

1 Scott Edward Cole, Esq. (S.B. #160744)  
Laura Van Note, Esq. (S.B. #310160)  
2 Cody Alexander Bolce, Esq. (S.B. #322725)  
**COLE & VAN NOTE**  
3 555 12<sup>th</sup> Street, Suite 1725  
Oakland, California 94607  
4 Telephone: (510) 891-9800  
Facsimile: (510) 891-7030  
5 Email: sec@colevannote.com  
Email: lvn@colevannote.com  
6 Email: cab@colevannote.com  
Web: www.colevannote.com

7  
8 Attorneys for Representative Plaintiff

9  
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF SANTA CLARA**

12  
13 IMANI CALDWELL, individually, and on  
behalf of all others similarly situated,  
14  
Plaintiff,  
15 vs.  
16 GUESS ?, INC., GUESS? RETAIL, INC.,  
GUESS Factory, and DOES 1 through 100,  
17 inclusive,  
18 Defendants.

Case No. 22CV393558

**CLASS ACTION**

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

- 1. NEGLIGENCE;
- 2. INVASION OF PRIVACY;
- 3. BREACH OF CONFIDENCE;
- 4. INFORMATION PRACTICES ACT OF 1977 (CAL. CIV. CODE §1798);
- 5. BREACH OF IMPLIED CONTRACT;
- 6. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- 7. UNFAIR BUSINESS PRACTICES;
- 8. UNJUST ENRICHMENT

**[JURY TRIAL DEMANDED]**

**COLE & VAN NOTE**  
ATTORNEYS AT LAW  
555 12<sup>TH</sup> STREET, SUITE 1725  
OAKLAND, CA 94607  
TEL: (510) 891-9800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Representative Plaintiff alleges as follows:  
2

3 **INTRODUCTION**

4 1. Representative Imani Caldwell (“Representative Plaintiff”) brings this class action  
5 against Defendants Guess? Inc., Guess? Retail, Inc., Guess? Factory, and Does 1-100 (collectively  
6 “Defendants”) for their failure to properly secure and safeguard Representative Plaintiff’s and  
7 Class Members’ personally identifiable information stored within Defendants’ information  
8 network, including, without limitation, their full names, Social Security numbers, driver’s license  
9 numbers, passport numbers, and/or financial account numbers (these types of information, *inter*  
10 *alia*, being hereafter referred to, collectively, as “personally identifiable information” or “PII”),<sup>1</sup>  
11 and to properly secure and safeguard Representative Plaintiff’s and Class Members’ PII stored  
12 within Defendants’ information network.

13 2. With this action, Representative Plaintiff seeks to hold Defendants responsible for  
14 the harms they caused and will continue to cause Representative Plaintiff and the countless other  
15 similarly situated persons in the preventable cyberattack that occurred between February 2, 2021  
16 and February 23, 2021, by which cybercriminals infiltrated Defendants’ inadequately protected  
17 network servers and accessed highly sensitive PII and financial information which was being kept  
18 unprotected (the “Data Breach”).

19 3. Representative Plaintiff further seeks to hold Defendants responsible for not  
20 ensuring that the PII was maintained in a manner consistent with industry and other relevant  
21 standards.  
22  
23  
24

25 <sup>1</sup> 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 their 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).

1           4. Defendants acquired, collected and stored Representative Plaintiff's and Class  
2 Members' PII and/or financial information in connection with Representative Plaintiff's and Class  
3 Members' employment with Defendant.

4           5. Therefore, at all relevant times, Defendants knew, or should have known, that  
5 Representative Plaintiff and Class Members would use Defendants' networks to store and/or share  
6 sensitive data, including highly confidential PII, because Defendants required that they provide  
7 this information to obtain employment.

8           6. By obtaining, collecting, using, and deriving a benefit from Representative  
9 Plaintiff's and Class Members' PII, Defendants assumed legal and equitable duties to those  
10 individuals. These duties arise from state and federal statutes and regulations as well as common  
11 law principles.

