lawsuit, Hines and the putative class members were represented by reputable counsel who are highly experienced both with class actions and specifically with BIPA.

5. The parties engaged in extensive and broad discovery in this case. Hines and the putative class members served two sets of requests for production of documents, two sets of requests for admission, and two sets of interrogatories, all of which were served in order to understand (among other things) how Proctorio's software was designed, how it functions, and whether or not it actually collects biometric information or biometric identifiers.

6. As part of the discovery in this case, Proctorio produced more than 55,000 pages of documents in response to 47 separate requests for production, provided detailed answers to 20 different interrogatories, and responded to 56 separate requests for admission.

7. In addition to engaging in written discovery, Hines and the putative class members took the depositions of both current and former Proctorio personnel, including

Proctorio's founder and CEO, and a corporate deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) that sought testimony on seven wide-ranging subjects.

8. Hines and the putative class members also engaged in third party discovery, which included serving third-party subpoenas for deposition testimony and documents, including subpoenas to higher education institutions that use Proctorio's software for remote exam proctoring, as well as to Proctorio's security consultant that advised Proctorio regarding its software and functionality.

9. Most important of all, Proctorio produced to Hines and the putative class members its source code for those components of its software that could conceivably implicate BIPA. Specifically, Proctorio gave Hines and the putative class members full and unfettered access to the source code associated with the face detection and ID check functionality of Proctorio's software upon which Hines and the putative class members' claims in this case are based.

10. To ensure that Hines had a full and fair opportunity to elicit all relevant facts and evidence, Proctorio also provided to Hines and the putative class members' expert witness secured access to source code for additional components of the software which were not even at issue in the case and did not implicate BIPA. These components included the source code that runs on a test-taker's device during an exam (Hines and the putative class members already had the source code for the face detection and ID check functionality), the source code that runs on an instructor's device to review results from a remote proctoring session, and the source code that concerned pre-encryption

communication between a test taker's machine or an instructor's machine and Proctorio's servers.

11. Hines and the putative class members retained their own expert to review and analyze Proctorio's source code, analyze whether Proctorio's software collected biometric information or biometric identifiers, and ultimately opine as to whether Proctorio's software implicates or violates BIPA.

12. As a result of the extensive discovery undertaken in this case, Hines agrees that the allegations in the complaint do not accurately describe Proctorio's software and how it operates. While Hines maintains that he had a good faith factual basis for his allegations at the beginning of the case, Hines now acknowledges and agrees that the evidence does not comport with the allegations made in the Complaint. Specifically, from the source code, documents, deposition testimony, and other information Proctorio produced in this case, Hines has found no evidence that Proctorio's software:

- a. Scans or analyzes test-takers' facial geometry or constantly monitors test-takers' facial geometry before, during, or after an exam to confirm test takers' identities;
- b. Scans test-takers' faces during exams or measures test takers' facial geometry (including head movements, eye movements, mouth movements, and voice) during exams;
- c. Acquires biometric data points about test-takers;
- d. Collects, captures, stores, uses, or profits from test-takers' facial geometries;

- e. Performs face recognition or facial landmark detection;
- f. Uniquely identifies test-takers using scans or analyses of facial geometry; or
- g. Uses biometrics to determine if a test-taker is the same person whose picture is in the student ID that the test-taker provides at the beginning of an exam.

Given the broad scope of discovery conducted in this case, Hines has no reason to suspect that such evidence exists.

13. In fact, the evidence produced by Proctorio and reviewed by Hines establishes that Proctorio's software does not:

- a. Acquire biometric data points about test-takers
- b. Collect, capture, store, use, or profit from test-takers' facial geometries;
- c. Perform face recognition or facial landmark detection;
- d. Track head or eye movements;
- e. Uniquely identify test-takers using scans or analyses of facial geometry; or
- f. Use biometrics to determine if a test-taker is the same person whose picture is in the student ID that the test-taker provides at the beginning of an exam.

14. Discovery also established that Proctorio does not sell, lease, trade or otherwise profit from any customer's biometric information. Discovery revealed that

Proctorio utilizes an encryption tool called Zero-Knowledge Encryption that prevents Proctorio from accessing any personally-identifying information collected during the exam process. For example, Proctorio cannot access the names of the students that take its exams.

15. Discovery further established that Proctorio's software performs facial detection, which means that it is able to identify the presence of a forward-looking face on a webcam, but not facial recognition, which means that it cannot identify the individual in the webcam.

16. After the extensive discovery undertaken in this case, Hines has found no evidence that Proctorio has committed any negligent violation of BIPA because he has found no evidence that Proctorio's software collects biometric information or biometric identifiers. Given the broad scope of discovery conducted in this case, Hines has no reason to suspect that such evidence exists. As a result, Hines found no evidence that Proctorio has failed to obtain any required consent. Given the broad scope of discovery conducted in this case, Hines has no reason to suspect that such evidence exists.

17. After the extensive discovery undertaken in this case, Hines has found no evidence that Proctorio has committed any intentional or reckless violation of BIPA. Given the broad scope of discovery conducted in this case, Hines has no reason to suspect that such evidence exists. Documents and deposition testimony produced during discovery in this case show that Proctorio takes extensive measures to protect test-takers' privacy, including because:

- a. Proctorio does not require test-takers to provide personally identifiable information beyond what their institutions require to access the exam they are taking remotely;
- b. Proctorio utilizes Zero-Knowledge Encryption to secure information before it ever leaves a test-taker's device, meaning that Proctorio does not have the information necessary to decrypt that information—only authorized personnel at the test-taker's institution have the encryption keys;
- c. Proctorio's platform undergoes daily vulnerability tests to assess the strength of the platform against potential attacks; and
- d. Proctorio engages third-party organizations to vet and evaluate its safety standards and privacy protections.

18. After the extensive discovery undertaken in this case, Hines now agrees that, based on the evidence produced in discovery and specific to the claims in this case, it cannot be maintained as a class action under Federal Rule of Civil Procedure 23 or Illinois Code of Civil Procedure Section 2-801, including because it would be challenging (and may be unknowable) for Hines to ascertain and identify class members given the unique aspects of how Proctorio's software functions. Specifically, Hines found no evidence that Proctorio collects or possesses information sufficient to:

- a. Determine a particular test-taker's location;
- b. Identify a particular test-taker by name; or
- c. Identify a particular test-taker's email address, phone number, mailing address, or other contact information.

Given the broad scope of discovery conducted in this case, Hines has no reason to suspect that such evidence exists.

19. Given the difficulties in certifying a class in this particular case, Hines agrees that claims against Proctorio are not suitable for class treatment.

20. Based on the foregoing, the parties agree that there is no evidence of any violation of BIPA by Proctorio and there is therefore no basis to continue this action.

Accordingly, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Hines and Proctorio hereby stipulate to dismiss this case with prejudice and without an award of costs or attorneys' fees to either side.

Respectfully submitted,

Dated: August 22, 2022

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