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

10
11 JATINA SMITH, individually, and on
behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 SELECT EDUCATION GROUP, Inc., and
DOES 1 through 100, inclusive,

15 Defendants.

Case No.

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE AND EQUITABLE RELIEF
FOR:**

- 1. **NEGLIGENCE;**
- 2. **BREACH OF IMPLIED CONTRACT;**
- 3. **BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING;**
- 4. **UNFAIR BUSINESS PRACTICES;**

[JURY TRIAL DEMANDED]

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20 **INTRODUCTION**

21 1. Representative Plaintiff Jatina Smith (“Representative Plaintiff”) brings this class
22 action against Defendant Select Education Group, Inc. (“Defendant” or “SEG”) for its failure to
23 properly secure and safeguard Representative Plaintiff’s and Class Members’ personally
24 identifiable information stored within Defendant’s information network, including without
25 limitation, name, Social Security Number, billing and payment records, and/or academic records
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1 (these types of information, *inter alia*, being thereafter referred to, collectively, as “personally
2 identifiable information” or “PII”).¹

3 2. With this action, Representative Plaintiff seeks to hold Defendant responsible for
4 the harms it caused and will continue to cause Representative Plaintiff and, at least, 67,097 ² other
5 similarly situated persons in the massive and preventable cyberattack, by which cybercriminals
6 infiltrated Defendant’s inadequately protected network servers and accessed highly sensitive PII
7 which was being kept unprotected (the “Data Breach”).

8 3. While Defendant claims the breach occurred as early as November 5, 2023,
9 Defendant did not begin informing victims of the Data Breach until four months after the Data
10 Breach, and failed to inform victims when or for how long the Data Breach occurred or when
11 Defendant became aware of the Data Breach. Indeed, Representative Plaintiff and Class Members
12 were wholly unaware of the Data Breach until they received letters from Defendant informing
13 them of it. The Notice received by Representative Plaintiff was dated March 20, 2024.

14 4. Defendant acquired, collected and stored Representative Plaintiff’s and Class
15 Members’ PII. Therefore, at all relevant times, Defendant knew or should have known that
16 Representative Plaintiff and Class Members would use Defendant’s services to store and/or share
17 sensitive data, including highly confidential PII.

18 5. Defendant disregarded the rights of Representative Plaintiff and Class Members by
19 intentionally, willfully, recklessly and/or negligently failing to take and implement adequate and
20 reasonable measures to ensure that Representative Plaintiff’s and Class Members’ PII was
21 safeguarded, failing to take available steps to prevent an unauthorized disclosure of data, and
22 failing to follow applicable, required and appropriate protocols, policies and procedures regarding

23
24 ¹ Personally identifiable information (“PII”) generally incorporates information that can be
25 used to distinguish or trace an individual’s identity, either alone or when combined with other
26 personal or identifying information. 2 C.F.R. § 200.79. At a minimum, it includes all information
27 that on its face expressly identifies an individual. PII also is generally defined to include certain
28 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.).

² <https://apps.web.maine.gov/online/aeviewer/ME/40/36a1b9ba-7ab0-4445-8641-06a0f9b33003.shtml> (last accessed April 3, 2024).

1 the encryption of data, even for internal use. As a result, Representative Plaintiff's and Class
2 Members' PII was compromised through disclosure to an unknown and unauthorized third party—
3 an undoubtedly nefarious third party seeking to profit off this disclosure by defrauding
4 Representative Plaintiff and Class Members in the future. Representative Plaintiff and Class
5 Members have a continuing interest in ensuring their information is and remains safe and are
6 entitled to injunctive and other equitable relief.

7
8 **JURISDICTION AND VENUE**

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

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

16 8. Defendant is headquartered and routinely conducts business in the State where this
17 District is located, has sufficient minimum contacts in this State and has intentionally availed itself
18 of this jurisdiction by marketing and selling products and services and by accepting and processing
19 payments for those products and services within this State.

20 9. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of
21 the events that gave rise to Representative Plaintiff's claims took place within this District, and
22 Defendant does business in this Judicial District.

23
24 **PLAINTIFF**

25 10. Representative Plaintiff is an adult individual and, at all relevant times herein, was
26 a resident and citizen of the State of North Dakota. Representative Plaintiff is a victim of the Data
27 Breach.

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1 11. Defendant received highly sensitive PII from Representative Plaintiff in connection
2 with the services Representative Plaintiff obtained. As a result, Representative Plaintiff's
3 information was among the data accessed by an unauthorized third party in the Data Breach.

4 12. At all times herein relevant, Representative Plaintiff is and was a member of each
5 of the Classes.

