

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DANIEL B. STORM, HOLLY P.	:	
WHITE, and DORIS MCMICHAEL,	:	
individually and on behalf of all others	:	
similarly situated,	:	Civil Action No.: _____
	:	
Plaintiffs,	:	CLASS ACTION COMPLAINT
	:	
v.	:	JURY TRIAL DEMANDED
	:	
PAYTIME, INC.,	:	<i>ELECTRONICALLY FILED</i>
	:	
Defendant.	:	

CLASS ACTION COMPLAINT

NOW COME Plaintiffs, Daniel B. Storm, Holly P. White, and Doris McMichael (collectively “Plaintiffs”), by and through their undersigned counsel, individually and on behalf of all others similarly situated, and hereby file this Class Action Complaint against Paytime, Inc. (“Paytime” or “Defendant”). In support thereof, Plaintiffs state and allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this nationwide Class Action Complaint on behalf of themselves and all other individuals whose personal and financial information was stolen from the computer systems of Paytime (the “Data Breach”).

2. As a result of Paytime’s failure to protect this confidential data, the personal and financial information of Plaintiffs and the members of the proposed Class, including but not limited to full legal names, Social Security numbers, bank account data, street addresses, birth dates, wages, hiring dates, and phone numbers, was obtained by unknown third parties.

3. Paytime had a duty to protect the private, highly sensitive, confidential personal and financial information of Plaintiffs and the members of the proposed Class.

4. Paytime failed to safeguard and prevent vulnerabilities from being taken advantage of in its computer system.

5. Intruders first gained access to Paytime's computer systems on April 7, 2014. However, Paytime did not discover the security breach until April 30, 2014. Paytime then waited until May 12, 2014 to begin sending out notifications about the breach.

THE PARTIES

6. Defendant Paytime is national payroll service bureau offering a wide array of services, including human resource management solutions, time and attendance systems, and web-based payroll submission. Paytime provides payroll processing services to over one thousand clients throughout the United States.

7. Paytime is headquartered at 5053 Ritter Road, Suite 100, Mechanicsburg, Pennsylvania 17055.

8. Plaintiff, Daniel B. Storm, is an adult individual residing in Lexington, Kentucky. Plaintiff Storm's former employer utilized Paytime as its payroll processing service.

9. Plaintiff, Holly P. White, is an adult individual residing in Lancaster, Pennsylvania. Plaintiff White's employer utilizes Paytime as its payroll processing service.

10. Plaintiff, Doris McMichael, is an adult individual residing in New Cumberland, Pennsylvania. Plaintiff McMichael's employer utilizes Paytime as its payroll processing service.

JURISDICTION AND VENUE

11. This Court has original jurisdiction over this action under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2). The amount in controversy in this action exceeds \$5,000,000, exclusive of interest and costs, and there are more than 100 members of the Class defined below, the majority of whom reside in different states than Defendant.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Defendant regularly transacts business in this District, and a substantial part of the events giving rise to this Complaint arose in this District.

FACTUAL BACKGROUND

13. Plaintiffs and the proposed Class members were required to provide their current and former employers with highly sensitive, private, and confidential personal and financial information, including their full legal names, addresses, bank account data, Social Security numbers, and dates of birth.

14. Through its payroll processing and human resources management contracts with the current and former employers of Plaintiffs and the proposed Class members, Paytime came into possession of the personal and financial information of Plaintiffs and the proposed Class members.

15. The personal and financial information of Plaintiff and the proposed Class members, while under the control of Paytime, was accessed without the authorization of Plaintiffs and the proposed Class members.

16. Although intruders first gained access to Paytime's computer systems on April 7, 2014, Paytime did not discover the security breach until April 30, 2014.

17. Paytime waited until May 12, 2014 to begin sending out notifications about the breach.

18. Nationally, over 233,000 individuals have had their personal and financial information misappropriated as a result of the breach of Paytime's computer network.

19. Paytime had a duty to protect the private, highly sensitive, confidential personal and financial information of Plaintiffs and the proposed Class members.

20. Paytime failed to safeguard and prevent vulnerabilities from being taken advantage of in its computer systems.

21. The 2013 Identity Fraud Report released by Javelin Strategy & Research reports that in 2012 identity fraud incidents increased by more than one million victims and fraudsters stole nearly \$21 billion. The study found 12.6 million victims of identity fraud in the United States in the past year, which equates to 1 victim every 3 seconds. The report also found that nearly 1 in 4 data breach letter recipients became a victim of identity fraud, with breaches involving Social Security numbers to be the most damaging.

