

1 Scott Edward Cole, Esq. (S.B. #160744)
Laura Grace Van Note, Esq. (S.B. #310160)
2 **COLE & VAN NOTE**
555 12th Street, Suite 2100
3 Oakland, California 94607
Telephone: (510) 891-9800
4 Facsimile: (510) 891-7030
Email: sec@colevannote.com
5 Email: lvn@colevannote.com

6 Attorneys for Representative Plaintiff
and the Plaintiff Classes

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 COREY POLUK, individually, and
on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 TICKETMASTER, L.L.C. and LIVE
NATION ENTERTAINMENT, INC.,

16 Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR DAMAGES

1. **NEGLIGENCE;**
2. **BREACH OF IMPLIED CONTRACT;**
3. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
4. **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.;**
5. **VIOLATION OF THE CALIFORNIA CONSUMER PRIVACY ACT OF 2018 CAL. CIV. CODE §§ 1798.100 ET SEQ. (“CCPA”); AND**
6. **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT CAL. CIV. CODE §§ 1750 ET SEQ. (“CLRA”)**

[JURY TRIAL DEMANDED]

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
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INTRODUCTION

1
2 1. Representative Corey Poluk (“Representative Plaintiff”) brings this
3 class action against Ticketmaster, L.L.C. and Live Nation Entertainment, Inc.
4 (“Defendants”) for their failure to properly secure and safeguard Representative
5 Plaintiff’s and Class Members’ personally identifiable information stored within
6 Defendants’ information network, including without limitation, full names, home
7 addresses, emails, phone numbers, ticket sales and event information, order details,
8 and credit card details (these types of information, *inter alia*, being thereafter
9 referred to as “personally identifiable information” or “PII”).¹ All such information
10 is referred to in the aggregate herein as “Private Information.”

11 2. With this action, Representative Plaintiff seeks to hold Defendants
12 responsible for the harms they caused and will continue to cause Representative
13 Plaintiff and numerous other similarly situated persons in the massive and
14 preventable cyberattack purportedly discovered by Defendants on May 28, 2024, by
15 which cybercriminals infiltrated Defendants’ inadequately protected network and
16 accessed the Private Information which was being kept under-protected (the “Data
17 Breach”).

18 3. While cybercriminals made public information about the breach and
19 thereby informed Defendants of the breach as of May 28, 2024, as of the date of this
20 Complaint, Defendants have failed to inform victims when or for how long the Data
21 Breach occurred. Indeed, Defendants have yet to notify Representative Plaintiff that
22 his information was compromised.

23 4. Defendants acquired, collected and stored Representative Plaintiff’s
24 and Class Members’ Private Information. Therefore, at all relevant times,

25 ¹ Personally identifiable information (“PII”) generally incorporates information that can be
26 used to distinguish or trace an individual’s identity, either alone or when combined with other
27 personal or identifying information. 2 C.F.R. § 200.79. At a minimum, it includes all information
28 that on its face expressly identifies an individual. PII also is generally defined to include certain
identifiers that do not on its face name an individual, but that are considered to be particularly
sensitive and/or valuable if in the wrong hands (for example, Social Security numbers, passport
numbers, driver’s license numbers, financial account numbers, etc.).

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ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

1 Defendants knew or should have known that Representative Plaintiff and Class
2 Members would use Defendants’ services and thereby share sensitive data, including
3 highly confidential Private Information.

4 5. Defendants disregarded the rights of Representative Plaintiff and Class
5 Members by intentionally, willfully, recklessly and/or negligently failing to take and
6 implement adequate and reasonable measures to ensure that Representative
7 Plaintiff’s and Class Members’ Private Information was safeguarded, failing to take
8 available steps to prevent an unauthorized disclosure of data, and failing to follow
9 applicable, required and appropriate protocols, policies and procedures regarding the
10 encryption of data, even for internal use. As a result, Representative Plaintiff’s and
11 Class Members’ Private Information was compromised through disclosure to an
12 unknown and unauthorized third party—an undoubtedly nefarious third party
13 seeking to profit off this disclosure by defrauding Representative Plaintiff and Class
14 Members in the future. Representative Plaintiff and Class Members have a
15 continuing interest in ensuring their information is and remains safe and are entitled
16 to injunctive and other equitable relief.

17
18 **JURISDICTION AND VENUE**

19 6. Jurisdiction is proper in this Court under 28 U.S.C. § 1332 (diversity
20 jurisdiction). Specifically, this Court has subject matter and diversity jurisdiction
21 over this action under 28 U.S.C. § 1332(d) because this is a class action where the
22 amount in controversy exceeds the sum or value of \$5 million, exclusive of interest
23 and costs, there are more than 100 members in the proposed class and at least one
24 other Class Member is a citizen of a state different from Defendants.

25 7. Supplemental jurisdiction to adjudicate issues pertaining to state law is
26 proper in this Court under 28 U.S.C. § 1367.

27 8. Defendant Ticketmaster LLC is a wholly owned subsidiary of Live
28 Nation Entertainment, Inc. headquartered in California with its principal executive

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
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1 office located at 9348 Civic Center Drive, Beverly Hills, CA 94210 and routinely
2 conducts business in the State where this District is located, has sufficient minimum
3 contacts in this State and has intentionally availed itself of this jurisdiction by
4 marketing and selling products and services, and by accepting and processing
5 payments for those products and services within this State.

6 9. Ticketmaster and Live Nation Entertainment completed their merger on
7 January 25, 2010.²

8 10. Ticketmaster “operates a ticket distribution company. [Ticketmaster]
9 buys, transfers, and sells tickets for live music, sporting, arts, theater, and family
10 events. Ticketmaster serves clients worldwide.”³

11 11. Plaintiff and the Class Members are current and former customers of
12 Ticketmaster and account holders at TicketMaster.com.

13 12. Defendant Live Nation Entertainment, Inc. is a Delaware corporation
14 headquartered in California with its principal executive office located at 9348 Civic
15 Center Drive, Beverly Hills, CA 94210.

16 13. Live Nation Entertainment is a publicly traded corporation listed in the
17 New York Stock Exchange with revenues totaling approximately \$3.8 billion for the
18 three months ending on March 31, 2024.⁴

19 14. Live Nation is “the largest live entertainment company in the world,
20 connecting over 765 million fans across all of our concerts and ticketing platforms
21 in 49 countries during 2023.”⁵

22
23
24 ² *Live Nation and Ticketmaster Entertainment Complete Merger*, SECURITIES AND
EXCHANGE COMMISSION (Jan. 25, 2010),
<https://www.sec.gov/Archives/edgar/data/1335258/000119312510012287/dex991.htm>.

25 ³ *Ticketmaster LLC*, BLOOMBERG,
<https://www.bloomberg.com/profile/company/0009574D:US> (last visited June 4, 2024)

26 ⁴ *Form 10-Q Quarterly Report for Live Nation Entertainment, Inc.*, BAMSEC,
<https://www.bamsec.com/filing/133525824000071?cik=1335258> (last visited June 4, 2024).

27 ⁵ *Form 10-K Annual Report for Live Nation Entertainment, Inc.*, BAMSEC,
28 <https://www.bamsec.com/filing/133525824000017?cik=1335258> (last visited June 4, 2024).

1 15. Venue is proper in this Court under 28 U.S.C. § 1391 because a
2 substantial part of the events that gave rise to Representative Plaintiff’s claims took
3 place within this District, and Defendants do business in this Judicial District.