6 13. As required in order to obtain services and/or employment from Defendant,
7 Representative Plaintiff provided Defendant with highly sensitive PII.

8 14. Representative Plaintiff's PII was exposed in the Data Breach because Defendant
9 stored and/or shared Representative Plaintiff's PII. Representative Plaintiff's PII was within the
10 possession and control of Defendant at the time of the Data Breach.

11 15. Representative Plaintiff received a letter from Defendant, dated March 20, 2024,
12 stating Representative Plaintiff's PII was involved in the Data Breach (the "Notice").

13 16. As a result, Representative Plaintiff spent time dealing with the consequences of
14 the Data Breach, which included and continues to include time spent verifying the legitimacy and
15 impact of the Data Breach, exploring credit monitoring and identity theft insurance options, self-
16 monitoring Representative Plaintiff's accounts and seeking legal counsel regarding Representative
17 Plaintiff's options for remedying and/or mitigating the effects of the Data Breach. This time has
18 been lost forever and cannot be recaptured.

19 17. Representative Plaintiff suffered actual injury in the form of damages to and
20 diminution in the value of Representative Plaintiff's PII—a form of intangible property that
21 Representative Plaintiff entrusted to Defendant, which was compromised in and as a result of the
22 Data Breach.

23 18. Representative Plaintiff suffered lost time, annoyance, interference and
24 inconvenience as a result of the Data Breach and has anxiety and increased concerns for the loss
25 of privacy, as well as anxiety over the impact of cybercriminals accessing, using and selling
26 Representative Plaintiff's PII.

27
28

1 19. Representative Plaintiff suffered imminent and impending injury arising from the
2 substantially increased risk of fraud, identity theft and misuse resulting from Representative
3 Plaintiff's PII, in combination with Representative Plaintiff's name, being placed in the hands of
4 unauthorized third parties/criminals.

5 20. Representative Plaintiff has a continuing interest in ensuring that Representative
6 Plaintiff's PII, which, upon information and belief, remains backed up in Defendant's possession,
7 is protected and safeguarded from future breaches.

8
9 **DEFENDANT**

10 21. Defendant is a Limited Liability Company formed in Delaware with a principal
11 place of business located at 5601 Stoddard Rd. Modesto, CA 95356. Defendant is a private post-
12 secondary education group educating students both in person and online.³

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

18
19 **CLASS ACTION ALLEGATIONS**

20 23. Representative Plaintiff brings this action pursuant to the provisions of Rules 23(a),
21 (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of Representative Plaintiff and
22 the following class/subclass (collectively, the "Classes"):

23 **Nationwide Class:**

24 "All individuals within the United States of America whose PII was
25 exposed to unauthorized third parties as a result of the data breach allegedly
26 discovered on or around November 5, 2023."

26 **California Subclass:**

27 ³ SELECT EDUCATION GROUP, <https://www.selectededucationgroup.com/> (last accessed
28 April 3, 2024).

1 “All individuals within the State of California whose PII was exposed to
2 unauthorized third parties as a result of the data breach allegedly discovered
3 on or around November 5, 2023.”

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

11 25. In the alternative, Representative Plaintiff requests additional subclasses as
12 necessary based on the types of PII that were compromised.

13 26. Representative Plaintiff reserves the right to amend the above definition or to
14 propose subclasses in subsequent pleadings and motions for class certification.

15 27. This action has been brought and may properly be maintained as a class action
16 under Federal Rules of Civil Procedure Rule 23 because there is a well-defined community of
17 interest in the litigation and membership in the proposed Classes is easily ascertainable.

18 a. Numerosity: A class action is the only available method for the fair and
19 efficient adjudication of this controversy. The members of the Plaintiff
20 Classes are so numerous that joinder of all members is impractical, if not
21 impossible. Representative Plaintiff is informed and believe and, on that
22 basis, alleges that the total number of Class Members is in the tens of
23 thousands of individuals. Membership in the Classes will be determined by
24 analysis of Defendant’s records.

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

- 1) Whether Defendant had a legal duty to Representative Plaintiff and the Classes to exercise due care in collecting, storing, using and/or safeguarding their PII;
- 2) Whether Defendant knew or should have known of the susceptibility of its data security systems to a data breach;

