

TIME SENSITIVE

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Rogers v. BNSF Railway Company, No. 2019-CH-04393 (Cir. Ct. Cook Cnty., Ill.)

*For more information, visit www.BNSFBIPAClassAction.com.
Para informacion en Espanol, visitar www.BNSFBIPAClassAction.com.*

PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT IF YOU REGISTERED YOUR FINGERPRINT INFORMATION USING AN AUTO-GATE SYSTEM AT ANY OF BNSF'S ILLINOIS FACILITIES AT ANY TIME BETWEEN APRIL 4, 2014, AND MARCH 5, 2024.

This is a court-authorized notice of a proposed class action settlement. This is not a solicitation from a lawyer and is not notice of a lawsuit against you.

1. WHY DID I GET A NOTICE?

The Court has authorized notice of a proposed Settlement in a class action lawsuit, *Rogers v. BNSF Railway Company*, No. 2019-CH-04393, pending in the Circuit Court of Cook County, Illinois before the Honorable Judge Pamela McLean Meyerson. The Settlement would resolve two lawsuits brought on behalf of persons who allege that BNSF Railway Company ("Defendant") required truck drivers to register their fingerprint information using an Auto-Gate System at BNSF's Illinois facilities without complying with the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1, *et seq.* ("BIPA"). The lawsuits are *Rogers v. BNSF Railway Company*, No. 19-cv-03083 (N.D. Ill.) and *Rogers v. BNSF Railway Company*, No. 2019-CH-04393 (Cook Cnty., Ill.). You have been identified as someone who may have registered your fingerprint information using an Auto-Gate System at one of BNSF's four Illinois facilities between April 4, 2014, and March 5, 2024. The Court has granted preliminary approval of the Settlement and has preliminarily certified the Settlement Class for purposes of settlement only. This Notice explains the nature of the class action lawsuit, the terms of the Settlement, and the legal rights and obligations of the Settlement Class Members. Please read the instructions and explanations below so that you can better understand your legal rights.

2. WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs allege BNSF captured, collected, received through trade, or otherwise obtained the biometrics (fingerprints) of individuals who visited its Illinois facilities without receiving informed written consent from those individuals and that BNSF stored and possessed those biometrics without first posting a publicly available retention and destruction schedule. Plaintiffs, who are truck drivers, claim that BNSF required them to submit their fingerprint biometrics in order to gain access to BNSF's facilities in Illinois while they were delivering or picking up loads of freight. Plaintiffs allege that this practice of obtaining biometrics without informed written consent and without a publicly available retention and destruction schedule violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/*et seq.*, and that similarly situated individuals are entitled to recover statutory damages. BNSF denies that it violated BIPA and denies that any Plaintiff or Class Member has been harmed in any way.

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3. WHY IS THIS A CLASS ACTION?

A class action is a lawsuit in which an individual called a “Class Representative” brings a lawsuit on behalf of other people who have similar claims. All of these people together are a “Class” or “Class Members.” A class action Settlement finally approved by the Court resolves the issues for all Settlement Class Members, except for those who exclude themselves from the Settlement Class.

4. WHY IS THERE A SETTLEMENT?

To resolve this matter without the expense, delay, and uncertainties of continued litigation, the Parties have reached a Settlement, which resolves all biometric-related claims against the Released Parties, including Defendant. If approved by the Court, the Settlement requires Defendant to pay money to the Settlement Class Members, as well as pay the Settlement Administrator’s expenses, attorneys’ fees and costs to Class Counsel, and Service Awards to the Class Representatives.

The Court has already preliminarily approved the Settlement. Nevertheless, because the settlement of a class action determines the rights of all members of the class, a court overseeing this lawsuit must give Final Approval to the Settlement before it can be effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this Notice and the opportunity to exclude themselves from the Settlement Class, and to voice their support or opposition to Final Approval of the Settlement. If the Court does not give Final Approval of the Settlement, or if it is terminated by the Parties, the Settlement will be void, and the lawsuits above will proceed as if there had been no Settlement and no certification of the Settlement Class.

5. WHO IS IN THE SETTLEMENT CLASS?

You are a member of the Settlement Class if you registered your fingerprint information using an Auto-Gate System at any of BNSF’s four Illinois Facilities between April 4, 2014, and March 5, 2024.

6. WHAT ARE MY OPTIONS?

(1) Accept the Settlement.