4
5 **PLAINTIFF**

6 16. Representative Plaintiff is an adult individual and, at all relevant times
7 herein, was a resident and citizen of the State of California. Representative Plaintiff
8 is a victim of the Data Breach.

9 17. Defendants received highly sensitive Private Information from
10 Representative Plaintiff in connection with the services Representative Plaintiff
11 received. As a result, Representative Plaintiff’s information was among the data
12 accessed by an unauthorized third party in the Data Breach.

13 18. At all times herein relevant, Representative Plaintiff is and was a
14 member of the Class.

15 19. As required in order to obtain services from Defendants, Representative
16 Plaintiff provided Defendants with highly sensitive Private Information.

17 20. Representative Plaintiff’s Private Information was exposed in the Data
18 Breach because Defendants stored and/or shared Representative Plaintiff’s Private
19 Information. Representative Plaintiff’s Private Information was within the
20 possession and control of Defendants at the time of the Data Breach.

21 21. Representative Plaintiff received a letter from Defendants stating
22 Representative Plaintiff’s Private Information was involved in the Data Breach (the
23 “Notice”).

24 22. As a result, Representative Plaintiff spent time dealing with the
25 consequences of the Data Breach, which included, and continues to include, time
26 spent verifying the legitimacy and impact of the Data Breach, exploring credit
27 monitoring and identity theft insurance options, self-monitoring Representative
28 Plaintiff’s accounts and seeking legal counsel regarding Representative Plaintiff’s

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1 options for remedying and/or mitigating the effects of the Data Breach. This time
2 has been lost forever and cannot be recaptured.

3 23. Representative Plaintiff suffered actual injury in the form of damages
4 to and diminution in the value of Representative Plaintiff's Private Information—a
5 form of intangible property that Representative Plaintiff entrusted to Defendants,
6 which was compromised in and as a result of the Data Breach.

7 24. Representative Plaintiff suffered lost time, annoyance, interference and
8 inconvenience as a result of the Data Breach and has anxiety and increased concerns
9 for the loss of privacy, as well as anxiety over the impact of cybercriminals
10 accessing, using and selling Representative Plaintiff's Private Information.

11 25. Representative Plaintiff suffered imminent and impending injury
12 arising from the substantially increased risk of fraud, identity theft and misuse
13 resulting from Representative Plaintiff's Private Information being placed in the
14 hands of unauthorized third parties/criminals.

15 26. Representative Plaintiff has a continuing interest in ensuring that
16 Representative Plaintiff's Private Information, which, upon information and belief,
17 remains backed up in Defendants' possession, is protected and safeguarded from
18 future breaches.

19
20 **DEFENDANTS**

21 27. The true names and capacities of persons or entities, whether
22 individual, corporate, associate or otherwise, who may be responsible for some of
23 the claims alleged here are currently unknown to Representative Plaintiff.
24 Representative Plaintiff will seek leave of court to amend this Complaint to reflect
25 the true names and capacities of such responsible parties when their identities
26 become known.
27
28

CLASS ACTION ALLEGATIONS

28. Representative Plaintiff brings this action pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of Representative Plaintiff and the following class (collectively, the “Class”):

Nationwide Plaintiff Class:

“All individuals within the United States of America whose Private Information was exposed to unauthorized third parties as a result of the data breach allegedly disclosed on May 28, 2024.”

California Plaintiff Sub-Class:

“All individuals within the State of California whose Private Information was exposed to unauthorized third parties as a result of the data breach allegedly disclosed on May 28, 2024”

29. Excluded from the Classes are the following individuals and/or entities: Defendants and Defendants’ parents, subsidiaries, affiliates, officers and directors and any entity in which Defendants have a controlling interest, all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out, any and all federal, state or local governments, including but not limited to its departments, agencies, divisions, bureaus, boards, sections, groups, counsel and/or subdivisions, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

30. In the alternative, Representative Plaintiff may request additional subclasses as necessary based, e.g., on the types of Private Information that were compromised.

31. Representative Plaintiff reserves the right to amend the above definition or to propose subclasses in subsequent pleadings and its motion for class certification.

32. This action has been brought and may properly be maintained as a class action under Federal Rules of Civil Procedure Rule 23 because there is a well-

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1 defined community of interest in the litigation and membership in the proposed Class
2 is easily ascertainable.

3 a. Numerosity: A class action is the only available method for the
4 fair and efficient adjudication of this controversy. The members
5 of the Plaintiff Class are so numerous that joinder of all members
6 is impractical, if not impossible. Membership in the Class will be
determined by analysis of Defendants' records.

7 b. Commonality: Representative Plaintiff and Class Members share
8 a community of interest in that there are numerous common
9 questions and issues of fact and law which predominate over any
10 questions and issues solely affecting individual members,
including but not necessarily limited to:

- 11 1) Whether Defendants have a legal duty to Representative
12 Plaintiff and the Class to exercise due care in collecting,
13 storing, using and/or safeguarding their Private Information;
- 14 2) Whether Defendants knew or should have known of the
15 susceptibility of their data security systems to a data breach;
- 16 3) Whether Defendants' security procedures and practices to
17 protect their systems were reasonable in light of the measures
18 recommended by data security experts;
- 19 4) Whether Defendants' failure to implement adequate data
20 security measures allowed the Data Breach to occur;
- 21 5) Whether Defendants failed to comply with their own policies
22 and applicable laws, regulations and industry standards
23 relating to data security;
- 24 6) Whether Defendants adequately, promptly and accurately
25 informed Representative Plaintiff and Class Members that
26 their Private Information had been compromised;
- 27 7) How and when Defendants actually learned of the Data
28 Breach;

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

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- 8) Whether Defendants’ conduct, including their failure to act, resulted in or was the proximate cause of the breach of their systems, resulting in the loss of Representative Plaintiff’s and Class Members’ Private Information;
 - 9) Whether Defendants adequately addressed and fixed the vulnerabilities which permitted the Data Breach to occur;
 - 10) Whether Defendants engaged in unfair, unlawful or deceptive practices by failing to safeguard Representative Plaintiff’s and Class Members’ Private Information;
 - 11) Whether Representative Plaintiff and Class Members are entitled to actual and/or statutory damages and/or whether injunctive, corrective and/or declaratory relief and/or an accounting is/are appropriate as a result of Defendants’ wrongful conduct; and
 - 12) Whether Representative Plaintiff and Class Members are entitled to restitution as a result of Defendants’ wrongful conduct.
- c. Typicality: Representative Plaintiff’s claims are typical of the claims of the Plaintiff Class. Representative Plaintiff and all members of the Plaintiff Class sustained damages arising out of and caused by Defendants’ common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff has the same interest in the litigation of this case as the Class Members, is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to other Class Members or the Class in its entirety. Representative Plaintiff anticipates no management difficulties in this litigation.

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555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

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e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Plaintiff Class to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the Plaintiff Class, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of the Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

33. Class certification is proper because the questions raised by this Complaint are of common or general interest affecting numerous persons, such that it is impracticable to bring all Class Members before the Court.

34. This class action is also appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to Class Members, thereby requiring the Court’s imposition of uniform relief to ensure compatible standards of conduct toward the Class Members and making final injunctive relief appropriate with respect to the Class in its entirety. Defendants’ policies and practices challenged herein apply to and affect Class Members uniformly and Representative Plaintiff’s challenge of these policies and practices hinges on Defendants’ conduct with respect to the Class in its entirety, not on facts or law applicable only to Representative Plaintiff.