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- 3) Whether Defendant’s security procedures and practices to protect its systems were reasonable in light of the measures recommended by data security experts;
 - 4) Whether Defendant’s failure to implement adequate data security measures allowed the Data Breach to occur;
 - 5) Whether Defendant failed to comply with its own policies and applicable laws, regulations and industry standards relating to data security;
 - 6) Whether Defendant adequately, promptly and accurately informed Representative Plaintiff and Class Members that their PII had been compromised;
 - 7) How and when Defendant actually learned of the Data Breach;
 - 8) Whether Defendant’s conduct, including its failure to act, resulted in or was the proximate cause of the breach of its systems, resulting in the loss of Representative Plaintiff’s and Class Members’ PII;
 - 9) Whether Defendant adequately addressed and fixed the vulnerabilities which permitted the Data Breach to occur;
 - 10) Whether Defendant engaged in unfair, unlawful or deceptive practices by failing to safeguard Representative Plaintiff’s and Class Members’ PII;
 - 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 Defendant’s wrongful conduct; and
 - 12) Whether Representative Plaintiff and Class Members are entitled to restitution as a result of Defendant’s wrongful conduct.
- c. Typicality: Representative Plaintiff’s claims are typical of the claims of the Plaintiff Classes. Representative Plaintiff and all members of the Plaintiff Classes sustained damages arising out of and caused by Defendant’s 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 each of the Plaintiff Classes 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 Classes in their entirety. Representative Plaintiff anticipates no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense

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and burden of individual litigation by each member makes or may make it impractical for members of the Plaintiff Classes 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 Classes, 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.

28. 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.

29. This class action is also appropriate for certification because Defendant has 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 Classes in their entirety. Defendant's policies and practices challenged herein apply to and affect Class Members uniformly and Representative Plaintiff's challenge of these policies and practices hinges on Defendant's conduct with respect to the Classes in their entirety, not on facts or law applicable only to Representative Plaintiff.

30. Unless a Class-wide injunction is issued, Defendant may continue in its failure to properly secure the PII of Class Members, and Defendant may continue to act unlawfully as set forth in this Complaint.

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

1 **COMMON FACTUAL ALLEGATIONS**

2 **The Cyberattack**

3 32. In the course of the Data Breach, one or more unauthorized third parties accessed
4 Class Members' sensitive data, including but not limited to, name, Social Security Numbers,
5 billing and payment records and/or academic records. Representative Plaintiff was among the
6 individuals whose data was accessed in the Data Breach.

7 33. According to the Data Breach Notification, which Defendant filed with the Office
8 of the Maine Attorney General, 67,097 persons were affected by the Data Breach.⁴

9 34. Representative Plaintiff was provided the information detailed above upon
10 Representative Plaintiff's receipt of a letter from Defendant, dated March 20, 2024. Representative
11 Plaintiff was not aware of the Data Breach until receiving that letter.

12
13 **Defendant's Failed Response to the Breach**

14 35. Upon information and belief, the unauthorized third-party cybercriminals gained
15 access to Representative Plaintiff's and Class Members' PII with the intent of misusing the PII,
16 including marketing and selling Representative Plaintiff's and Class Members' PII.

17 36. Not until roughly four months after Defendant claims the Data Breach occurred did
18 Defendant begin sending the Notice to persons whose PII Defendant confirmed was potentially
19 compromised as a result of the Data Breach. The Notice provided basic details of the Data Breach
20 and Defendant's recommended next steps.

21 37. The Notice included, *inter alia*, the claims that Defendant determined a criminal
22 threat actor had access to its computer system as early as November 5, 2023. The Notice does not
23 provide information as to when Defendant learned of the Data Breach or how long the Data Breach
24 took place.

25 38. Representative Plaintiff and Class Members were required to provide their PII to
26 Defendant in order to receive services and/or employment, and as part of providing services and/or

27 ⁴ [https://apps.web.maine.gov/online/aeviewer/ME/40/36a1b9ba-7ab0-4445-8641-](https://apps.web.maine.gov/online/aeviewer/ME/40/36a1b9ba-7ab0-4445-8641-06a0f9b33003.shtml)
28 [06a0f9b33003.shtml](https://apps.web.maine.gov/online/aeviewer/ME/40/36a1b9ba-7ab0-4445-8641-06a0f9b33003.shtml) (last accessed April 3, 2024).

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1 employment, Defendant created, collected and stored Representative Plaintiff's and Class
2 Members' PII with the reasonable expectation and mutual understanding that Defendant would
3 comply with its obligations to keep such information confidential and secure from unauthorized
4 access.

5 39. Despite this, Representative Plaintiff and the Class Members remain, even today,
6 in the dark regarding what particular data was stolen, the particular malware used and what steps
7 are being taken, if any, to secure their PII going forward. Representative Plaintiff and Class
8 Members are thus left to speculate as to where their PII ended up, who has used it and for what
9 potentially nefarious purposes. Indeed, they are left to further speculate as to the full impact of the
10 Data Breach and how exactly Defendant intends to enhance its information security systems and
11 monitoring capabilities so as to prevent further breaches.