To receive payment from the Settlement Fund, *you do not have to do anything*. If the Court approves the Settlement, the Settlement Administrator will *automatically* send a check to your last known mailing address. In order to receive your share of the Settlement Fund without taxes being automatically withheld, you must provide your Social Security number and/or other tax information to the Settlement Administrator. If you do not provide your tax information to the Settlement Administrator, a portion of your share of the Settlement Fund may be withheld by the Settlement Administrator pursuant to IRS guidelines. Please visit the Settlement Website at BNSFBIPAClassAction.com and provide your tax information by **July 15, 2024**. If you wish to update or confirm your mailing address or confirm your eligibility under the Settlement, you may do so by emailing info@BNSFBIPAClassAction.com.

(2) Exclude yourself.

You may exclude yourself from the Settlement. If you do so, you will not receive any cash payment, but you will not release any claims you may have against the Released Parties (as that term is defined in the Settlement Agreement) and are free to pursue whatever legal rights you may have by pursuing your own lawsuit against the Released Parties at your own risk and expense. To exclude yourself from the Settlement, you must mail a signed letter to the Settlement Administrator at BNSF BIPA Class Action Lawsuit, P.O. Box 2527, Portland, OR 97208-2527 postmarked by **May 7, 2024**. You may also exclude yourself by emailing your request for exclusion to info@BNSFBIPAClassAction.com by **May 7, 2024**. The exclusion letter must state that you exclude yourself from this Settlement, include your full name, address, and telephone number, and be signed by you.

(3) Object to the Settlement.

If you wish to object to the Settlement, you must submit your objection in writing to the Clerk of the Circuit Court of Cook County, Illinois, 50 W. Washington Street, #802, Chicago, IL 60602. The objection must be postmarked no later than **May 7, 2024**. You must also send a copy of your objection to the Settlement Administrator at BNSF BIPA Class Action Lawsuit, P.O. Box 2527, Portland, OR 97208-2527,

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postmarked no later than **May 7, 2024**. Any objection to the proposed Settlement must include (i) your full name, address, telephone number, and email address; (ii) the case name and number of the State Case (*Rogers v. BNSF Railway Company*, No. 2019-CH-04393); (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) the identification of any other objections you have filed, or have had filed on your behalf, in any other class action cases in the last four years; and (v) your signature. If you hire an attorney in connection with making an objection, that attorney must also file with the Court a notice of appearance by the objection deadline of **May 7, 2024**. If you do hire your own attorney, you will be solely responsible for payment of any fees and expenses the attorney incurs on your behalf. If you exclude yourself from the Settlement, you cannot file an objection.

You may appear at the Final Approval Hearing, which will be held on **June 17, 2024 at 2:00 p.m.**, in the Circuit Court of Cook County, via remote means at the following link: <https://circuitcourtofcookcounty.zoom.us/j/92896632736?pwd=cS9PaEQyOFFka0Fwdjd3NXgyd253UT09>. **The Meeting ID is 928 9663 2736. The Password is 813107.** You may appear on your own behalf or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Participating in the hearing is not necessary; however, persons wishing to be heard orally in opposition to the Final Approval of the Settlement, the request for attorneys' fees and expenses, and/or the request for Service Awards to the Class Representatives are required to indicate in their written objection their intention to appear at the hearing on their own behalf or through counsel and to identify the names of any witnesses they intend to call to testify at the Final Approval Hearing, as well as any exhibits they intend to introduce at the Final Approval Hearing. The hearing date and time is subject to change by the Court. Any updates will be posted on the Settlement Website, www.BNSFBIPAClassAction.com.

7. WHAT DOES THE SETTLEMENT PROVIDE?

Cash Payments. Defendant has agreed to create a \$75,000,000.00 Settlement Fund. If the Court approves the Settlement and you do not exclude yourself from the Settlement Class, you will automatically receive an equal share of the Settlement Fund after deductions for the Settlement Administrator's expenses, attorneys' fees, costs and expenses for Class Counsel, and Service Awards for the Class Representatives. The exact amount of each Settlement Class Member's payment is unknown at this time, but the net per-person payment is estimated to be approximately \$1,000.00. All checks issued to Settlement Class Members will expire and become void 120 days after they are issued. Please submit your tax information to the Settlement Administrator at www.BNSFBIPAClassAction.com by **July 15, 2024**, in order to ensure taxes are not automatically withheld from your check. The attorneys who brought this lawsuit (listed below) will ask the Court to award them attorneys' fees in an amount up to 35% of the Settlement Fund, plus their reasonable costs and expenses, for the substantial time, expense and effort spent investigating the facts, litigating, and negotiating the Settlement. The Class Representatives also will apply to the Court for a payment of up to \$15,000 each for their time, effort, and service in this matter. Class Counsel will file with the Court their request for attorneys' fees and costs and Service Awards on **April 16, 2024**, and post their request on the Settlement Website.