12           7. Defendants disregarded the rights of Representative Plaintiff and Class Members  
13 by intentionally, willfully, recklessly, or negligently failing to take and implement adequate and  
14 reasonable measures to ensure that Representative Plaintiff's and Class Members' PII was  
15 safeguarded, failing to take available steps to prevent an unauthorized disclosure of data, and  
16 failing to follow applicable, required and appropriate protocols, policies and procedures regarding  
17 the encryption of data, even for internal use. As a result, the PII of Representative Plaintiff and  
18 Class Members was compromised through disclosure to an unknown and unauthorized third-  
19 party—an undoubtedly nefarious third-party that seeks to profit off this disclosure by defrauding  
20 Representative Plaintiff and Class Members in the future. Representative Plaintiff and Class  
21 Members have a continuing interest in ensuring that their information is and remains safe, and they  
22 are entitled to injunctive and other equitable relief.

23  
24   **JURISDICTION AND VENUE**

25           8. This Court has jurisdiction over Representative Plaintiff's and Class Members'  
26 claims for damages and injunctive relief pursuant to, *inter alia*, Cal. Civ. Code §1798, *et seq.* and  
27 Cal. Bus. & Prof. Code §17200, *et seq.*, among other California state statutes.

28           9. Venue as to Defendants is proper in this judicial district pursuant to California Code

1 of Civil Procedure § 395(a). Defendants operated in and employed numerous Class Members  
2 within this County and transact business, have agents, and are otherwise within this Court's  
3 jurisdiction for purposes of service of process. The unlawful acts alleged herein have had a direct  
4 effect on Representative Plaintiff and those similarly situated within the State of California and  
5 within this County.

6  
7 **PLAINTIFF(S)**

8 10. Representative Plaintiff is an adult individual and, at all relevant times herein, a  
9 resident of the State of California. Representative Plaintiff is a victim of the Data Breach.

10 11. Prior to the Data Breach, Representative Plaintiff was employed by Defendant.

11 12. In connection with this employment, Defendant collected PII and financial  
12 information from Representative Plaintiff. As a result, Representative Plaintiff's information was  
13 among the data accessed by an unauthorized third-party in the Data Breach.

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

16 14. As required in order to obtain the aforementioned employment from Defendants,  
17 Representative Plaintiff provided Defendants with highly sensitive personal and financial  
18 information.

19 15. Representative Plaintiff's PII was exposed in the Data Breach because Defendants  
20 stored and/or shared Representative Plaintiff's PII and financial information. Representative  
21 Plaintiff's PII and financial information was within the possession and control of Defendants at  
22 the time of the Data Breach.

23 16. Representative Plaintiff has already spent and will continue to spend time dealing  
24 with the consequences of the Data Breach. This includes, without limitation, time spent verifying  
25 the legitimacy and impact of the Data Breach, exploring credit monitoring and identity theft  
26 insurance options, self-monitoring personal/financial accounts, and seeking legal counsel  
27 regarding options for remedying and/or mitigating the effects of the Data Breach. This time has  
28 been lost forever and cannot be recaptured.

1 17. Representative Plaintiff suffered actual injury in the form of damages to and  
2 diminution in the value of Representative Plaintiff's PII—a form of intangible property that  
3 Representative Plaintiff entrusted to Defendants for the purpose of obtaining employment, which  
4 was compromised in and as a result of the Data Breach.

5 18. Representative Plaintiff suffered lost time, annoyance, interference, and  
6 inconvenience as a result of the Data Breach and has anxiety and increased concerns for the loss  
7 of privacy, as well as anxiety over the impact of cybercriminals accessing and using sensitive PII  
8 and/or financial information.

9 19. Representative Plaintiff has suffered imminent and impending injury arising from  
10 the substantially increased risk of fraud, identity theft, and misuse resulting from Representative  
11 Plaintiff's PII and financial information, in combination with Representative Plaintiff's name,  
12 being placed in the hands of unauthorized third-parties/criminals.