12 40. Representative Plaintiff's and Class Members' PII may end up for sale on the dark
13 web, or simply fall into the hands of companies that will use the detailed PII for targeted marketing
14 without Representative Plaintiff's and/or Class Members' approval. Either way, unauthorized
15 individuals can now easily access Representative Plaintiff's and Class Members' PII.

16
17 **Defendant Collected/Stored Class Members' PII**

18 41. Defendant acquired, collected, stored and assured reasonable security over
19 Representative Plaintiff's and Class Members' PII.

20 42. As a condition of its relationships with Representative Plaintiff and Class Members,
21 Defendant required that Representative Plaintiff and Class Members entrust Defendant with highly
22 sensitive and confidential PII. Defendant, in turn, stored that information on Defendant's system
23 that was ultimately affected by the Data Breach.

24 43. By obtaining, collecting and storing Representative Plaintiff's and Class Members'
25 PII, Defendant assumed legal and equitable duties over the PII and knew or should have known
26 that it was thereafter responsible for protecting Representative Plaintiff's and Class Members' PII
27 from unauthorized disclosure.

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1 44. Representative Plaintiff and Class Members have taken reasonable steps to
2 maintain their PII's confidentiality. Representative Plaintiff and Class Members relied on
3 Defendant to keep their PII confidential and securely maintained, to use this information for
4 business purposes only and to make only authorized disclosures of this information.

5 45. Defendant could have prevented the Data Breach, which began no later than
6 November 5, 2023, by properly securing and encrypting and/or more securely encrypting its
7 servers generally, as well as Representative Plaintiff's and Class Members' PII.

8 46. Defendant's negligence in safeguarding Representative Plaintiff's and Class
9 Members' PII is exacerbated by repeated warnings and alerts directed to protecting and securing
10 sensitive data, as evidenced by the trending data breach attacks in recent years.

11 47. Due to the high-profile nature of these breaches, and other breaches of its kind,
12 Defendant was and/or certainly should have been on notice and aware of such attacks occurring in
13 its industry and, therefore, should have assumed and adequately performed the duty of preparing
14 for such an imminent attack. This is especially true given that Defendant is a large, sophisticated
15 operation with the resources to put adequate data security protocols in place.

16 48. And yet, despite the prevalence of public announcements of data breach and data
17 security compromises, Defendant failed to take appropriate steps to protect Representative
18 Plaintiff's and Class Members' PII from being compromised.

19
20 **Defendant Had an Obligation to Protect the Stolen Information**

21 49. In failing to adequately secure Representative Plaintiff's and Class Members'
22 sensitive data, Defendant breached duties it owed Representative Plaintiff and Class Members
23 under statutory and common law. Moreover, Representative Plaintiff and Class Members
24 surrendered their highly sensitive PII to Defendant under the implied condition that Defendant
25 would keep it private and secure. Accordingly, Defendant also has an implied duty to safeguard
26 their PII, independent of any statute.

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1 50. Defendant was prohibited by the Federal Trade Commission Act (the “FTC Act”) (15 U.S.C. § 45) from engaging in “unfair or deceptive acts or practices in or affecting commerce.”
2
3 The Federal Trade Commission (the “FTC”) has concluded that a company’s failure to maintain
4 reasonable and appropriate data security for consumers’ sensitive personal information is an
5 “unfair practice” in violation of the FTC Act. *See, e.g., FTC v. Wyndham Worldwide Corp.*, 799
6 F.3d 236 (3d Cir. 2015).

7 51. In addition to its obligations under federal and state laws, Defendant owed a duty
8 to Representative Plaintiff and Class Members to exercise reasonable care in obtaining, retaining,
9 securing, safeguarding, deleting and protecting the PII in Defendant’s possession from being
10 compromised, lost, stolen, accessed, and misused by unauthorized persons. Defendant owed a duty
11 to Representative Plaintiff and Class Members to provide reasonable security, including
12 consistency with industry standards and requirements, and to ensure that its computer systems,
13 networks and protocols adequately protected Representative Plaintiff’s and Class Members’ PII.

14 52. Defendant owed a duty to Representative Plaintiff and Class Members to design,
15 maintain and test its computer systems, servers and networks to ensure that all PII in its possession
16 was adequately secured and protected.

17 53. Defendant owed a duty to Representative Plaintiff and Class Members to create and
18 implement reasonable data security practices and procedures to protect all PII in its possession,
19 including not sharing information with other entities who maintained sub-standard data security
20 systems.

21 54. Defendant owed a duty to Representative Plaintiff and Class Members to
22 implement processes that would immediately detect a breach on its data security systems in a
23 timely manner.

