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

JOEY MUNIZ, individually and on behalf of all similarly situated,
Plaintiff,

v.

WORKWELL TECHNOLOGIES, INC., a Delaware Corporation,
Defendant.

No. 2019-CH-04061

Calendar 16

Judge David B. Atkins

JUDGE DAVID B. ATKINS
MAR 17 2021
Circuit Court-1879

MEMORANDUM OPINION AND ORDER

THIS CASE COMING TO BE HEARD on non-parties' motions to quash Plaintiff's third-party subpoenas, the Court, having considered the briefs submitted and being fully advised in the premises,

THE COURT HEREBY ORDERS:

Background

On March 28, 2019, Plaintiff Joey Muniz filed this class action against Workwell Technologies, Inc. (Workwell), alleging violations of the Illinois Biometric Information Privacy Act (BIPA). In December of 2019, Plaintiff and Workwell reached an agreement to settle this action. This Court entered a preliminary approval order on January 13, 2020, and, entered an amended preliminary approval order on January 21, 2020.

Subsequent to entry of the Court's January 21, 2020 preliminary approval order, Plaintiff issued subpoenas *duces tecum* to the various third party companies that Workwell identified as corporate customers of its biometric technology. In response to his subpoenas, Plaintiff is requesting the names, last known addresses, and email contact information from each third party for past and present employees who have utilized the Workwell biometric technology. Now moving to quash those subpoenas are: Johnson Development Co., LLC; Abbott House, LLC; Bayside Terrace, LLC; H.Q.C. Inc.; Morningside Property Management, LLC; O'Keefe, Lyons & Hynes, LLC; Prime Wood Craft, LLC; Progressive Carriers, Co.; Rex Services, Inc.; and United States Cylinder Gas Corp. (collectively the Subpoena Recipients).[1]

Legal Standard

[1] Several additional entities that received Plaintiff's subpoenas *duces tecum* filed similar motions to quash, but have since reached resolutions with Plaintiff regarding the subpoenas.

The use of subpoena is a judicial process, and courts have broad and flexible powers to prevent abuses of their process.[2] "A subpoena *duces tecum* will be quashed if the requesting party fails to show: (1) that the material sought is evidentiary and relevant; (2) the material sought is not otherwise reasonably procurable by the exercise of due diligence in advance of trial; (3) that the requesting party cannot properly prepare for trial without such production and the failure to obtain the materials sought may tend to unreasonably delay the trial; and (4) the application is made in good faith and is not intended as a general 'fishing expedition'."[3]

Discussion

The Subpoena Recipients contend that because they have not opted to join the settlement reached between Plaintiff and Workwell, there is a danger, should they produce contact information responsive to Plaintiff's subpoenas, that their Illinois employees who used the Workwell-manufactured-and-provided biometric technology could see that their employers did not participate in the settlement and subsequently decide to seek legal action against the Subpoena Recipients under BIPA. While the Court recognizes and understands the Subpoena Recipients' concerns, it must also acknowledge that any potential for prejudice against the Subpoena Recipients does not necessarily rise to a level that requires the subpoenas to be quashed.

The information sought by Plaintiff's subpoenas is undeniably relevant in nature. Plaintiff brought this action on behalf of a class, and now, after having reached a settlement agreement with Workwell, seeks information necessary to meet his obligation as the class representative and issue notice of the settlement upon all class members. The Subpoena Recipients' concerns cannot supersede the rights of the prospective class members, particularly in light of the fact that they are entitled to monies to dispersed pursuant to a class action settlement with Workwell. While the parties have reached a settlement, this action is not closed. Funds provided by Workwell pursuant to the parties' settlement must be dispersed to class members who make a claim on their share of the funds. In order for class members to determine whether or not to claim their share, they must be informed of the action, the settlement, and their rights as class members. Thus, the information sought is unequivocally relevant to this action, no matter if the parties have settled prior to trial. The suggestion that parties would need to extend discovery and delay an agreed-to class settlement until after non-parties had decided whether or not to provide

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[2] *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶62, (citing *People v. Walley*, 215 Ill. App. 3d 971, 974 (1st Dist. 1991)).

[3] *People v. Cannon*, 127 Ill. App. 3d 663, 665 (1st Dist. 1984) (citing to *United States v. Nixon*, 418 U.S. 683, 700 (1974)).

essential contact information relating to the class members is absurd. The potential effect would be unknown numbers of putative class members never learning of their rights relating to the action and the settlement. The reality is that whether the subpoenas *duces tecum* were issued before or after the settlement, each Subpoena Recipient is uniquely positioned to provide the names and contact information of putative class members.

As Plaintiff states in his response to Johnson Development, LLC's motion to quash and his combined response to the motions to quash brought by the other Subpoena Recipients identified in this Order, Plaintiff represented to the Court in its motion for the preliminary approval order and during the appearance associated with presentation of that motion that he intended to issue subpoenas to non-party employers for the explicit and limited purpose of obtaining contact information for class members. The Court entered the preliminary approval order having contemplated and understood Plaintiff's plan to issue the subpoenas. Despite the Subpoena Recipients contentions, Plaintiff is not in possession of contact information for all of the putative class members in this action. Plaintiff has represented that Workwell is able to provide only the names of individuals whose biometric data are affected by the causes of action included in Plaintiff's Complaint. Where the Subpoena Recipients are uniquely positioned to be able to not only identify which of their employees have used Workwell biometric scanners for the purposes of employment timekeeping and information as to how those employees may be contacted, Plaintiff's subpoenas are reasonable. Any burden or cost to the Subpoena Recipients in gathering and providing information responsive to the subpoenas is outweighed by the obvious need to inform Workwell class members of their rights under the settlement reached in this action.