35. Unless a Class-wide injunction is issued, Defendants may continue in their failure to properly secure the Private Information of Class Members, and Defendants may continue to act unlawfully as set forth in this Complaint.

1 36. Further, Defendants have acted or refused to act on grounds generally
2 applicable to the Class and, accordingly, final injunctive or corresponding
3 declaratory relief with regard to the Class Members as a whole is appropriate under
4 Rule 23(b)(2) of the Federal Rules of Civil Procedure.

5
6 **COMMON FACTUAL ALLEGATIONS**

7 **The Cyberattack**

8 37. In the course of the Data Breach, one or more unauthorized third parties
9 accessed Class Members' Private Information. Representative Plaintiff was among
10 the individuals whose data was accessed in the Data Breach.

11 38. According to the publicly available information, Representative
12 Plaintiff states, based on information and belief, that numerous persons were
13 affected by the Data Breach.

14 39. Representative Plaintiff was provided the information detailed above
15 upon receipt from a communication from a third party, which prompted
16 Representative Plaintiff to review publicly available information related to the Data
17 Breach. Representative Plaintiff was not aware of the Data Breach until receiving
18 that communication from the third party.

19
20 **Defendants' Failed Response to the Breach**

21 40. Upon information and belief, the unauthorized third-party
22 cybercriminals gained access to Representative Plaintiff's and Class Members'
23 Private Information with the intent of misusing the Private Information, including
24 marketing and selling Representative Plaintiff's and Class Members' Private
25 Information. Threat actors posted the data on the hacking website, Breach Forums.

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1 The notorious hacking group ShinyHunters offered the trove of Plaintiff’s and Class
2 Members’ Private Information for \$500,000.⁶

3 41. Defendants still have not sent Notice to persons whose Private
4 Information was potentially compromised as a result of the Data Breach.

5 42. Defendants had and continue to have obligations created by applicable
6 federal and state law as set forth herein, reasonable industry standards, common law
7 and their own assurances and representations to keep Representative Plaintiff’s and
8 Class Members’ Private Information confidential and to protect such Private
9 Information from unauthorized access.

10 43. Representative Plaintiff and Class Members were required to provide
11 their Private Information to Defendants in order to receive services. Thus,
12 Defendants created, collected and stored Representative Plaintiff’s and Class
13 Members’ Private Information with the reasonable expectation and mutual
14 understanding that Defendants would comply with their obligations to keep such
15 information confidential and secure from unauthorized access.

16 44. Despite this, Representative Plaintiff and the Class Members remain,
17 even today, in the dark regarding what particular data was stolen, the particular
18 malware used and what steps are being taken, if any, to secure their Private
19 Information going forward. Representative Plaintiff and Class Members are thus left
20 to speculate as to where their Private Information ended up, who has used it and for
21 what potentially nefarious purposes. Indeed, they are left to further speculate as to
22 the full impact of the Data Breach and how exactly Defendants intend to enhance
23 their information security systems and monitoring capabilities so as to prevent
24 further breaches.

25 45. Representative Plaintiff’s and Class Members’ Private Information
26 may end up for sale on the dark web, or simply fall into the hands of companies that

27 ⁶ Waqas, *Hackers Claim Ticketmaster Data Breach: 560M Users’ Info for Sale at \$500k*,
28 HACKREAD (June 4, 2024), <https://hackread.com/hackers-ticketmaster-data-breach-560m-users-sale/>.

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ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

1 will use the detailed Private Information for targeted marketing without
2 Representative Plaintiff's and/or Class Members' approval. Either way,
3 unauthorized individuals can now easily access Representative Plaintiff's and Class
4 Members' Private Information.

5
6 **Defendants Collected/Stored Class Members' Private Information**

7 46. Defendants acquired, collected, stored and assured reasonable security
8 over Representative Plaintiff's and Class Members' Private Information.

9 47. As a condition of their relationships with Representative Plaintiff and
10 Class Members, Defendants required that Representative Plaintiff and Class
11 Members entrust Defendants with highly sensitive and confidential Private
12 Information. Defendants, in turn, stored that information on Defendants' systems
13 that were ultimately affected by the Data Breach.

14 48. By obtaining, collecting and storing Representative Plaintiff's and
15 Class Members' Private Information, Defendants assumed legal and equitable duties
16 over the Private Information and knew or should have known that it was thereafter
17 responsible for protecting Representative Plaintiff's and Class Members' Private
18 Information from unauthorized disclosure.

19 49. Representative Plaintiff and Class Members have taken reasonable
20 steps to maintain their Private Information's confidentiality. Representative Plaintiff
21 and Class Members relied on Defendants to keep their Private Information
22 confidential and securely maintained, to use this information for business purposes
23 only and to make only authorized disclosures of this information.

24 50. Defendants could have prevented the Data Breach by properly securing
25 and encrypting and/or more securely encrypting their servers generally, as well as
26 Representative Plaintiff's and Class Members' Private Information.

27 51. Defendants' negligence in safeguarding Representative Plaintiff's and
28 Class Members' Private Information is exacerbated by repeated warnings and alerts

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ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
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1 directed to protecting and securing sensitive data, as evidenced by the trending data
2 breach attacks in recent years.

3 52. Due to the high-profile nature of these breaches, and other breaches of
4 its kind, Defendants were and/or certainly should have been on notice and aware of
5 such attacks occurring in their industry and, therefore, should have assumed and
6 adequately performed the duty of preparing for such an imminent attack. This is
7 especially true given that Defendants are large, sophisticated operations with the
8 resources to put adequate data security protocols in place.

9 53. And yet, despite the prevalence of public announcements of data breach
10 and data security compromises, Defendants failed to take appropriate steps to protect
11 Representative Plaintiff's and Class Members' Private Information from being
12 compromised.

13
14 **Defendants Had an Obligation to Protect the Stolen Information**

15 54. In failing to adequately secure Representative Plaintiff's and Class
16 Member's sensitive data, Defendants breached duties they owed Representative
17 Plaintiff and Class Members under statutory and common law.

18 55. Representative Plaintiff and Class Members surrendered their highly
19 sensitive Private Information to Defendants under the implied condition that
20 Defendants would keep it private and secure. Accordingly, Defendants also have an
21 implied duty to safeguard their Private Information, independent of any statute.

22 56. Defendants were also prohibited by the Federal Trade Commission Act
23 (the "FTC Act") (15 U.S.C. § 45) from engaging in "unfair or deceptive acts or
24 practices in or affecting commerce." The Federal Trade Commission (the "FTC")
25 has concluded that a company's failure to maintain reasonable and appropriate data
26 security for consumers' sensitive personal information is an "unfair practice" in
27 violation of the FTC Act. *See, e.g., FTC v. Wyndham Worldwide Corp.*, 799 F.3d
28 236 (3d Cir. 2015).

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555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
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1 57. In addition to their obligations under federal and state laws, Defendants
2 owed a duty to Representative Plaintiff and Class Members to exercise reasonable
3 care in obtaining, retaining, securing, safeguarding, deleting and protecting the
4 Private Information in Defendants’ possession from being compromised, lost,
5 stolen, accessed, and misused by unauthorized persons. Defendants owed a duty to
6 Representative Plaintiff and Class Members to provide reasonable security,
7 including consistency with industry standards and requirements, and to ensure that
8 their computer systems, networks and protocols adequately protected Representative
9 Plaintiff’s and Class Members’ Private Information.