24 55. Defendant owed a duty to Representative Plaintiff and Class Members to act upon
25 data security warnings and alerts in a timely fashion.

26 56. Defendant owed a duty to Representative Plaintiff and Class Members to disclose
27 if its computer systems and data security practices were inadequate to safeguard individuals’ PII
28

1 from theft because such an inadequacy would be a material fact in the decision to entrust their PII
2 to Defendant.

3 57. Defendant owed a duty of care to Representative Plaintiff and Class Members
4 because they were foreseeable and probable victims of any inadequate data security practices.

5 58. Defendant owed a duty to Representative Plaintiff and Class Members to encrypt
6 and/or more reliably encrypt Representative Plaintiff's and Class Members' PII and monitor user
7 behavior and activity in order to identify possible threats.

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

10 59. PII is a valuable commodity for which a "cyber black market" exists in which
11 criminals openly post stolen payment card numbers, Social Security numbers and other personal
12 information on a number of underground internet websites.

13 60. The high value of PII to criminals is further evidenced by the prices they will pay
14 for it through the dark web. Numerous sources cite dark web pricing for stolen identity credentials.
15 For example, personal information can be sold at a price ranging from \$40 to \$200, and bank
16 details have a price range of \$50 to \$200.⁵ Experian reports that a stolen credit or debit card number
17 can sell for \$5 to \$110 on the dark web.⁶ Criminals can also purchase access to entire company
18 data breaches from \$999 to \$4,995.⁷

19 61. These criminal activities have and will result in devastating financial and personal
20 losses to Representative Plaintiff and Class Members. For example, it is believed that certain PII
21 compromised in the 2017 Equifax data breach was being used three years later by identity thieves
22 to apply for COVID-19-related benefits in the state of Oklahoma. Such fraud will be an
23

24 ⁵ *Your personal data is for sale on the dark web. Here's how much it costs*, Digital Trends, Oct.
25 16, 2019, available at: <https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/> (last accessed April 3, 2024).

26 ⁶ *Here's How Much Your Personal Information Is Selling for on the Dark Web*, Experian, Dec.
27 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 April 3, 2024)

28 ⁷ *In the Dark*, VPNOverview, 2019, available at:
<https://vpnoverview.com/privacy/anonymous-browsing/in-the-dark/> (last accessed April 3, 2024)

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1 omnipresent threat for Representative Plaintiff and Class Members for the rest of their lives. They
2 will need to remain constantly vigilant.

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

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

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

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

25
26 [L]aw enforcement officials told us that in some cases, stolen data may be held for
27 up to a year or more before being used to commit identity theft. Further, once stolen
28 data have been sold or posted on the Web, fraudulent use of that information may

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1 continue for years. As a result, studies that attempt to measure the harm resulting
2 from data breaches cannot necessarily rule out all future harm.⁸

3 66. When cybercriminals access financial information, and other personally sensitive
4 data—as they did here—there is no limit to the amount of fraud to which Defendant may have
5 exposed Representative Plaintiff and Class Members.

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

12 68. Most of the reported data breaches are a result of lax security and the failure to
13 create or enforce appropriate security policies, rules and procedures. Appropriate information
14 security controls, including encryption, must be implemented and enforced in a rigorous and
15 disciplined manner so that a *data breach never occurs*.¹²

16 69. Here, Defendant knew of the importance of safeguarding PII and of the foreseeable
17 consequences that would occur if Representative Plaintiff’s and Class Members’ PII was stolen,
18 including the significant costs that would be placed on Representative Plaintiff and Class Members
19 as a result of a breach of this magnitude. As detailed above, Defendant knew or should have known
20 that the development and use of such protocols were necessary to fulfill its statutory and common
21 law duties to Representative Plaintiff and Class Members. Its failure to do so is therefore
22 intentional, willful, reckless and/or grossly negligent.

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25 ⁸ *Report to Congressional Requesters*, GAO, at 29 (June 2007), available at:
<http://www.gao.gov/new.items/d07737.pdf/> (last accessed April 3, 2024).

26 ⁹ Lucy L. Thompson, “Despite the Alarming Trends, Data Breaches Are Preventable,” in
DATA BREACH AND ENCRYPTION HANDBOOK (Lucy Thompson, ed., 2012).

27 ¹⁰ *Id.* at 17.

28 ¹¹ *Id.* at 28.

¹² *Id.*

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1 74. Defendant knew that the PII was private and confidential and should be protected
2 as private and confidential and, thus, Defendant owed a duty of care not to subject Representative
3 Plaintiff and Class Members to an unreasonable risk of harm because they were foreseeable and
4 probable victims of any inadequate security practices.