22. To assist companies in protecting the security of sensitive personal and financial information, the Federal Trade Commission (“FTC”) has issued a publication entitled “Protecting Personal Information: A Guide for Business” (the “FTC Report”). In this publication, the FTC provides guidelines for businesses on how to develop a “sound data security plan” to protect against crimes of identity theft.

23. To protect the personal sensitive information in their files, the FTC Report instructs businesses to follow the following guidelines:

- a) Keep inventory of all computers and laptops where the company stores sensitive data;
- b) Do not collect personal information if there is no legitimate business need. If there is a legitimate business need, only keep the information as long as necessary;
- c) Use social security numbers only for required and lawful purposes and do not store these numbers unnecessarily, such as for an employee or customer identification number;

- d) Encrypt the personal information, particularly if the sensitive information is shipped to outside carriers or contractors. In addition, the business should keep an inventory of all the information it ships;
- e) Do not store sensitive computer data on any computer with an Internet connection or access unless it is essential for conducting the business;
- f) Control access to sensitive information by requiring that employees use “strong” passwords; and
- g) Implement information disposal practices that are reasonable and appropriate to prevent unauthorized access to personally identifying information.

24. Paytime violated federal guidelines and failed to meet current data security industry standards by failing to ensure adequate security over Plaintiffs’ and the proposed Class members’ personal and financial information and by failing to retain Plaintiffs’ and the proposed Class members’ personal and financial information in a secure and safe manner.

25. As a direct result of Paytime’s failure to maintain reasonable and adequate security procedures to protect against the theft of Plaintiffs’ and the proposed Class members’ personal and financial information, Plaintiffs and the proposed Class members are at an increased and imminent risk of becoming victims of identity theft crimes, fraud and abuse.

26. In addition, Plaintiffs and the proposed Class members have spent, or will need to spend, considerable time and money to protect themselves as a result of Paytime’s conduct.

CLASS ACTION ALLEGATIONS

27. Plaintiffs bring this action as a Class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of all similarly situated persons, defined as follows:

All persons in the United States whose personal and financial information was contained in or on Paytime's computer systems, whose personal and financial information was stolen or otherwise misappropriated as a result of the Data Breach.

28. Plaintiffs are members of the Class they seek to represent.

29. The Class is so numerous that joinder of all members is impracticable, as approximately 233,000 individuals' personal and financial information has been compromised.

30. The members of the Class are readily ascertainable, as they can be identified by records maintained by Paytime. Notice can be provided by means permissible under Rule 23.

31. Plaintiffs' claims are typical of the claims of all members of the Class. Specifically, Plaintiffs' and Class members' claims arise from Paytime's failure to install and maintain reasonable security measures, and to implement appropriate policies, to protect Plaintiffs' and Class members' personal and financial information.

32. The conduct of Paytime has caused injury and/or imminent threat of injury to Plaintiffs and members of the Class.

33. Prosecuting separate actions by individual Class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Paytime.

34. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs have no interests antagonistic to or in conflict with those of the proposed Class members and therefore are adequate representatives for the proposed Class members.

35. Plaintiffs are represented by experienced counsel who are qualified to litigate this case.

36. Common questions of law and fact predominate over individualized questions. A Class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

37. There are questions of law and fact common to all members of the Class, the answers to which will advance the resolution of the claims of the Class members and that include, without limitation:

- a) Whether Paytime failed to provide adequate security and/or protection for its computer systems and/or web-based software applications containing Plaintiffs' and the proposed Class members' financial and personal data;
- b) Whether Paytime owed a legal duty to Plaintiffs and the proposed Class members to protect their personal and financial information and whether Paytime breached this duty;
- c) Whether the conduct of Paytime resulted in the unauthorized breach of its computer systems and/or web-based software applications containing Plaintiffs' and the proposed Class members' financial and personal data;
- d) Whether Plaintiffs and the proposed Class members have been injured by Paytime's conduct;
- e) Whether Plaintiffs and Class members are at an increased risk of identity theft as a result of Paytime's failure to protect Plaintiffs' and the proposed Class members' personal and financial information;
- f) Whether Paytime was negligent;
- g) Whether Paytime is in breach of contract;

- h) Whether Plaintiffs and the proposed Class members are entitled to injunctive relief; and
- i) Whether Plaintiffs and the proposed Class members are entitled to damages, and the measure of such damages.

COUNT I
NEGLIGENCE

38. Plaintiffs incorporate and re-allege each and every allegation contained above as if fully set forth herein.

39. Paytime had a duty to exercise reasonable care to protect and secure Plaintiffs' and the proposed Class members' personal and financial information within its possession or control from being compromised, lost, stolen, misused, and/or disclosed to unauthorized parties. This highly confidential personal and financial information includes but is not limited to Social Security numbers, dates of birth, full legal names, addresses, bank account information, and other personal information.