10 58. Defendants owed a duty to Representative Plaintiff and Class Members
11 to design, maintain and test their computer systems, servers and networks to ensure
12 that all Private Information in their possession was adequately secured and protected.

13 59. Defendants owed a duty to Representative Plaintiff and Class Members
14 to create and implement reasonable data security practices and procedures to protect
15 all Private Information in their possession, including not sharing information with
16 other entities who maintained substandard data security systems.

17 60. Defendants owed a duty to Representative Plaintiff and Class Members
18 to implement processes that would immediately detect a breach of their data security
19 systems in a timely manner.

20 61. Defendants owed a duty to Representative Plaintiff and Class Members
21 to act upon data security warnings and alerts in a timely fashion.

22 62. Defendants owed a duty to Representative Plaintiff and Class Members
23 to disclose if their computer systems and data security practices were inadequate to
24 safeguard individuals’ Private Information from theft because such an inadequacy
25 would be a material fact in the decision to entrust their Private Information to
26 Defendants.

27
28

1 63. Defendants owed a duty of care to Representative Plaintiff and Class
 2 Members because they were foreseeable and probable victims of any inadequate data
 3 security practices.

4 64. Defendants owed a duty to Representative Plaintiff and Class Members
 5 to encrypt and/or more reliably encrypt Representative Plaintiff's and Class
 6 Members' Private Information and monitor user behavior and activity in order to
 7 identify possible threats.

8
 9 **Value of the Relevant Sensitive Information**

10 65. The high value of Private Information to criminals is evidenced by the
 11 prices they will pay for it through the dark web. Numerous sources cite dark web
 12 pricing for stolen identity credentials. For example, personal information can be sold
 13 at a price ranging from \$40 to \$200, and bank details have a price range of \$50 to
 14 \$200.⁷ Experian reports that a stolen credit or debit card number can sell for \$5 to
 15 \$110 on the dark web.⁸ Criminals can also purchase access to entire company data
 16 breaches from \$999 to \$4,995.⁹

17 66. These criminal activities have and will result in devastating financial
 18 and personal losses to Representative Plaintiff and Class Members. For example, it
 19 is believed that certain Private Information compromised in the 2017 Equifax data
 20 breach was being used three years later by identity thieves to apply for COVID-19-
 21 related benefits in the state of Oklahoma. Such fraud will be an omnipresent threat
 22 for Representative Plaintiff and Class Members for the rest of their lives. They will
 23 need to remain constantly vigilant.

24
 25 ⁷ *Your personal data is for sale on the dark web. Here's how much it costs*, Digital Trends, Oct.
 26 16, 2019, available at: <https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/> (Last accessed May 7, 2024).

27 ⁸ *Here's How Much Your Personal Information Is Selling for on the Dark Web*, Experian, Dec.
 28 6, 2017, available at: <https://www.experian.com/blogs/ask-experian/heres-how-much-your-personal-information-is-selling-for-on-the-dark-web/> (Last accessed May 7, 2024).

⁹ *In the Dark*, VPNOverview, 2019, available at:
<https://vpnoverview.com/privacy/anonymous-browsing/in-the-dark> (Last accessed May 7, 2024).

1 67. The FTC defines identity theft as “a fraud committed or attempted using
2 the identifying information of another person without authority.” The FTC describes
3 “identifying information” as “any name or number that may be used, alone or in
4 conjunction with any other information, to identify a specific person,” including,
5 among other things, “[n]ame, Social Security number, date of birth, official State or
6 government issued driver’s license or identification number, alien registration
7 number, government passport number, employer or taxpayer identification number.”

8 68. Identity thieves can use Private Information, such as that of
9 Representative Plaintiff and Class Members which Defendants failed to keep secure,
10 to perpetrate a variety of crimes that harm victims. For instance, identity thieves may
11 commit various types of government fraud such as immigration fraud, obtaining a
12 driver’s license or identification card in the victim’s name but with another’s picture,
13 using the victim’s information to obtain government benefits or filing a fraudulent
14 tax return using the victim’s information to obtain a fraudulent refund.

15 69. The ramifications of Defendants’ failure to keep secure Representative
16 Plaintiff’s and Class Members’ Private Information are long lasting and severe. Once
17 Private Information is stolen, particularly identification numbers, fraudulent use of
18 that information and damage to victims may continue for years. Indeed,
19 Representative Plaintiff’s and Class Members’ Private Information was taken by
20 hackers to engage in identity theft or to sell it to other criminals who will purchase
21 the Private Information for that purpose. The fraudulent activity resulting from the
22 Data Breach may not come to light for years.

23 70. There may be a time lag between when harm occurs versus when it is
24 discovered and also between when Private Information is stolen and when it is used.
25 According to the U.S. Government Accountability Office (“GAO”), which
26 conducted a study regarding data breaches:

27 [L]aw enforcement officials told us that in some cases, stolen data may
28 be held for up to a year or more before being used to commit identity

1 theft. Further, once stolen data have been sold or posted on the Web,
 2 fraudulent use of that information may continue for years. As a result,
 3 studies that attempt to measure the harm resulting from data breaches
 4 cannot necessarily rule out all future harm.¹⁰

5 71. When cybercriminals access financial information, health insurance
 6 information and other personally sensitive data—as they did here—there is no limit
 7 to the amount of fraud to which Defendants may have exposed Representative
 8 Plaintiff and Class Members.

9 72. And data breaches are preventable.¹¹ As Lucy Thompson wrote in the
 10 DATA BREACH AND ENCRYPTION HANDBOOK, “[i]n almost all cases, the data
 11 breaches that occurred could have been prevented by proper planning and the correct
 12 design and implementation of appropriate security solutions.”¹² She added that
 13 “[o]rganizations that collect, use, store, and share sensitive personal data must accept
 14 responsibility for protecting the information and ensuring that it is not
 15 compromised....”¹³

16 73. Most of the reported data breaches are a result of lax security and the
 17 failure to create or enforce appropriate security policies, rules and procedures.
 18 Appropriate information security controls, including encryption, must be
 19 implemented and enforced in a rigorous and disciplined manner so that a *data breach*
 20 *never occurs*.¹⁴

21 74. Here, Defendants knew of the importance of safeguarding Private
 22 Information and of the foreseeable consequences that would occur if Representative
 23 Plaintiff’s and Class Members’ Private Information was stolen, including the
 24 significant costs that would be placed on Representative Plaintiff and Class

25
 26 ¹⁰ *Report to Congressional Requesters*, GAO, at 29 (June 2007), available at:
<http://www.gao.gov/new.items/d07737.pdf/> (Last accessed May 7, 2024).

27 ¹¹ Lucy L. Thompson, “Despite the Alarming Trends, Data Breaches Are Preventable,” in
 DATA BREACH AND ENCRYPTION HANDBOOK (Lucy Thompson, ed., 2012).

28 ¹² *Id.* at 17.

¹³ *Id.* at 28.

¹⁴ *Id.*

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1 Members as a result of a breach of this magnitude. As detailed above, Defendants
 2 knew or should have known that the development and use of such protocols were
 3 necessary to fulfill their statutory and common law duties to Representative Plaintiff
 4 and Class Members. Their failure to do so is therefore intentional, willful, reckless
 5 and/or grossly negligent.

