

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

FILED
4/29/2021 7:51 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH00205

MONIQUE ROBERTS, individually and)
on behalf of similarly situated)
individuals,)
)
Plaintiff,)
)
v.)
)
PAYCHEX, INC., a Delaware)
corporation,)
)
Defendant.)

13148011

No. 2019-CH-00205

Hon. Alison C. Conlon

Jury Trial Demanded

THIRD AMENDED CLASS ACTION COMPLAINT & JURY DEMAND

Plaintiff Monique Roberts (“Plaintiff”), individually and on behalf of other similarly situated individuals, brings her Third Amended Class Action Complaint against Defendant Paychex, Inc. (“Defendant”), for its violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”), and to obtain redress for persons injured by its conduct. Plaintiff alleges the following based on personal knowledge as to her own experiences, and as to all other matters, upon information and belief, including an investigation conducted by her attorneys.

INTRODUCTION

1. BIPA defines a “biometric identifier” as any personal feature that is unique to an individual, including handprints, fingerprints and palm scans. “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.”

2. Defendant is a leading provider of payroll, timekeeping, HR, tax, and compliance services for businesses.

3. Defendant obtains individual workers' biometric identifiers when they use Defendant's timeclocks to conduct timekeeping services for its commercial clients, *i.e.* such workers' respective employers, including Plaintiff's employer.

4. BIPA provides, *inter alia*, that a private entity, 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 it first:

- (1) informs the person whose biometrics are to be collected *in writing* that biometric identifiers or biometric information will be collected or stored;
- (2) informs the person whose biometrics are to be collected *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;
- (3) receives a *written release* from the person whose biometrics are to be collected, allowing the capture and collection of their biometric identifiers or biometric information; and
- (4) publishes publicly available retention guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a).

5. 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. 750 ILCS 14/15(a).

6. Finally, private entities are prohibited from profiting from an individual's biometric identifiers or biometric information, as well as disclosing the same to third parties without informed consent. 740 ILCS 14/15(c)-(d).

7. Indeed, "biometrics are unlike other unique identifiers that are used to access finances or other sensitive information," and therefore require special treatment compared to traditional private 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.

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

9. Compliance with BIPA is straightforward and minimally burdensome. For example, the necessary disclosures may be accomplished through a single sheet of paper or through a prominently featured notice affixed to a biometric-enabled device.

10. BIPA's requirements bestow a right to privacy in biometrics and a right to make an *informed* decision when electing whether to provide or withhold biometrics.

11. Defendant's deprivation of Plaintiff's statutory rights conferred by BIPA constitutes the actual injuries the Illinois Legislature sought to prevent.

12. On her own behalf and on behalf of 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

13. Defendant Paychex, Inc., is a Delaware corporation registered with and authorized by the Illinois Secretary of State to transact business in Illinois. Defendant transacts business throughout Illinois, including in Cook County.

14. At all relevant times, Plaintiff Roberts has been a resident and citizen of the State of Illinois.

JURISDICTION AND VENUE

15. This Court may assert personal jurisdiction over Defendant, pursuant to 735 ILCS 5/2-209, in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant is doing business within this state and because Plaintiff's claims arise out of Defendant's unlawful in-state actions.

16. Venue is proper in Cook County, pursuant to 735 ILCS 5/2-101, because Defendant is doing business in Cook County and thus resides there under § 2-102, and because the transaction out of which this cause of action arises occurred in Cook County.

FACTS SPECIFIC TO PLAINTIFF

17. Defendant is a leading provider of timekeeping services for businesses.

18. In order to conduct timekeeping services for its commercial clients, Defendant provides its clients with biometric timekeeping systems ("Paychex Timeclocks") that rely on the scanning of biometric identifiers in order to authenticate users' identities and accurately record their work hours.

19. During the relevant time period, Defendant supplied Plaintiff's employer with a Paychex Timeclock. While Plaintiff worked for her employer in Chicago, Illinois, she was required

to scan her biometric identifier, or portions thereof, into a Paychex Timeclock each time she “clocked-in” and “clocked-out” of a work shift.

20. Defendant then obtained, stored, used, and relied on information generated as a result of the collection of Plaintiff’s biometrics from a Paychex Timeclock, *i.e.* biometric information, in order to perform timekeeping services on behalf of Plaintiff’s respective employer.

21. Although Defendant obtains, stores, and uses biometric information, it failed to provide any written disclosures describing the purpose and duration of such use, it failed to make publicly available any retention or destruction policies, and it failed to obtain informed written consent, all in violation of BIPA.

22. The data and information that Defendant ultimately obtains and relies on to conduct timekeeping services for its commercial clients constitutes biometric information because such data and information is based on, and would not exist absent, individuals’ respective biometric identifiers.

