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

11245075

WARDELL BROWN,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

MACNEIL AUTOMOTIVE PRODUCTS, LTD.
d/b/a WEATHERTECH, an Illinois Corporation,

Defendant.

Case No. 2019-CH-00503

MACNEIL AUTOMOTIVE PRODUCTS, LTD.
d/b/a WEATHERTECH, an Illinois Corporation,

Third Party Plaintiff,

v.

JURY TRIAL DEMANDED

ADP, LLC, a Delaware Company; Paychex,
Inc., a Delaware Corporation; and ADP, Inc., a
Delaware Corporation,

Third Party Defendants.

THIRD PARTY COMPLAINT

Defendant/Third-Party Plaintiff, MacNeil Automotive Products, LTD, d/b/a WeatherTech (“WeatherTech”) by its undersigned attorneys, for its Third Party Complaint against ADP, LLC and ADP, Inc. (collectively “ADP”) and PAYCHEX, INC. (“Paychex”) (collectively “Third-party Defendants”) states the following:

PARTIES

1. Defendant/Third-Party Plaintiff WeatherTech is an Illinois company.
2. On information and belief, at all relevant times Third-party Defendant ADP, LLC was and is a Delaware company with its principal place of business in New Jersey.

3. On information and belief, at all relevant times Third-party Defendant Paychex was and is a Delaware corporation with its principal place of business in New York.

4. On information and belief, at all relevant times Third-Party Defendant ADP, Inc. was and is a Delaware corporation with its principal place of business in New Jersey.

5. On information and belief, Plaintiff Wardell Brown is an Illinois citizen and Cook County, Illinois, resident.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Defendants pursuant to 735 ILCS § 5/2-209 because they conduct or conducted business transactions in Illinois and are or were registered to conduct business in Illinois.

7. Venue is proper in Cook County because Defendants are or were authorized to conduct business in this State and, on information and belief, Plaintiff Brown resides in Cook County.

FACTUAL BACKGROUND

8. On May 3, 2019, Plaintiff Wardell Brown filed his First Amended Complaint alleging that WeatherTech violated the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* via its use of Third-party Defendant ADP’s time clock systems.

9. WeatherTech denies all material allegations directed towards it by Plaintiff. *See* WeatherTech’s Answer and Affirmative Defenses to Plaintiff’s First Amended Complaint, filed on November 23, 2020, attached hereto as Exhibit A.

10. Third-party Defendants represented to WeatherTech that their respective time-clock systems did not collect, scan or capture any biometric identifiers or biometric information,

as that term is defined under BIPA, and otherwise complied with all federal and state laws and regulations.

11. The technology employed by Third-party Defendants' time-clock systems is proprietary and trade secretive and, as such, WeatherTech did not have any independent information as to how said time-clock systems functioned. The Third-party Defendants' time-clock systems were the sole property of the Third-party Defendants and were under said Third-party Defendants' complete and sole control.

12. WeatherTech reasonably relied on Third-party Defendants' representations, and acted with all diligence, as to what their technology and time-clock systems did and how said systems and devices functioned and that said time-clock systems did not capture, collect or scan any biometric identifiers or biometric information, as those terms are set forth in BIPA.

13. From January 1, 2014 to approximately November 1, 2014, WeatherTech employed and utilized Paychex time-clock systems at its premises.

14. From approximately November 1, 2014 to the filing of the First Amended Complaint, WeatherTech employed and utilized ADP time-clock systems at its premises.

15. Without prejudice to any of the denials and/or defenses asserted in WeatherTech's Answer and Affirmative Defenses filed on November 23, 2020, WeatherTech brings forth the following claims against Third-party Defendants as follows:

COUNT I – CONTRIBUTION – ALL THIRD-PARTY DEFENDANTS

16. WeatherTech realleges paragraphs 1 through 15 as though they were fully set forth herein.

17. At all relevant times, Third-party Defendants owed a duty to WeatherTech to correctly and accurately describe how their time-clock system technologies functioned and accurately inform WeatherTech with regard to the same, and owed WeatherTech a duty to inform it of potential implications related to federal and state statutes, such as BIPA, that could be implicated with regard to the use of Third-party Defendants' time-clock systems.

18. Notwithstanding the aforesaid duties, Third-party Defendants were guilty of one or more of the following negligent acts or omissions: 1) failing to inform WeatherTech as to how their respective time-clock systems' technology functions and the nature of the finger-scans utilized; 2) failing to inform WeatherTech as to the implications of the use of the respective time-clock technologies and their implications with certain privacy statutes, such as BIPA; 3) failing to inform and provide WeatherTech's employees of the requisite requirements under BIPA and failing to establish a required BIPA publicly-available policy; 4) negligently explaining how the Third-party Defendants' respective time-clock systems functioned and the technology related to the same; 5) acquired, held and disclosed WeatherTech employee finger-scans without following the requirements of BIPA; and 6) were otherwise reckless and/or negligent.