6 75. Defendants disregarded the rights of Representative Plaintiff and Class
 7 Members by, *inter alia*, (i) intentionally, willfully, recklessly and/or negligently
 8 failing to take adequate and reasonable measures to ensure that their network servers
 9 were protected against unauthorized intrusions, (ii) failing to disclose that they did
 10 not have adequately robust security protocols and training practices in place to
 11 adequately safeguard Representative Plaintiff's and Class Members' Private
 12 Information, (iii) failing to take standard and reasonably available steps to prevent
 13 the Data Breach, (iv) concealing the existence and extent of the Data Breach for an
 14 unreasonable duration of time, and (v) failing to provide Representative Plaintiff and
 15 Class Members prompt and accurate notice of the Data Breach.

16
 17 **FIRST CLAIM FOR RELIEF**
 18 **Negligence**
 19 **(On behalf of the Nationwide Plaintiff Class)**

20 76. Each and every allegation of the preceding paragraphs is incorporated
 21 in this Count with the same force and effect as though fully set forth herein.

22 77. At all times herein relevant, Defendants owed Representative Plaintiff
 23 and Class Members a duty of care, *inter alia*, to act with reasonable care to secure
 24 and safeguard their Private Information and to use commercially reasonable methods
 25 to do so. Defendants took on this obligation upon accepting and storing
 26 Representative Plaintiff's and Class Members' Private Information on their
 27 computer systems.

28 78. Among these duties, Defendants were expected:

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- a. to exercise reasonable care in obtaining, retaining, securing, safeguarding, deleting and protecting the Private Information in their possession;
- b. to protect Representative Plaintiff’s and Class Members’ Private Information using reasonable and adequate security procedures and systems that were/are compliant with industry-standard practices;
- c. to implement processes to quickly detect the Data Breach and to timely act on warnings about data breaches; and
- d. to promptly notify Representative Plaintiff and Class Members of any data breach, security incident or intrusion that affected or may have affected their Private Information.

79. Defendants knew that the Private Information was private and confidential and should be protected as private and confidential and, thus, Defendants owed a duty of care not to subject Representative Plaintiff and Class Members to an unreasonable risk of harm because they were foreseeable and probable victims of any inadequate security practices.

80. Defendants knew or should have known of the risks inherent in collecting and storing Private Information, the vulnerabilities of their data security systems and the importance of adequate security. Defendants knew about numerous, well-publicized data breaches.

81. Defendants knew or should have known that their data systems and networks did not adequately safeguard Representative Plaintiff’s and Class Members’ Private Information.

82. Only Defendants were in the position to ensure that their systems and protocols were sufficient to protect the Private Information that Representative Plaintiff and Class Members had entrusted to them.

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1 83. Defendants breached their duties to Representative Plaintiff and Class
2 Members by failing to provide fair, reasonable or adequate computer systems and
3 data security practices to safeguard Representative Plaintiff’s and Class Members’
4 Private Information.

5 84. Because Defendants knew that a breach of their systems could damage
6 thousands of individuals, including Representative Plaintiff and Class Members,
7 Defendants had a duty to adequately protect their data systems and the Private
8 Information contained thereon.

9 85. Representative Plaintiff’s and Class Members’ willingness to entrust
10 Defendants with their Private Information was predicated on the understanding that
11 Defendants would take adequate security precautions. Moreover, only Defendants
12 had the ability to protect their systems and the Private Information they stored on
13 them from attack. Thus, Defendants had a special relationship with Representative
14 Plaintiff and Class Members.

15 86. Defendants also had independent duties under state and federal laws
16 that required Defendants to reasonably safeguard Representative Plaintiff’s and
17 Class Members’ Private Information and promptly notify them about the Data
18 Breach. These “independent duties” are untethered to any contract between
19 Defendants and Representative Plaintiff and/or the remaining Class Members.

20 87. Defendants breached their general duty of care to Representative
21 Plaintiff and Class Members in, but not necessarily limited to, the following ways:

- 22 a. by failing to provide fair, reasonable or adequate computer
23 systems and data security practices to safeguard Representative
24 Plaintiff’s and Class Members’ Private Information;
- 25 b. by failing to timely and accurately disclose that Representative
26 Plaintiff’s and Class Members’ Private Information had been
27 improperly acquired or accessed;
- 28

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- 1 c. by failing to adequately protect and safeguard the Private
- 2 Information by knowingly disregarding standard information
- 3 security principles, despite obvious risks, and by allowing
- 4 unmonitored and unrestricted access to unsecured Private
- 5 Information;
- 6 d. by failing to provide adequate supervision and oversight of the
- 7 Private Information with which they were and are entrusted, in
- 8 spite of the known risk and foreseeable likelihood of breach and
- 9 misuse, which permitted an unknown third party to gather
- 10 Representative Plaintiff’s and Class Members’ Private
- 11 Information, misuse the Private Information and intentionally
- 12 disclose it to others without consent;
- 13 e. by failing to adequately train their employees to not store Private
- 14 Information longer than absolutely necessary;
- 15 f. by failing to consistently enforce security policies aimed at
- 16 protecting Representative Plaintiff’s and the Class Members’
- 17 Private Information;
- 18 g. by failing to implement processes to quickly detect data
- 19 breaches, security incidents or intrusions; and
- 20 h. by failing to encrypt Representative Plaintiff’s and Class
- 21 Members’ Private Information and monitor user behavior and
- 22 activity in order to identify possible threats.

21 88. Defendants’ willful failure to abide by these duties was wrongful,
22 reckless and/or grossly negligent in light of the foreseeable risks and known threats.

23 89. As a proximate and foreseeable result of Defendants’ grossly negligent
24 conduct, Representative Plaintiff and Class Members have suffered damages and are
25 at imminent risk of additional harm and damages (as alleged above).

26 90. The law further imposes an affirmative duty on Defendants to timely
27 disclose the unauthorized access and theft of the Private Information to
28 Representative Plaintiff and Class Members so that they could and/or still can take

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1 appropriate measures to mitigate damages, protect against adverse consequences and
2 thwart future misuse of their Private Information.

3 91. Defendants breached their duty to notify Representative Plaintiff and
4 Class Members of the unauthorized access by failing to notify Representative
5 Plaintiff and Class Members and failing and continuing to fail to provide
6 Representative Plaintiff and Class Members sufficient information regarding the
7 breach. To date, Defendants have not provided sufficient information to
8 Representative Plaintiff and Class Members regarding the extent of the unauthorized
9 access and continues to breach their disclosure obligations to Representative
10 Plaintiff and Class Members.

11 92. Further, through their failure to provide timely and clear notification of
12 the Data Breach to Representative Plaintiff and Class Members, Defendants
13 prevented Representative Plaintiff and Class Members from taking meaningful,
14 proactive steps to, *inter alia*, secure and/or access their Private Information.

15 93. There is a close causal connection between Defendants' failure to
16 implement security measures to protect Representative Plaintiff's and Class
17 Members' Private Information and the harm suffered, or risk of imminent harm
18 suffered, by Representative Plaintiff and Class Members. Representative Plaintiff's
19 and Class Members' Private Information was accessed as the proximate result of
20 Defendants' failure to exercise reasonable care in safeguarding such Private
21 Information by adopting, implementing and maintaining appropriate security
22 measures.