5 75. Defendant knew or should have known of the risks inherent in collecting and
6 storing PII, the vulnerabilities of its data security systems and the importance of adequate security.
7 Defendant knew about numerous, well-publicized data breaches.

8 76. Defendant knew or should have known that its data systems and networks did not
9 adequately safeguard Representative Plaintiff's and Class Members' PII.

10 77. Only Defendant was in the position to ensure that its systems and protocols were
11 sufficient to protect the PII that Representative Plaintiff and Class Members had entrusted to it.

12 78. Defendant breached its duties to Representative Plaintiff and Class Members by
13 failing to provide fair, reasonable or adequate computer systems and data security practices to
14 safeguard Representative Plaintiff's and Class Members' PII.

15 79. Because Defendant knew that a breach of its systems could damage thousands of
16 individuals, including Representative Plaintiff and Class Members, Defendant had a duty to
17 adequately protect its data systems and the PII contained thereon.

18 80. Representative Plaintiff's and Class Members' willingness to entrust Defendant
19 with its PII was predicated on the understanding that Defendant would take adequate security
20 precautions. Moreover, only Defendant had the ability to protect its systems and the PII it stored
21 on them from attack. Thus, Defendant had a special relationship with Representative Plaintiff and
22 Class Members.

23 81. Defendant also had independent duties under state and federal laws that required
24 Defendant to reasonably safeguard Representative Plaintiff's and Class Members' PII and
25 promptly notify them about the Data Breach. These "independent duties" are untethered to any
26 contract between Defendant and Representative Plaintiff and/or the remaining Class Members.
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1 82. Defendant breached its general duty of care to Representative Plaintiff and Class
2 Members in, but not necessarily limited to, the following ways:

- 3 a. by failing to provide fair, reasonable or adequate computer systems and data
4 security practices to safeguard Representative Plaintiff's and Class
5 Members' PII;
- 6 b. by failing to timely and accurately disclose that Representative Plaintiff's
7 and Class Members' PII had been improperly acquired or accessed;
- 8 c. by failing to adequately protect and safeguard the PII by knowingly
9 disregarding standard information security principles, despite obvious risks,
10 and by allowing unmonitored and unrestricted access to unsecured PII;
- 11 d. by failing to provide adequate supervision and oversight of the PII with
12 which it was and is entrusted, in spite of the known risk and foreseeable
13 likelihood of breach and misuse, which permitted an unknown third party
14 to gather Representative Plaintiff's and Class Members' PII, misuse the PII
15 and intentionally disclose it to others without consent;
- 16 e. by failing to adequately train its employees to not store PII longer than
17 absolutely necessary;
- 18 f. by failing to consistently enforce security policies aimed at protecting
19 Representative Plaintiff's and the Class Members' PII;
- 20 g. by failing to implement processes to quickly detect data breaches, security
21 incidents or intrusions; and
- 22 h. by failing to encrypt Representative Plaintiff's and Class Members' PII and
23 monitor user behavior and activity in order to identify possible threats.

24 83. Defendant's willful failure to abide by these duties was wrongful, reckless and/or
25 grossly negligent in light of the foreseeable risks and known threats.

26 84. As a proximate and foreseeable result of Defendant's grossly negligent conduct,
27 Representative Plaintiff and Class Members have suffered damages and are at imminent risk of
28 additional harms and damages (as alleged above).

 85. The law further imposes an affirmative duty on Defendant to timely disclose the
unauthorized access and theft of the PII to Representative Plaintiff and Class Members so that they
could and/or still can take appropriate measures to mitigate damages, protect against adverse
consequences and thwart future misuse of their PII.

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1 86. Defendant breached its duty to notify Representative Plaintiff and Class Members
2 of the unauthorized access by waiting four months after the Data Breach took place to notify
3 Representative Plaintiff and Class Members and then by failing and continuing to fail to provide
4 Representative Plaintiff and Class Members sufficient information regarding the breach. To date,
5 Defendant has not provided sufficient information to Representative Plaintiff and Class Members
6 regarding the extent of the unauthorized access and continues to breach its disclosure obligations
7 to Representative Plaintiff and Class Members.

8 87. Further, through its failure to provide timely and clear notification of the Data
9 Breach to Representative Plaintiff and Class Members, Defendant prevented Representative
10 Plaintiff and Class Members from taking meaningful, proactive steps to, *inter alia*, secure and/or
11 access their PII.

12 88. There is a close causal connection between Defendant’s failure to implement
13 security measures to protect Representative Plaintiff’s and Class Members’ PII and the harm
14 suffered, or risk of imminent harm suffered, by Representative Plaintiff and Class Members.
15 Representative Plaintiff’s and Class Members’ PII was accessed as the proximate result of
16 Defendant’s failure to exercise reasonable care in safeguarding such PII by adopting,
17 implementing and maintaining appropriate security measures.