19. If the Plaintiff or any putative class member sustained injuries and damages as claimed in the First Amended Complaint, which WeatherTech specifically denies, such injury and damages were proximately caused by the above-mentioned negligent acts or omissions of Third-party Defendants.

20. At all times relevant to the allegations in the First Amended Complaint, there was in effect an act entitled the Joint Tortfeasors Contribution Act, 740 ILCS 100/0.01 et seq. ("Contribution Act")

21. If WeatherTech is found liable to Plaintiff and/or any putative class member, which liability WeatherTech specifically denies, WeatherTech will be entitled to an apportionment of fault or contribution against Third-party Defendants.

22. In the event WeatherTech is found liable to any Plaintiff and/or putative class member in any amount whatsoever, WeatherTech requests that this Court enter judgment in its favor and against Third-party Defendants in the fullest amount allowed by law pursuant to the Contribution Act.

WHEREFORE, WeatherTech respectfully requests judgment to be entered against Third-party Defendants as follows: 1) in the fullest amount allowed by law pursuant to the Contribution Act; and 2) for such other and additional relief the Court deems appropriate.

COUNT 2 (COMMON LAW INDEMNIFICATION)
- ALL THIRD-PARTY DEFENDANTS

23. WeatherTech realleges paragraphs 1 through 22 as though they were fully set forth herein.

24. With regard to the claims alleged in the First Amended Complaint, Third-party Defendants' subcontractors, agents, servants, employees or representatives had sole and complete control and understanding of their respective proprietary and trade secretive time-clock system technology.

25. Any acts or omissions allegedly resulting in injuries to the Plaintiff and/or any putative class member were the acts or omissions of Third-party Defendants, their subcontractors, agents, servants, employees and/or representatives and not of WeatherTech.

26. Any injuries allegedly suffered by Plaintiff and/or any putative class member were the result of acts or omissions by Third-party Defendants, their subcontractors, agents, servants, employees, or representatives or guarding of their work/systems/technology.

27. If WeatherTech is found liable to Plaintiff and/or any putative class member, which liability WeatherTech expressly denies, its liability will only be by virtue of the special relationship between WeatherTech and Third-party Defendants.

28. WeatherTech has suffered damages in defending the First Amended Complaint and the original Complaint.

WHEREFORE, WeatherTech respectfully requests judgment be entered against Third-party Defendants as follows: 1) for total and complete indemnity for all of WeatherTech's costs and expenses, including attorney fees, incurred in defending the original Complaint and the First Amended Complaint; 2) for total and complete indemnity for any judgments which may be rendered against WeatherTech in this lawsuit; 3) for total and complete indemnity for any and all amounts which may in good faith be paid by WeatherTech by way of compromise or settlement; 4) for pre-judgment interest, if any judgment is rendered against WeatherTech in this lawsuit; and 5) for such other and additional relief the Court deems appropriate.

COUNT 3 (NEGLIGENT MISREPRESENTATION) – ALL THIRD PARTY DEFENDANTS

29. WeatherTech realleges paragraphs 1 through 28 as though they were fully set forth herein.

30. The Third-party Defendants had a duty to communicate accurate information to WeatherTech with regard to their respective time-clock systems and technology. Further, the Third-party Defendants had a duty to not only accurately convey how their respective time-clock systems functioned, but also whether said systems implicated any specific statutory scheme, such as BIPA.

31. The Third-party Defendants falsely stated and represented that their respective time-clock systems did not scan nor collect nor hold a WeatherTech employee's fingerprint as that term is defined in the biometric identifier and biometric information section of BIPA.

32. Upon information and belief, the Third-party Defendants breached their duty of care and were careless and/or negligent in their representations as to how their technology functioned in their respective time-clock systems.

33. The Third-party Defendants' misrepresentations and inaccurate statements induced WeatherTech to employ their respective time-clock systems at its place of business and WeatherTech reasonably relied on said misrepresentations as an accurate description of the technology behind said time-clock systems.

34. The First Amended Complaint has been filed against WeatherTech alleging that it violated BIPA wherein it is alleged that WeatherTech wrongfully collected, stored and disclosed Plaintiff's and/or putative class members' biometric information and identifiers without following the requirements of BIPA.

35. That if any violation of BIPA is to be found, it is a proximate cause of the misrepresentations of the Third-party Defendants to WeatherTech.