13 20. Representative Plaintiff has a continuing interest in ensuring that the PII and  
14 financial information, which, upon information and belief, remains backed up in Defendants'  
15 possession, is protected and safeguarded from future breaches.

16  
17 **DEFENDANTS**

18 21. Representative Plaintiff is informed and believes and, based thereon, alleges that,  
19 at all times herein relevant, Defendants (including the Doe defendants) did business within the  
20 State of California providing retail services.

21 22. Those defendants identified as Does 1 through 100, inclusive, are and were, at all  
22 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or  
23 each of the remaining defendants.

24 23. Representative Plaintiff is unaware of the true names and capacities of those  
25 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by  
26 such fictitious names. The Representative Plaintiff will seek leave of court to amend this  
27 Complaint when such names are ascertained. The Representative Plaintiff is informed and believes  
28 and, on that basis, alleges that each of the fictitiously-named defendants were responsible in some

1 manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and that the  
2 damages, as herein alleged, were proximately caused thereby.

3 24. Representative Plaintiff is informed and believes and, on that basis, alleges that, at  
4 all relevant times herein mentioned, each of the defendants was the agent and/or employee of each  
5 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and  
6 scope of such agency and/or employment.

7  
8 **CLASS ACTION ALLEGATIONS**

9 25. Representative Plaintiff brings this action individually and on behalf of all persons  
10 similarly situated and proximately damaged by Defendants' conduct including, but not necessarily  
11 limited to, the following Plaintiff Class:

12 "All individuals within the State of California whose PII and/or financial  
13 information was exposed to unauthorized third-parties as a result of the data  
14 breach occurring between February 2, 2021 and February 23, 2021."

15 26. Excluded from the Class are the following individuals and/or entities: (a)  
16 Defendants and Defendants' parents, subsidiaries, affiliates, officers and directors, and any entity  
17 in which Defendants have a controlling interest; (b) all individuals who make a timely election to  
18 be excluded from this proceeding using the correct protocol for opting out; (c) any and all federal,  
19 state or local governments, including but not limited to its departments, agencies, divisions,  
20 bureaus, boards, sections, groups, counsels and/or subdivisions; and (d) all judges assigned to hear  
21 any aspect of this litigation, as well as their immediate family members.

22 27. Representative Plaintiff reserves the right to request additional subclasses be added,  
23 as necessary, based on the types of PII and financial information that were compromised and/or  
24 the nature of certain Class Members' relationship(s) to the Defendants. At present, Class Members  
25 include, *inter alia*, all persons within the California whose data was accessed in the Data Breach.

26 28. Representative Plaintiff reserves the right to amend the above definition in  
27 subsequent pleadings and/or motions for class certification.  
28

1           29. This action has been brought and may properly be maintained as a class action  
2 under California Code of Civil Procedure § 382 because there is a well-defined community of  
3 interest in the litigation and the proposed class is easily ascertainable.

4           a. Numerosity: A class action is the only available method for the fair and  
5 efficient adjudication of this controversy. The members of the Plaintiff  
6 Class are so numerous that joinder of all members is impractical, if not  
7 impossible. Representative Plaintiff is informed and believes and, on that  
8 basis, alleges that the total number of Class Members is in the thousands of  
9 individuals. Membership in the Class will be determined by analysis of  
10 Defendants' records.