The Subpoena Recipients' concerns about the sought-after information being used to improperly develop further actions against them under BIPA is not wholly without merit. Such action would absolutely qualify issuance of the subpoenas as a "fishing expedition." The Court will not condone Plaintiff's counsel using this action and the settlement reached on behalf of their client herein for the purposes of obtaining contact information of individuals who they believe may potentially have causes of actions against their employers under the same theories raised here. Fortunately, Plaintiff has made clear — in its response to the motions to quash and during the August 21, 2020 hearing on the motions to quash — that any contact information provided in response to the subpoenas can be provided to the Settlement Administrator directly, who

would be obligated to maintain such information as confidential.[4] [5] Indeed, not only should the Subpoena Recipients produce information responsive to the subpoenas directly to the Settlement Administrator, but all notices sent to class members should be sent from the Settlement Administrator only. They need not explicitly reference or identify contact information for Plaintiff's counsel or *any* references to the Subpoena Recipients.[6] Rather, the notices need only notify class members of the settlement in this action, their rights as class members to a portion of the settlement funds, and what they need to do if they wish to receive the share of the settlement funds to which they are entitled. Plaintiff's counsel need never be in possession of, or even review, the contact information of the class members.

Some of the Subpoena Recipients object to Plaintiff's subpoenas seeking information relating to employers who used facial scanners rather than fingerprint scanners. As pointed out by Plaintiff in his combined response to the non-Johnson Development, LLC motions to quash, the settlement class entails all individuals who used Workwell facial scanners as well as fingerprint scanners for employment timekeeping purposes in Illinois.[7]

WHEREFORE, the Court orders as follows:

a. The motions to quash filed by Johnson Development Co., LLC, Abbott House, LLC, Bayside Terrace, LLC, H.Q.C. Inc., Morningside Property Management, LLC, O'Keefe, Lyons & Hynes, LLC, Prime Wood Craft, LLC, Progressive Carriers, Co., Rex Services, Inc., and United States Cylinder Gas Corp. (collectively the Subpoena Recipients) are DENIED.

b. Each Subpoena Recipients shall, by or on April 14, 2021, compile and produce to the Settlement Administrator the following: (1) the name, (2)

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[4] See Plaintiff's response to Johnson Development, LLC's motion quash at pgs. 3-4; see also, Plaintiff's combined response to the non-Johnson Development, LLC motions to quash at pg. 10.

[5] See the Stipulation of Class Action Settlement at § 5.1, which is attached to Plaintiff's response to Johnson Development, LLC's motion to quash at Exhibit 1-B.

[6] To the extent the Subpoena Recipients must be referenced in the notices, they need not be explicitly named. Rather, notices send to class members whose employers did not opt into the settlement reached in this action should not include any reference to the employer beyond a possible single statement reflecting that the employer is not, and never was, a party to Cook County Case No. 2019-CH-04061 and it not a "Participating Employer." Pursuant to the settlement and preliminary approval order, employees of employers which do not participate in the settlement are members of the "Workwell Class" only. Therefore, there is no need to address their employers in the notice.

[7] See the Court's January 21, 2021 Preliminary Approval Order at ¶ 6.

the last-known U.S. mailing address, and/or[8] (3) email address of each current and former employee who used Workwell-branded biometric finger and facial scanners between March 28, 2014 and April 8, 2019 in the state of Illinois. Plaintiff's Counsel will provide Subpoena Recipients with contact information for the Settlement Administrator *instanter*.

c. The Settlement Administrator will not share any of the contact information received from the Subpoena Recipients pursuant to this Order with any individuals or entities, including Plaintiff and Plaintiff's counsel, and will use the information solely for the purposes of issuing notices to the putative class members.

d. The notices issued to the Subpoena Recipients shall only explicitly reference the "Workwell Class."[9] In the even that a Subpoena Recipient decides to become a participating employer prior to the Settlement Administrator issuing the notices pursuant to this Order, the original notice, with references to the "Employer Class" may be sent to the current and former employees of that Subpoena Recipient.

e. Once all of the settlement funds in this action have been dispersed — either to putative class members or *cy pres* recipients — the Settlement Administrator shall destroy all copies in its possession of the contact information provided by the Subpoena Recipients in response to Plaintiff's subpoenas *duces tecum*.

ENTERED: JUDGE DAVID B. ATKINS
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The Court.

[8] Each Subpoena Recipient will provide the last-known contact information they have of each current and former employee as identified in paragraph b above, whether they have only a mailing address, only an email address, or both.

[9] Class members are entitled to see and review the Court's January 21, 2021 Preliminary Approval Order, and thus, may inform themselves of the "Employer Class" by reviewing it. To the extent that none of the Subpoena Recipients are participating employers, their current and former employees do not qualify as members of the "Employer Class." Therefore, notice to those the Subpoena Recipients' current and former employees need not explicitly address that second class.