36. That as a direct and proximate result of the Third-party Defendants' misrepresentations to WeatherTech as to how the technology of their respective time-clock systems functioned, WeatherTech has and will in the future incur damages including the cost of defending against Plaintiff's original Complaint and the First Amended Complaint.

WHEREFORE, Defendant/Third Party Plaintiff WeatherTech demands judgment in its favor and against the Third-party Defendants, jointly and severally, in an amount in excess of

\$100,000, and for its attorney's fees, costs and applicable interests, and for all such other and further relief as the Court deems proper and just.

**COUNT 4 (WILLFUL/RECKLESS MISREPRESENTATION) –
ALL THIRD PARTY DEFENDANTS**

37. WeatherTech realleges paragraphs 1 through 28 as though they were fully set forth herein.

38. The Third-party Defendants knew or should have known that they misrepresented to WeatherTech how their respective time-clock systems functioned.

39. That due Third-party Defendants' willful and reckless misrepresentations and inaccurate statements, they induced WeatherTech to employ their respective time-clock systems at its place of business and WeatherTech reasonably relied on said misrepresentations as an accurate description of the technology behind said time-clock systems.

40. The First Amended Complaint has been filed against WeatherTech alleging that it violated BIPA wherein it is alleged that WeatherTech wrongfully collected, stored and disclosed Plaintiff's and/or putative class members' biometric information and identifiers without following the requirements of BIPA.

41. That if any violation of BIPA is to be found, it is a proximate cause of the willful and reckless misrepresentations of the Third-party Defendants to WeatherTech.

42. That as a direct and proximate result of the Third-party Defendants' misrepresentations to WeatherTech as to how the technology of their respective time-clock systems functioned, WeatherTech has and will in the future incur damages including the cost of defending against Plaintiff's original Complaint and the First Amended Complaint.

WHEREFORE, Defendant/Third Party Plaintiff WeatherTech demands judgment in its favor and against the Third-party Defendants, jointly and severally, in an amount in excess of

\$100,000, and for its attorney's fees, costs and applicable interests, and for all such other and further relief as the Court deems proper and just.

COUNT 5 (CONTRACTUAL INDEMNITY) – ADP

43. WeatherTech realleges paragraphs 1 through 42 as though they were fully set forth herein.

44. On or about May 28, 2014, WeatherTech and ADP entered into a contract ("ADP Contract"), which is valid and supported by adequate consideration. A true and correct copy of this contract is attached hereto as Exhibit B.

45. The ADP Contract states: Section 6. A. "Willful Acts, Errors and Omissions. ADP shall reimburse Client for actual damages incurred by Client as a direct result of the criminal or fraudulent acts or willful misconduct of ADP or any of its employees."

46. ADP knew or should have known that it misrepresented to WeatherTech how its time-clock systems functioned.

47. That due to ADP's willful and reckless misrepresentations and inaccurate statements, it induced WeatherTech to employ its time-clock systems at WeatherTech's place of business and WeatherTech reasonably relied on said misrepresentations as an accurate description of the technology behind said time-clock systems.

48. A First Amended Complaint has been filed against WeatherTech alleging that it violated BIPA wherein it is alleged that WeatherTech wrongfully collected, stored and disclosed Plaintiff's and/or putative class members' biometric information and identifiers without following the requirements of BIPA.

49. That if any violation of BIPA is to be found, it is a proximate cause of the willful and reckless misrepresentations of ADP to WeatherTech.

50. If Plaintiff and/or any putative class member sustained injury and damages as claimed in the First Amended Complaint, which WeatherTech specifically denies, such injury and damages were proximately caused by the willful conduct of ADP.

51. The ADP Contract obligates ADP to hold WeatherTech completely harmless and provide complete indemnity for actual damages to WeatherTech, as stated above, with regard to the First Amended Complaint and WeatherTech has suffered damages in defending the original Complaint and the First Amended Complaint.

WHEREFORE, WeatherTech respectfully requests judgment be entered against ADP as follows: 1) for total and complete indemnity for all of WeatherTech's costs and expenses, including attorney fees, incurred in defending the original Complaint and the First Amended Complaint; 2) for total and complete indemnity for any judgments which may be rendered against WeatherTech in this lawsuit; 3) for total and complete indemnity for any and all amounts which may in good faith be paid by WeatherTech by way of compromise or settlement; 4) for pre-judgment interest, if any judgment is rendered against WeatherTech in this lawsuit; and 5) for such other and additional relief the Court deems appropriate.

JURY DEMAND

WeatherTech hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

MACNEIL AUTOMOTIVE PRODUCTS, LTD
d/b/a WEATHERTECH

By: /s/Timothy M. Schaum
One of Its Attorneys

Robert S. Grabemann
Timothy M. Schaum