8. WHAT RIGHTS AM I GIVING UP IN THIS SETTLEMENT?

Unless you exclude yourself from this Settlement, you will be considered a member of the Settlement Class, which means that, in exchange for being entitled to receive the cash benefits from the Settlement, you give up your right to file or continue a lawsuit against Defendant and other Released Parties (as defined in the Settlement Agreement) relating to your use of an Automatic Gate System. Giving up your legal claims is called a release. The precise terms of the release are available on the Settlement Website. Unless you formally exclude yourself by mailing a signed letter to the Settlement Administrator as explained above, you will release your claims. If you have any questions, you can talk for free to the attorneys identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

9. WHEN WILL I BE PAID?

The Parties cannot predict exactly when (or whether) the Court will give Final Approval to the Settlement, so please be patient. However, if the Court finally approves the Settlement and the court order becomes final, checks will be mailed within approximately 60 days from that date. If there is an appeal of the Settlement, payment may be delayed. Updated information about the case is available at www.BNSFBIPAClassAction.com, or you can call the Settlement Administrator at 1-888-905-0306, or contact Class Counsel at the address provided below.

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10. WHEN WILL THE COURT RULE ON THE SETTLEMENT?

The Court has already given preliminary approval to the Settlement. A final hearing on the Settlement, called a Final Approval Hearing, will be held to determine the fairness of the Settlement. At the Final Approval Hearing, the Court will also consider whether to make final the certification of the Settlement Class for settlement purposes, hear any proper objections and arguments to the Settlement, as well as any requests for an award of attorneys' fees, costs, and expenses and Class Representative Service Awards that may be sought by Class Counsel. The Court will hold the Final Approval Hearing on **June 17, 2024, at 2:00 p.m.** by remote means at the following link: **<https://circuitcourtofcookcounty.zoom.us/j/92896632736?pwd=cS9PaEQyOFFka0Fwdjd3NXgyd253UT09>**. **The Meeting ID is 928 9663 2736. The Password is 813107.** The hearing date and time, including whether the hearing will take place via remote means, is subject to change by the Court, so please check the Settlement Website, www.BNSFBIPAClassAction.com, for updates.

If the Settlement is given Final Approval, the Court will not make any determination as to the merits of the claims against Defendant or its defenses to those claims. Instead, the Settlement's terms will take effect and the lawsuits will be dismissed on the merits with prejudice. Both sides have agreed to the Settlement in order to achieve an early and certain resolution to the lawsuit, in a manner that provides specific and valuable benefits to the members of the Settlement Class.

If the Court does not approve the Settlement, if it approves the Settlement and the approval is reversed on appeal, or if the Settlement does not become final for any other reason, you will not be paid at this time and Settlement Class Members will receive no benefits from the Settlement Fund. Plaintiffs, Defendant, and all of the Settlement Class Members will be in the same position as they were prior to the execution of the Settlement, and the Settlement will have no legal effect, and Plaintiffs and Defendant will return to litigation. There can be no assurance that if the Settlement is not approved, the Settlement Class will recover more than is provided in the Settlement or, indeed, anything at all.

11. WHO REPRESENTS THE CLASS?

The Court has approved the following attorneys to represent the Settlement Class. They are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer instead, you may hire one at your own expense:

Myles McGuire
Evan M. Meyers
David L. Gerbie
Brendan Duffner
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12. WHERE CAN I GET ADDITIONAL INFORMATION?

This Notice is only a summary of the proposed Settlement of this lawsuit. More details can be obtained at www.BNSFBIPAClassAction.com. If you have any questions, you can also call the Settlement Administrator at 1-888-905-0306 or contact Class Counsel at email addresses set forth above. In addition to the documents available on www.BNSFBIPAClassAction.com, all pleadings and documents filed in court may be reviewed or copied in the Office of the Clerk. Please do not call the Judge or the Clerk of the Court about this case. They will not be able to give you advice on your options.

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