23 94. Defendants' wrongful actions, inactions and omissions constituted (and
24 continue to constitute) common law negligence.

25 95. The damages Representative Plaintiff and Class Members have
26 suffered (as alleged above) and will continue to suffer were and are the direct and
27 proximate result of Defendants' grossly negligent conduct.
28

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1 96. Additionally, 15 U.S.C. § 45 (FTC Act, Section 5) prohibits “unfair
2 [...] practices in or affecting commerce,” including, as interpreted and enforced by
3 the FTC, the unfair act or practice by businesses, such as Defendants, of failing to
4 use reasonable measures to protect Private Information. The FTC publications and
5 orders described above also form part of the basis of Defendants’ duty in this regard.

6 97. Defendants violated 15 U.S.C. § 45 by failing to use reasonable
7 measures to protect Private Information and not complying with applicable industry
8 standards, as described in detail herein. Defendants’ conduct was particularly
9 unreasonable given the nature and amount of Private Information they obtained and
10 stored and the foreseeable consequences of the immense damages that would result
11 to Representative Plaintiff and Class Members.

12 98. As a direct and proximate result of Defendants’ negligence and
13 negligence *per se*, Representative Plaintiff and Class Members have suffered and
14 will continue to suffer injury, including but not limited to (i) actual identity theft, (ii)
15 the loss of the opportunity of how their Private Information is used, (iii) the
16 compromise, publication and/or theft of their Private Information, (iv) out-of-pocket
17 expenses associated with the prevention, detection and recovery from identity theft,
18 tax fraud and/or unauthorized use of their Private Information, (v) lost opportunity
19 costs associated with effort expended and the loss of productivity addressing and
20 attempting to mitigate the actual and future consequences of the Data Breach,
21 including but not limited to efforts spent researching how to prevent, detect, contest
22 and recover from embarrassment and identity theft, (vi) lost continuity in relation to
23 their personal records, (vii) the continued risk to their Private Information, which
24 may remain in Defendants’ possession and is subject to further unauthorized
25 disclosures so long as Defendants fail to undertake appropriate and adequate
26 measures to protect Representative Plaintiff’s and Class Members’ Private
27 Information in their continued possession, and (viii) future costs in terms of time,
28 effort and money that will be expended to prevent, detect, contest and repair the

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1 impact of the Private Information compromised as a result of the Data Breach for
2 the remainder of the lives of Representative Plaintiff and Class Members.

3 99. As a direct and proximate result of Defendants’ negligence and
4 negligence *per se*, Representative Plaintiff and Class Members have suffered and
5 will continue to suffer other forms of injury and/or harm, including but not limited
6 to anxiety, emotional distress, loss of privacy and other economic and noneconomic
7 losses.

8 100. Additionally, as a direct and proximate result of Defendants’
9 negligence and negligence *per se*, Representative Plaintiff and Class Members have
10 suffered and will continue to suffer the continued risks of exposure of their Private
11 Information, which remains in Defendants’ possession and is subject to further
12 unauthorized disclosures so long as Defendants fail to undertake appropriate and
13 adequate measures to protect Private Information in their continued possession.

14
15 **SECOND CLAIM FOR RELIEF**
16 **Breach of Implied Contract**
17 **(On behalf of the Nationwide Plaintiff Class)**

18 101. Each and every allegation of the preceding paragraphs is incorporated
19 in this Count with the same force and effect as though fully set forth herein.

20 102. Through their course of conduct, Defendants, Representative Plaintiff
21 and Class Members entered into implied contracts for Defendants to implement data
22 security adequate to safeguard and protect the privacy of Representative Plaintiff’s
23 and Class Members’ Private Information.

24 103. Defendants required Representative Plaintiff and Class Members to
25 provide and entrust their Private Information as a condition of obtaining Defendants’
26 services from Defendants.

27 104. Defendants solicited and invited Representative Plaintiff and Class
28 Members to provide their Private Information as part of Defendants’ regular

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1 business practices. Representative Plaintiff and Class Members accepted
2 Defendants' offers and provided their Private Information to Defendants.

3 105. As a condition of being direct customers of Defendants, Representative
4 Plaintiff and Class Members provided and entrusted their Private Information to
5 Defendants. In so doing, Representative Plaintiff and Class Members entered into
6 implied contracts with Defendants by which Defendants agreed to safeguard and
7 protect such non-public information, to keep such information secure and
8 confidential and to timely and accurately notify Representative Plaintiff and Class
9 Members if their data had been breached and compromised or stolen.

10 106. A meeting of the minds occurred when Representative Plaintiff and
11 Class Members agreed to, and did, provide their Private Information to Defendants,
12 in exchange for, amongst other things, the protection of their Private Information.

13 107. Representative Plaintiff and Class Members fully performed their
14 obligations under the implied contracts with Defendants.

15 108. Defendants breached the implied contracts made with Representative
16 Plaintiff and Class Members by failing to safeguard and protect their Private
17 Information and by failing to provide timely and accurate notice to them that their
18 Private Information was compromised as a result of the Data Breach.

19 109. As a direct and proximate result of Defendants' above-described breach
20 of implied contract, Representative Plaintiff and Class Members have suffered and
21 will continue to suffer (i) ongoing, imminent and impending threat of identity theft
22 crimes, fraud and abuse, resulting in monetary loss and economic harm, (ii) actual
23 identity theft crimes, fraud and abuse, resulting in monetary loss and economic harm,
24 (iii) loss of the confidentiality of the stolen confidential data, (iv) the illegal sale of
25 the compromised data on the dark web, (v) lost work time, and (vi) other economic
26 and noneconomic harm.

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THIRD CLAIM FOR RELIEF
Breach of the Implied Covenant of Good Faith and Fair Dealing
(On behalf of the Nationwide Plaintiff Class)

110. Each and every allegation of the preceding paragraphs is incorporated in this Count with the same force and effect as though fully set forth therein.

111. Every contract in this State has an implied covenant of good faith and fair dealing. This implied covenant is an independent duty and may be breached even when there is no breach of a contract’s actual and/or express terms.

112. Representative Plaintiff and Class Members have complied with and performed all conditions of their contracts with Defendants.

113. Defendants breached the implied covenant of good faith and fair dealing by failing to maintain adequate computer systems and data security practices to safeguard Private Information, failing to timely and accurately disclose the Data Breach to Representative Plaintiff and Class Members and continued acceptance of Private Information and storage of other personal information after Defendants knew or should have known of the security vulnerabilities of the systems that were exploited in the Data Breach.

114. Defendants acted in bad faith and/or with malicious motive in denying Representative Plaintiff and Class Members the full benefit of their bargains as originally intended by the parties, thereby causing them injury in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF
California Unfair Competition Law
Cal. Bus. & Prof. Code §§ 17200, et seq.
(On behalf of the Nationwide Plaintiff Class)

115. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein

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1 116. Defendants are a “person” as defined by Cal. Bus. & Prof. Code
2 §17201.

3 117. Defendants violated Cal. Bus. & Prof. Code § 17200, *et seq.* (“UCL”)
4 by engaging in unlawful, unfair and deceptive business acts and practices.