18 89. Defendant’s wrongful actions, inactions and omissions constituted (and continue to
19 constitute) common law negligence.

20 90. The damages Representative Plaintiff and Class Members have suffered (as alleged
21 above) and will continue to suffer were and are the direct and proximate result of Defendant’s
22 grossly negligent conduct.

23 91. Additionally, 15 U.S.C. § 45 (FTC Act, Section 5) prohibits “unfair [...] practices
24 in or affecting commerce,” including, as interpreted and enforced by the FTC, the unfair act or
25 practice by businesses, such as Defendant, of failing to use reasonable measures to protect PII. The
26 FTC publications and orders described above also form part of the basis of Defendant’s duty in
27 this regard.

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1 92. Defendant violated 15 U.S.C. § 45 by failing to use reasonable measures to protect
2 PII and not complying with applicable industry standards, as described in detail herein.
3 Defendant’s conduct was particularly unreasonable given the nature and amount of PII it obtained
4 and stored and the foreseeable consequences of the immense damages that would result to
5 Representative Plaintiff and Class Members.

6 93. Defendant’s violation of 15 U.S.C. § 45 constitutes negligence *per se*.

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

22 95. As a direct and proximate result of Defendant’s negligence and negligence *per se*,
23 Representative Plaintiff and Class Members have suffered and will continue to suffer other forms
24 of injury and/or harm, including but not limited to anxiety, emotional distress, loss of privacy and
25 other economic and noneconomic losses.

26 96. Additionally, as a direct and proximate result of Defendant’s negligence and
27 negligence *per se*, Representative Plaintiff and Class Members have suffered and will continue to
28

1 suffer the continued risks of exposure of their PII, which remains in Defendant's possession and
2 is subject to further unauthorized disclosures so long as Defendant fails to undertake appropriate
3 and adequate measures to protect PII in its continued possession.

4
5 **SECOND CLAIM FOR RELIEF**
6 **Breach of Implied Contract**
7 **(On behalf of the Nationwide Class and the California Subclass)**

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

10 98. Through their course of conduct, Defendant, Representative Plaintiff and Class
11 Members entered into implied contracts for Defendant to implement data security adequate to
12 safeguard and protect the privacy of Representative Plaintiff's and Class Members' PII.

13 99. Defendant required Representative Plaintiff and Class Members to provide and
14 entrust their PII as a condition of obtaining Defendant's services from Defendant.

15 100. Defendant solicited and invited Representative Plaintiff and Class Members to
16 provide their PII as part of Defendant's regular business practices. Representative Plaintiff and
17 Class Members accepted Defendant's offers and provided their PII to Defendant.

18 101. As a condition of being direct customers of Defendant, Representative Plaintiff and
19 Class Members provided and entrusted their PII to Defendant. In so doing, Representative Plaintiff
20 and Class Members entered into implied contracts with Defendant by which Defendant agreed to
21 safeguard and protect such non-public information, to keep such information secure and
22 confidential and to timely and accurately notify Representative Plaintiff and Class Members if its
23 data had been breached and compromised or stolen.

24 102. A meeting of the minds occurred when Representative Plaintiff and Class Members
25 agreed to, and did, provide their PII to Defendant, in exchange for, amongst other things, the
26 protection of their PII.

27 103. Representative Plaintiff and Class Members fully performed their obligations under
28 the implied contracts with Defendant.

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1 110. Defendant acted in bad faith and/or with malicious motive in denying
2 Representative Plaintiff and Class Members the full benefit of their bargains as originally intended
3 by the parties, thereby causing them injury in an amount to be determined at trial.
4

5 **FOURTH CLAIM FOR RELIEF**
6 **Unfair Business Practices**
7 **(Cal. Bus. & Prof. Code, §17200, et seq.)**
8 **(On behalf of the California Subclass)**

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

11 112. Representative Plaintiff and California Subclass Members further bring this cause
12 of action, seeking equitable and statutory relief to stop the misconduct of Defendant, as
13 complained of herein.

14 113. Defendant engaged in unfair competition within the meaning of California
15 business & Professions Code §§ 17200, et seq., because Defendant's conduct is unlawful, unfair
16 and/or fraudulent, as herein alleged.

17 114. Representative Plaintiff, the California Subclass Members, and Defendant are each
18 a "person" or "persons" within the meaning of § 17201 of the California Unfair Competition Law
19 ("UCL").