23. By failing to comply with BIPA, Defendant has violated Plaintiffs’ substantive state rights to biometric privacy.

CLASS ALLEGATIONS

24. Plaintiff brings this action on her own behalf and on behalf of similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiffs seek to represent a Class (“Class”) defined as follows:

All individuals who scanned their finger, iris, face, or other biometric identifier into a Paychex Timeclock in Illinois during the applicable limitations period.

25. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officers or directors.

26. Upon information and belief, there are at least thousands of members of the Class, making the members of the Class so numerous that joinder of all members is impracticable. The member of the Class can be easily identified through Defendant's records.

27. Plaintiff's claims are typical of the claims of the Class she seeks to represent, because the bases of Defendant's liability to Plaintiff and the Class is substantially the same, and because Defendant's conduct has resulted in similar injuries to Plaintiff and to the Class.

28. 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. Common questions for the Class include, but are not limited to, the following:

- a. Whether the subject Paychex Timeclocks collect, capture, or otherwise obtain biometric identifiers or biometric information;
- b. Whether any biometric information is generated or otherwise derived from the subject Paychex Timeclocks;
- c. Whether Defendant made available to the public a written policy that establishes a retention schedule and guidelines for destroying biometric identifiers or biometric information;
- d. Whether Defendant obtained a written release from the Class before capturing, collecting, or otherwise obtaining their biometric identifiers or biometric information;
- e. Whether Defendant's conduct violates BIPA;

- f. Whether Defendant's BIPA violations are willful or reckless; and
- g. Whether Plaintiff and the Class are entitled to damages and injunctive relief.

29. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

30. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class they seek to represent. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither Plaintiff nor her counsel have any interest adverse to those of the other members of the Class.

31. Defendant has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

COUNT I
**Violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.*,
(On behalf of Plaintiff and the Class)**

32. Plaintiff hereby incorporates the foregoing allegations as if fully set forth herein.

33. Defendant is a private entity under BIPA.

34. In order to conduct timekeeping services for its commercial clients, including Plaintiff's employer, Defendant has obtained data and information derived from Plaintiff's and the

other Class members' biometric identifiers, *i.e.* biometric information, through its Paychex Timeclocks. Such biometric information is necessarily, even if temporarily, stored in the possession of Defendant in some format and manner in order to allow Defendant to accurately perform such services for its clients.

35. By conducting valuable timekeeping services that rely on biometric information for its commercial clients, Defendant profits from biometric information in violation of 740 ILCS 14/15(c).

36. Prior to obtaining Plaintiff's and the Class members' biometric information, and in violation of 740 ILCS 14/15(b), Defendant failed to provide any written disclosures regarding its collection, storage, and/or use of such biometric information, nor the purpose or duration of such collection, storage, and/or use, and failed to obtain written releases from Plaintiff and the Class members.

37. Prior to and after storing Plaintiff's and the Class members' biometric information, and in violation of 740 ILCS 14/15(a), Defendant failed to make publicly available any retention and destruction schedule for such biometric information.

38. BIPA provides for statutory damages of \$5,000 for each willful and/or reckless violation of BIPA and, alternatively, damages of \$1,000 for each negligent violation of BIPA.

39. Defendant's violations of BIPA, a statute enacted in 2008, were knowing and willful, or were at least in reckless disregard of the statutory requirements. Alternatively, Defendant negligently failed to comply with BIPA.

40. Accordingly, with respect to Count I, Plaintiff, on her own behalf and on behalf of the proposed Class, prays for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, respectfully requests that this Court enter an Order:

- a. Certifying the Class as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendant’s actions, as set forth herein, violate BIPA;
- c. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA;
- d. Awarding statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(1);
- e. Awarding statutory damages of \$1,000 for each negligent violation of BIPA, pursuant to 740 ILCS 14/20(3);
- f. Awarding reasonable attorneys’ fees, costs, and other litigation expenses pursuant to 740 ILCS 14/20(3);
- g. Awarding pre- and post-judgment interest, as allowable by law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: April 29, 2021

Respectfully submitted,

MONIQUE ROBERTS, individually and on behalf of similarly situated individuals,

By: /s/ Timothy P. Kingsbury
One of Plaintiff’s Attorneys

Evan M. Meyers
Timothy P. Kingsbury
MCGUIRE LAW, P.C. (Firm ID: 56618)
55 W. Wacker Drive, 9th Fl.
Chicago, IL 60601
Tel: (312) 893-7002
emeyers@mcgpc.com
tkingsbury@mcgpc.com

Counsel for Plaintiff and the Putative Class