5 118. Defendants’ “unfair” acts and practices include:

6 a. Defendants’ failure to implement and maintain reasonable
7 security measures to protect Representative Plaintiff’s and Class
8 Members’ Private Information from unauthorized disclosure,
9 release, data breaches and theft, which was a direct and
10 proximate cause of the Data Breach. Defendants failed to identify
11 foreseeable security risks, remediate identified security risks and
12 adequately maintain and/or improve security following previous
13 cybersecurity incidents. This conduct, with little if any utility, is
14 unfair when weighed against the harm to Representative Plaintiff
and Class Members, whose Private Information has been
compromised;

15 b. Defendants’ failure to implement and maintain reasonable
16 security measures, which was contrary to legislatively declared
17 public policy that seeks to protect consumers’ data and ensure
18 that entities that are trusted with it use appropriate security
19 measures. These policies are reflected in laws, including the FTC
Act (15 U.S.C. § 45, *et seq.*);

20 c. Defendants’ failure to implement and maintain reasonable
21 security measures, which also leads to substantial consumer
22 injuries, as described above, that are not outweighed by any
23 countervailing benefits to consumers or competition. Moreover,
24 because consumers could not know of Defendants’ inadequate
security, consumers could not have reasonably avoided the
harms that Defendants caused; and

25 d. Engaging in unlawful business practices by violating Cal. Civ.
26 Code § 1798.82.
27
28

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1 Defendants have engaged in “unlawful” business practices by violating
2 multiple laws, including the FTC Act, 15 U.S.C. § 45, *et seq.*, and California
3 common law.

4 119. Defendants’ unlawful, unfair and deceptive acts and practices include:

- 5 a. Failing to implement and maintain reasonable security and
6 privacy measures to protect Representative Plaintiff’s and Class
7 Members’ Private Information, which was a direct and proximate
8 cause of the Data Breach;
- 9 b. Failing to identify foreseeable security and privacy risks,
10 remediate identified security and privacy risks and adequately
11 maintain and/or improve security and privacy measures, which
12 was a direct and proximate cause of the Data Breach;
- 13 c. Failing to comply with common law and statutory duties
14 pertaining to the security and privacy of Representative
15 Plaintiff’s and Class Members’ Private Information, including
16 duties imposed by the FTC Act, 15 U.S.C. § 45, *et seq.*, which
17 was a direct and proximate cause of the Data Breach;
- 18 d. Misrepresenting that they would protect the privacy and
19 confidentiality of Representative Plaintiff’s and Class Members’
20 Private Information, including by implementing and maintaining
21 reasonable security measures;
- 22 e. Misrepresenting that they would comply with common law and
23 statutory duties pertaining to the security and privacy of
24 Representative Plaintiff’s and Class Members’ Private
25 Information, including duties imposed by the FTC Act, 15 U.S.C.
26 § 45, *et seq.*;
- 27 f. Omitting, suppressing and concealing the material fact that they
28 did not reasonably or adequately secure Representative
Plaintiff’s and Class Members’ Private Information; and
- g. Omitting, suppressing and concealing the material fact that they
did not comply with common law and statutory duties pertaining

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to the security and privacy of Representative Plaintiff’s and Class Members’ Private Information, including duties imposed by the FTC Act, 15 U.S.C. § 45, *et seq.*

120. Defendants’ representations and omissions were material because they were likely to deceive reasonable consumers about the adequacy of Defendants’ data security and ability to protect the confidentiality of consumers’ Private Information.

121. As a direct and proximate result of Defendants’ unfair, unlawful and fraudulent acts and practices, Representative Plaintiff and Class Members were injured and lost money or property, including the price received by Defendants for their goods and services, monetary damages from fraud and identity theft, time and expenses related to monitoring their financial accounts for fraudulent activity, an increased, imminent risk of fraud and identity theft and loss of value of their Private Information.

122. Defendants acted intentionally, knowingly and maliciously to violate California’s Unfair Competition Law and recklessly disregarded Representative Plaintiff’s and Class Members’ rights.

123. Representative Plaintiff and Class Members seek all monetary and nonmonetary relief allowed by law, including restitution of all profits stemming from Defendants’ unfair, unlawful and fraudulent business practices or use of their Private Information, declaratory relief, reasonable attorneys’ fees and costs, injunctive relief and other appropriate equitable relief.

FIFTH CLAIM FOR RELIEF
Violation of the California Consumer Privacy Act of 2018
Cal. Civ. Code §§ 1798.100, *et seq.* (“CCPA”)
(On behalf of the California Plaintiff Sub-Class)

124. Plaintiff realleges and incorporates all previous allegations

125. As more personal information about consumers is collected by businesses, consumers’ ability to properly protect and safeguard their privacy has

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1 decreased. Consumers entrust businesses with their personal information on the
2 understanding that businesses will adequately protect it from unauthorized access.

3 126. As a result, in 2018, the California Legislature passed the CCPA, giving
4 consumers broad protections and rights intended to safeguard their personal
5 information. Among other things, the CCPA imposes an affirmative duty on certain
6 businesses that maintain personal information about California residents to
7 implement and maintain reasonable security procedures and practices that are
8 appropriate to the nature of the information collected.

9 127. Defendants are subject to the CCPA and failed to implement such
10 procedures which resulted in the Data Breach.

11 128. Section 1798.150(a)(1) of the CCPA provides: “Any consumer whose
12 nonencrypted or nonredacted personal information, as defined [by the CCPA] is
13 subject to an unauthorized access and exfiltration, theft, or disclosure because of the
14 business’ violation of the duty to implement and maintain reasonable security
15 procedures and practices appropriate to the nature of the information to protect the
16 personal information may institute a civil action for” statutory or actual damages,
17 injunctive or declaratory relief, and any other relief the Court deems proper.

18 129. Plaintiffs are “consumers” as defined by Civ. Code § 1798.140(g)
19 because they are natural persons residing in the State of California.

20 130. Defendants are a “business” as defined by Civ. Code § 1798.140(c).

21 131. The CCPA provides that “personal information” includes “[a]n
22 individual’s first name or first initial and the individual’s last name in combination
23 with any one or more of the following data elements, when either the name or the
24 data elements are not encrypted or redacted . . . (iii) Account number or credit or
25 debit card number, in combination with any required security code, access code, or
26 password that would permit access to an individual’s financial account.” See Civ.
27 Code § 1798.150(a)(1); Civ. Code § 1798.81.5(d)(1)(A).

28

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1 132. Plaintiffs’ Private Information compromised in the Data Breach
2 constitutes “personal information” within the meaning of the CCPA.

3 133. Through the Data Breach, Plaintiffs’ private information was accessed
4 without authorization, exfiltrated, and stolen by criminals in a nonencrypted and/or
5 nonredacted format.

6 134. The Data Breach occurred because of Defendants’ failure to implement
7 and maintain reasonable security procedures and practices appropriate to the nature
8 of the information.

9 135. Simultaneously herewith, Plaintiff is providing notice to Defendants
10 pursuant to Cal. Civ. Code § 1798.150(b)(1), identifying the specific provisions of
11 the CCPA. Plaintiff alleges Defendants have violated or are violating. Although a
12 cure is not possible under the circumstances, if (as expected) Defendants are unable
13 to cure or do not cure the violation within 30 days, Plaintiff will amend this
14 Complaint to pursue actual or statutory damages as permitted by Cal. Civ. Code §
15 1798.150(a)(1)(A).

16 136. As a result of Defendants’ failure to implement and maintain reasonable
17 security procedures and practices that resulted in the Data Breach, Plaintiff seeks
18 statutory damages of up to \$750 per Class Member (and no less than \$100 per Class
19 Member), actual damages to the extent they exceed statutory damages, injunctive
20 and declaratory relief, and any other relief as deemed appropriate by the Court.