11           b. Commonality: Representative Plaintiff and Class Members share a  
12 community of interests in that there are numerous common questions and  
13 issues of fact and law which predominate over any questions and issues  
14 solely affecting individual members, including, but not necessarily limited  
15 to:

- 16           1) Whether Defendants engaged in the wrongful conduct alleged  
17 herein;
- 18           2) Whether Defendants had a legal duty to Representative Plaintiff  
19 and Class Members to exercise due care in collecting, storing,  
20 using and/or safeguarding their PII and financial information;
- 21           3) Whether Defendants knew or should have known of the  
22 susceptibility of Defendants' data security systems to a data  
23 breach;
- 24           4) Whether Defendants' security procedures and practices to  
25 protect its systems were reasonable in light of the measures  
26 recommended by data security experts;
- 27           5) Whether Defendants' failure to implement adequate data  
28 security measures, including the sharing of Representative  
Plaintiff's and Class Members' PII and financial information  
allowed the Data Breach to occur and/or worsened its effects;
- 6) Whether Defendants failed to comply with their own policies  
and applicable laws, regulations, and industry standards  
relating to data security;
- 7) Whether Defendants adequately, promptly, and accurately  
informed Representative Plaintiff and Class Members that their  
PII and financial information had been compromised;
- 8) How and when Defendants actually learned of the Data Breach;
- 9) Whether Defendants failed to adequately respond to the Data  
Breach, including failing to investigate it diligently and notify  
affected individuals in the most expedient time possible and  
without unreasonable delay, and whether this caused damages  
to Representative Plaintiff and Class Members;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 10) Whether Defendants’ conduct, including its failure to act, resulted in or was the proximate cause of the breach of these systems, resulting in the loss of the PII and financial information of Representative Plaintiff and Class Members;
  - 11) Whether Defendants adequately addressed and fixed the vulnerabilities which permitted the Data Breach to occur;
  - 12) Whether Defendants’ conduct, including its failure to act, resulted in or was the proximate cause of the Data Breach and/or damages flowing therefrom;
  - 13) Whether Defendants’ actions alleged herein constitute gross negligence and whether the negligence/recklessness of any one or more individual(s) can be imputed to Defendants;
  - 14) Whether Defendants engaged in unfair, unlawful, or deceptive practices by failing to safeguard the PII and financial information of Representative Plaintiff and Class Members;
  - 15) 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, if so, what is necessary to redress the imminent and currently ongoing harm faced by Representative Plaintiff, Class Members, and the general public;
  - 16) Whether Representative Plaintiff and Class Members are entitled to restitution as a result of Defendants’ wrongful conduct;
  - 17) Whether Defendants continue to breach duties to Representative Plaintiff and Class Members.
- 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. The same event and conduct that gave rise to Representative Plaintiff’s claims are identical to those that give rise to the claims of every Class Member because Representative Plaintiff and each Class Member had his/her sensitive PII and/or financial information compromised in the same way by the same conduct of Defendants. Representative Plaintiff and all Class Members face the identical threats resulting from the breach of his/her PII and/or financial information without the protection of encryption and adequate monitoring of user behavior and activity necessary to identify those threats.
- d. Adequacy of Representation: Representative Plaintiff is an adequate representative of the Plaintiff Class in that Representative Plaintiff has the same interest in the litigation of this case as the remaining Class Members, is committed to vigorous prosecution of this case



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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. Representative Plaintiff and proposed class counsel will fairly and adequately protect the interests of all Class Members.

Superiority of Class Action: The damages suffered by individual Class Members, are significant, but may be small relative to the enormous expense of individual litigation by each member. This makes or may make it impractical for members of the Plaintiff Class to seek redress individually for the wrongful conduct alleged herein. Even if Class Members could afford such individual litigation, the court system could not. 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 other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

30. 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.

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

32. Unless a Class-wide injunction is issued, Defendants' violations may continue, and Defendants may continue to act unlawfully as set forth in this Complaint.

1 **COMMON FACTUAL ALLEGATIONS**

2 **The Cyberattack**

3 33. In the course of the Data Breach, one or more unauthorized third-parties accessed  
4 Class Members' sensitive data including, but not limited to, full names, Social Security numbers,  
5 driver's license numbers, passport numbers, and/or financial account numbers. Representative  
6 Plaintiff was among the individuals whose information was accessed in the Data Breach.