20 115. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful
21 and/or fraudulent business practice, as set forth in California Business & Professions Code § 1
22 7200-17208. Specifically, Defendant conducted business activities while failing to comply with
23 the legal mandates cited herein. Such violations include but are not necessarily limited to:

- 24 a. failure to maintain adequate computer systems and data security practices to
25 safeguard PII and financial information;
- 26 b. failure to disclose that its computer systems and data security practices were
27 inadequate to safeguard PII and financial information from theft;
- 28 c. failure to timely and accurately disclose the Data Breach to Representative
Plaintiff and California Subclass Members;

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- 1 d. continued acceptance of PII and financial information and storage of other
2 personal information after Defendant knew or should have known of the security
3 vulnerabilities of the systems that were exploited in the Data Breach; and
4 e. continued acceptance of PII and financial information and storage of other
5 personal information after Defendant knew or should have known of the Data
6 Breach and before they allegedly remediated the Data Breach.

7 116. Defendant knew or should have known that its computer systems and data security
8 practices were inadequate to safeguard the PII and financial information of Representative Plaintiff
9 and California Subclass Members, deter hackers, and detect a breach within a reasonable time and
10 that the risk of a data breach was highly likely. 149. In engaging in these unlawful business
11 practices, Defendant has enjoyed an advantage over its competition and a resultant disadvantage to
12 the public and California Subclass Members.

13 **RELIEF SOUGHT**

14 **WHEREFORE**, Representative Plaintiff, on Representative Plaintiff's own behalf and on
15 behalf of each member of the proposed National Class and California Subclass, respectfully
16 requests that the Court enter judgment in favor of Representative Plaintiff and the Classes and for
17 the following specific relief against Defendant as follows:

- 18 1. That the Court declare, adjudge and decree that this action is a proper class action
19 and certify each of the proposed Classes and/or any other appropriate Subclasses under Federal
20 Rules of Civil Procedure Rule 23 (b)(1), (b)(2), and/or (b)(3), including appointment of
21 Representative Plaintiff's counsel as Class Counsel;
- 22 2. For an award of damages, including actual, nominal and consequential damages, as
23 allowed by law in an amount to be determined;
- 24 3. That the Court enjoin Defendant, ordering it to cease and desist from unlawful
25 activities;
- 26 4. For equitable relief enjoining Defendant from engaging in the wrongful conduct
27 complained of herein pertaining to the misuse and/or disclosure of Representative Plaintiff's and
28

1 Class Members' PII, and from refusing to issue prompt, complete and accurate disclosures to
2 Representative Plaintiff and Class Members;

3 5. For injunctive relief requested by Representative Plaintiff, including but not limited
4 to injunctive and other equitable relief as is necessary to protect the interests of Representative
5 Plaintiff and Class Members, including but not limited to an Order:

- 6 a. prohibiting Defendant from engaging in the wrongful and unlawful acts
7 described herein;
- 8 b. requiring Defendant to protect, including through encryption, all data
9 collected through the course of business in accordance with all applicable
10 regulations, industry standards and federal, state or local laws;
- 11 c. requiring Defendant to delete and purge Representative Plaintiff's and Class
12 Members' PII unless Defendant can provide to the Court reasonable
13 justification for the retention and use of such information when weighed
14 against the privacy interests of Representative Plaintiff and Class Members;
- 15 d. requiring Defendant to implement and maintain a comprehensive
16 Information Security Program designed to protect the confidentiality and
17 integrity of Representative Plaintiff's and Class Members' PII;
- 18 e. requiring Defendant to engage independent third-party security auditors and
19 internal personnel to run automated security monitoring, simulated attacks,
20 penetration tests and audits on Defendant's systems on a periodic basis;
- 21 f. prohibiting Defendant from maintaining Representative Plaintiff's and
22 Class Members' PII on a cloud-based database;
- 23 g. requiring Defendant to segment data by creating firewalls and access
24 controls so that if one area of Defendant's network is compromised, hackers
25 cannot gain access to other portions of Defendant's systems;
- 26 h. requiring Defendant to conduct regular database scanning and securing
27 checks;
- 28 i. requiring Defendant to establish an information security training program
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 PII, as well as
protecting the PII of Representative Plaintiff and Class Members;
- j. requiring Defendant to implement a system of tests to assess its respective
employees' knowledge of the education programs discussed in the
preceding subparagraphs, as well as randomly and periodically testing
employees' compliance with Defendant's policies, programs and systems
for protecting personal identifying information;
- k. requiring Defendant to implement, maintain, review and revise as necessary
a threat management program to appropriately monitor Defendant's

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networks for internal and external threats, and assess whether monitoring tools are properly configured, tested and updated; and

1. requiring Defendant 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 Classes and/or Subclasses, hereby demands a trial by jury for all issues triable by jury.

Dated: April 4, 2024

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