21
22 **SIXTH CLAIM FOR RELIEF**
23 **Violation of the California Consumer Legal Remedies Act**
24 **Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”)**
25 **(On behalf of the California Plaintiff Sub-Class)**

26 137. Plaintiff realleges and incorporates by reference every allegation
27 contained elsewhere in this Complaint as if fully set forth herein.
28

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1 138. This cause of action is brought pursuant to the California Consumers
2 Legal Remedies Act (the “CLRA”), California Civil Code § 1750, *et seq.* This cause
3 of action does not seek monetary damages currently and is limited solely to
4 injunctive relief. Plaintiff will later amend this Complaint to seek damages in
5 accordance with the CLRA after providing Defendants with notice required by
6 California Civil Code § 1782.

7 139. Plaintiff and Class Members are “consumers,” as the term is defined
8 by California Civil Code § 1761(d).

9 140. Plaintiff, Class Members, and Defendants have engaged in
10 “transactions,” as that term is defined by California Civil Code § 1761(e).

11 141. The conduct alleged in this Complaint constitutes unfair methods of
12 competition and unfair and deceptive acts and practices for the purpose of the CLRA,
13 and the conduct undertaken by Defendants was likely to deceive consumers.

14 142. Cal. Civ. Code § 1770(a)(5) prohibits one who is involved in a
15 transaction from “[r]epresenting that goods or services have sponsorship, approval,
16 characteristics, ingredients, uses, benefits, or quantities which they do not have.”

17 143. Defendants violated this provision by representing that Defendants
18 took appropriate measures to protect Plaintiffs’ and the Class Members’ Private
19 Information. Additionally, Defendants improperly handled, stored, or protected
20 either unencrypted or partially encrypted data.

21 144. As a result, Plaintiff and the Class Members were induced to provide
22 their Private Information to Defendants.

23 145. As a result of engaging in such conduct, Defendants have violated
24 Civil Code § 1770.

25 146. Pursuant to Civil Code § 1780(a)(2) and (a)(5), Plaintiff seeks an order
26 of this Court that includes, but is not limited to, an order enjoining Defendants from
27 continuing to engage in unlawful, unfair, or fraudulent business practices or any
28 other act prohibited by law.

1 147. Plaintiff and the Class Members suffered injuries caused by
2 Defendants' misrepresentations, because they provided their Private Information
3 and believed that Defendants would adequately protect this information.

4 148. Plaintiff and Class Members may be irreparably harmed and/or denied
5 an effective and complete remedy if such an order is not granted.

6 149. The unfair and deceptive acts and practices of Defendants, as described
7 above, present a serious threat to Plaintiff and members of the Class.

8
9 **RELIEF SOUGHT**

10 **WHEREFORE**, Representative Plaintiff, on Representative Plaintiff's own
11 behalf and on behalf of each member of the proposed Class, respectfully requests
12 that the Court enter judgment in favor of Representative Plaintiff and the Class and
13 for the following specific relief against Defendants as follows:

14 1. That the Court declare, adjudge and decree that this action is a proper
15 class action and certify the proposed Class and/or any other appropriate subclasses
16 under Federal Rules of Civil Procedure Rules 23 (b)(1), (b)(2), and/or (b)(3),
17 including appointment of Representative Plaintiff's counsel as Class Counsel;

18 2. For an award of damages, including actual, nominal and consequential
19 damages, as allowed by law in an amount to be determined;

20 3. That the Court enjoin Defendants, ordering them to cease and desist
21 from unlawful activities;

22 4. For equitable relief enjoining Defendants from engaging in the
23 wrongful conduct complained of herein pertaining to the misuse and/or disclosure
24 of Representative Plaintiff's and Class Members' Private Information, and from
25 refusing to issue prompt, complete and accurate disclosures to Representative
26 Plaintiff and Class Members;

27 5. For injunctive relief requested by Representative Plaintiff, including
28 but not limited to injunctive and other equitable relief as is necessary to protect the

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

1 | interests of Representative Plaintiff and Class Members, including but not limited to
2 | an Order:

- 3 | a. prohibiting Defendants from engaging in the wrongful and
4 | unlawful acts described herein;
- 5 | b. requiring Defendants to protect, including through encryption,
6 | all data collected through the course of business in accordance
7 | with all applicable regulations, industry standards and federal,
8 | state or local laws;
- 9 | c. requiring Defendants to delete and purge Representative
10 | Plaintiff's and Class Members' Private Information unless
11 | Defendants can provide to the Court reasonable justification for
12 | the retention and use of such information when weighed against
13 | the privacy interests of Representative Plaintiff and Class
14 | Members;
- 15 | d. requiring Defendants to implement and maintain a
16 | comprehensive Information Security Program designed to
17 | protect the confidentiality and integrity of Representative
18 | Plaintiff's and Class Members' Private Information;
- 19 | e. requiring Defendants to engage independent third-party security
20 | auditors and internal personnel to run automated security
21 | monitoring, simulated attacks, penetration tests and audits on
22 | Defendants' systems on a periodic basis;
- 23 | f. prohibiting Defendants from maintaining Representative
24 | Plaintiff's and Class Members' Private Information on a cloud-
25 | based database;
- 26 | g. requiring Defendants to segment data by creating firewalls and
27 | access controls so that if one area of Defendants' network is
28 | compromised, hackers cannot gain access to other portions of
Defendants' systems;
- h. requiring Defendants to conduct regular database scanning and
securing checks;

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ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
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- i. requiring Defendants to establish information security training programs that includes at least annual information security training for all employees, with additional training to be provided as appropriate based upon the employees’ respective responsibilities with handling Private Information, as well as protecting the Private Information of Representative Plaintiff and Class Members;
- j. requiring Defendants to implement a system of tests to assess their respective employees’ knowledge of the education programs discussed in the preceding subparagraphs, as well as randomly and periodically testing employees’ compliance with Defendants’ policies, programs and systems for protecting personal identifying information;
- k. requiring Defendants to implement, maintain, review and revise as necessary a threat management program to appropriately monitor Defendants’ networks for internal and external threats, and assess whether monitoring tools are properly configured, tested and updated; and
- l. requiring Defendants to meaningfully educate all Class Members about the threats that they face as a result of the loss of their confidential personal identifying information to third parties, as well as the steps affected individuals must take to protect themselves.

6. For prejudgment interest on all amounts awarded, at the prevailing legal rate;

7. For an award of attorneys’ fees, costs and litigation expenses, as allowed by law; and

8. For all other Orders, findings and determinations identified and sought in this Complaint.

JURY DEMAND

Representative Plaintiff, individually and on behalf of the Plaintiff Class,
hereby demands a trial by jury for all issues triable by jury.

Dated: June 4, 2024

By: /s/ Laura Van Note
Scott Edward Cole, Esq. (CA S.B. #160744)
Laura Van Note, Esq. (CA S.B. #310160)
COLE & VAN NOTE
555 12th Street, Suite 2100
Oakland, California 94607
Telephone: (510) 891-9800
Facsimile: (510) 891-7030
Email: sec@colevannote.com
Email: lvn@colevannote.com

Attorneys for Representative Plaintiff
and the Plaintiff Classes

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 2100
OAKLAND, CA 94607
TEL: (510) 891-9800

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