7  
8 **Defendants' Failed Response to the Breach**

9 34. Upon information and belief, the unauthorized third-party cybercriminals gained  
10 access to Representative Plaintiff's and Class Members' PII and financial information with the  
11 intent of engaging in misuse of the PII and financial information, including marketing and selling  
12 Representative Plaintiff's and Class Members' PII.

13 35. Defendants had and continue to have obligations created by reasonable industry  
14 standards, common law, state statutory law, and their own assurances and representations to keep  
15 Representative Plaintiff's and Class Members' PII confidential and to protect such PII from  
16 unauthorized access.

17 36. Representative Plaintiff and Class Members were required to provide their PII and  
18 financial information to Defendants with the reasonable expectation and mutual understanding that  
19 Defendants would comply with their obligations to keep such information confidential and secure  
20 from unauthorized access.

21 37. Despite this, Representative Plaintiff and the Class Members remain, even today,  
22 in the dark regarding what particular data was stolen, the particular malware used, and what steps  
23 are being taken, if any, to secure their PII and financial information going forward. Representative  
24 Plaintiff and Class Members are left to speculate as to the full impact of the Data Breach and how  
25 exactly Defendants intend to enhance their information security systems and monitoring  
26 capabilities to prevent further breaches.

27 38. Representative Plaintiff's and Class Members' PII and financial information may  
28 end up for sale on the dark web, or simply fall into the hands of companies that will use the detailed

1 PII and financial information for targeted marketing without the approval of Representative  
2 Plaintiff and/or Class Members. Either way, unauthorized individuals can now easily access the  
3 PII and/or financial information of Representative Plaintiff and Class Members.  
4

5 **Defendants Collected/Stored Class Members' PII and Financial Information**

6 39. Defendants acquired, collected, and stored and assured reasonable security over  
7 Representative Plaintiff's and Class Members' PII and financial information.

8 40. To use their services, Defendants required that Representative Plaintiff and Class  
9 Members provide them with a plethora of highly sensitive personal and financial information such  
10 as Social Security numbers and financial account information.

11 41. By obtaining, collecting, and storing Representative Plaintiff's and Class Members'  
12 PII and financial information, Defendants assumed legal and equitable duties and knew or should  
13 have known that they were thereafter responsible for protecting Representative Plaintiff's and  
14 Class Members' PII and financial information from unauthorized disclosure.

15 42. Representative Plaintiff and Class Members have taken reasonable steps to  
16 maintain the confidentiality of their PII and financial information. Representative Plaintiff and  
17 Class Members relied on Defendants to keep their PII and financial information confidential and  
18 securely maintained, to use this information for business purposes only, and to make only  
19 authorized disclosures of this information.

20 43. Defendants could have prevented the Data Breach by properly securing and  
21 encrypting and/or more securely encrypting their servers generally, as well as Representative  
22 Plaintiff's and Class Members' PII and financial information.

23 44. Defendants' negligence in safeguarding Representative Plaintiff's and Class  
24 Members' PII and financial information is exacerbated by repeated warnings and alerts directed to  
25 protecting and securing sensitive data, as evidenced by the trending data breach attacks in recent  
26 years.

27 45. Due to the high-profile nature of many recent data breaches, Defendants were  
28 actually and/or certainly should have been on notice and aware of such attacks occurring and,

1 therefore, should have assumed and adequately performed the duty of preparing for such an  
2 imminent attack. This is especially true given that Defendants collect and store highly sensitive  
3 information of high value to cybercriminals.

4 46. Yet, despite the prevalence of public announcements of data breach and data  
5 security compromises, Defendants failed to take reasonable and appropriate steps to protect  
6 Representative Plaintiff's and Class Members' PII and financial information from being  
7 compromised

8  
9 **Defendants Had an Obligation to Protect the Stolen Information**

10 47. Defendants' failure to adequately secure Representative Plaintiff's and Class  
11 Members' sensitive data breaches duties they owe Representative Plaintiff and Class Members  
12 under statutory and common law. Representative Plaintiff and Class Members surrendered their  
13 highly sensitive personal data to Defendants under the implied condition that Defendants would  
14 keep it private and secure. Accordingly, Defendants also have an implied duty to safeguard their  
15 data, independent of any statute.