40. Paytime's duty included, among other things, designing, maintaining, and testing its security systems to ensure that Plaintiffs' and the proposed Class members' personal and financial information in its possession was adequately secured and protected.

41. Paytime further had a duty to implement processes that would detect a breach of its security systems in a timely manner.

42. Through its acts or omissions, Paytime breached its duty to use reasonable care to protect and secure Plaintiffs' and the proposed Class members' personal and financial information within its possession or control. Paytime breached its duty by failing to adopt, implement, and maintain adequate security measures to safeguard Plaintiffs' and proposed Class members' personal and financial information, failing to adequately monitor the security of its

networks, allowing unauthorized access to Plaintiffs' and the proposed Class members' personal and financial information, and failing to recognize in a timely manner that Plaintiffs' and proposed Class members' personal and financial information had been compromised.

43. Paytime's failure to comply with widespread industry standards relating to data security, as well as the delay between the date of the intrusion and the date Plaintiffs and proposed Class members were informed of the Data Breach further evidence Paytime's negligence in failing to exercise reasonable care in safeguarding and protecting Plaintiffs' and the proposed Class members' personal and financial information in its possession or control.

44. But for Paytime's wrongful and negligent breach of its duties owed to Plaintiffs and the proposed Class members, the Data Breach would not have occurred and Plaintiffs' and the proposed Class members' personal and financial information would not have been compromised.

45. The injury and harm suffered by Plaintiffs and the proposed Class members was the reasonably foreseeable result of Paytime's failure to exercise reasonable care in safeguarding and protecting Plaintiffs' and the proposed Class members' personal and financial information in its possession or control. Paytime knew or should have known that its systems and technologies for processing and securing Plaintiffs' and proposed Class members' personal and financial information had security vulnerabilities.

46. As a result of Paytime's negligence, Plaintiffs and the proposed Class members have suffered actual damages including but not limited to expenses for credit monitoring, lost work time, anxiety, emotional distress, loss of privacy, and other economic and non-economic harm.

47. As a result of Paytime's negligence, Plaintiffs and the proposed Class members are at an increased and imminent risk of becoming victims of identity theft crimes, fraud and abuse.

COUNT II
BREACH OF CONTRACT

48. Plaintiffs incorporate and re-allege each and every allegation contained above as if fully set forth herein.

49. Paytime came into possession of Plaintiffs' and the proposed Class members' personal and financial information for the purposes of processing payroll and providing human resources management services. Paytime contracted with the former and current employers of Plaintiffs and the proposed Class members to protect such information.

50. Upon information and belief, the contract between Paytime and the former and current employers of Plaintiffs and the proposed Class members required Paytime to safeguard and protect Plaintiffs' and the proposed Class members' personal and financial information from being compromised and/or stolen.

51. Plaintiffs and the proposed Class members were either direct or third-party beneficiaries of the contract between Paytime and their former or current employers, and Paytime had a duty of care to them.

52. Paytime did not safeguard or protect Plaintiffs' and the proposed Class members' personal and financial information from being accessed, compromised, and/or stolen. Paytime did not maintain sufficient security measures and procedures to prevent unauthorized access to Plaintiffs' and the proposed Class members' personal and financial information.

53. Because Paytime failed to safeguard and/or protect Plaintiffs' and the proposed Class members' personal and financial information from being compromised or stolen, Paytime breached its contracts with Plaintiffs and the proposed Class members.

54. Plaintiffs and the proposed Class members have suffered and will continue to suffer damages as the result of Paytime's breach.

PRAYER FOR RELIEF

55. Plaintiffs request that this Court enter judgment against Paytime and in favor of Plaintiffs and the proposed Class members and award the following relief:

- a) That this action be certified as a Class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiffs as representatives of the Class and Plaintiffs' counsel as counsel for the Class;
- b) Monetary damages;
- c) Injunctive relief, including but not limited to the provision of credit monitoring services for Plaintiffs and the proposed Class members for a period of at least twenty-five years, the provision of bank monitoring services for Plaintiffs and the proposed Class members for a period of at least twenty-five years, the provision of credit restoration services for Plaintiffs and the proposed Class members for a period of at least twenty-five years, and the provision of identity theft insurance for Plaintiffs and the proposed Class members for a period of at least twenty-five years;
- d) Reasonable attorneys' fees and expenses, including those related to experts and consultants;
- e) Costs;

- f) Pre and post judgment interest;
- g) Such other relief as this Court may deem just and proper.

JURY DEMAND

56. Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs, individually and on behalf of the Class they seek to represent, demands a trial by jury for all issues so triable.

Dated: June 12, 2014

By: /s/ Gary F. Lynch

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