16 48. In addition to their obligations under federal and state laws, Defendants owed a  
17 duty to Representative Plaintiff and Class Members to exercise reasonable care in obtaining,  
18 retaining, securing, safeguarding, deleting, and protecting the PII and financial information in  
19 Defendants' possession from being compromised, lost, stolen, accessed, and misused by  
20 unauthorized persons. Defendants owed a duty to Representative Plaintiff and Class Members to  
21 provide reasonable security, including consistency with industry standards and requirements, and  
22 to ensure that their computer systems, networks, and protocols adequately protected the PII and  
23 financial information of Representative Plaintiff and Class Members.

24 49. Defendants owed a duty to Representative Plaintiff and Class Members to design,  
25 maintain, and test their computer systems, servers and networks to ensure that the PII and financial  
26 information in their possession was adequately secured and protected.

27 50. Defendants owed a duty to Representative Plaintiff and Class Members to create  
28 and implement reasonable data security practices and procedures to protect the PII and financial

1 information in their possession, including not sharing information with other entities who  
2 maintained sub-standard data security systems.

3 51. Defendants owed a duty to Representative Plaintiff and Class Members to  
4 implement processes that would detect a breach on their data security systems in a timely manner.

5 52. Defendants owed a duty to Representative Plaintiff and Class Members to act upon  
6 data security warnings and alerts in a timely fashion.

7 53. Defendants owed a duty to Representative Plaintiff and Class Members to disclose  
8 if their computer systems and data security practices were inadequate to safeguard individuals' PII  
9 and/or financial information from theft because such an inadequacy would be a material fact in the  
10 decision to entrust this PII and/or financial information to Defendants.

11 54. Defendants owed a duty of care to Representative Plaintiff and Class Members  
12 because they were foreseeable and probable victims of any inadequate data security practices.

13 55. Defendants owed a duty to Representative Plaintiff and Class Members to encrypt  
14 and/or more reliably encrypt Representative Plaintiff's and Class Members' PII and financial  
15 information and monitor user behavior and activity in order to identify possible threats.

16  
17 **Value of the Relevant Sensitive Information**

18 56. The ramifications of Defendants' failure to keep secure Representative Plaintiff's  
19 and Class Members' PII and financial information are long lasting and severe. Once PII and  
20 financial information is stolen, fraudulent use of that information and damage to victims may  
21 continue for years. Indeed, the PII and/or financial information of Representative Plaintiff and  
22 Class Members was taken by hackers to engage in identity theft or to sell it to other criminals who  
23 will purchase the PII and/or financial information for that purpose. Some fraudulent activity  
24 resulting from the Data Breach may not come to light for years.

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

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

3 58. 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 59. Identity thieves can use PII and financial information, such as that of Representative  
11 Plaintiff and Class Members which Defendants failed to keep secure, to perpetrate a variety of  
12 crimes that harm victims. For instance, identity thieves may commit various types of government  
13 fraud such as immigration fraud, obtaining a driver’s license or identification card in the victim’s  
14 name but with another’s picture, using the victim’s information to obtain government benefits, or  
15 filing a fraudulent tax return using the victim’s information to obtain a fraudulent refund.

16 60. There may be a time lag between when harm occurs versus when it is discovered,  
17 and also between when PII and/or financial information is stolen and when it is used. According  
18 to the U.S. Government Accountability Office (“GAO”), which conducted a study regarding data  
19 breaches:

20 [L]aw enforcement officials told us that in some cases, stolen data may be held for  
21 up to a year or more before being used to commit identity theft. Further, once stolen  
22 data have been sold or posted on the Web, fraudulent use of that information may  
23 continue for years. As a result, studies that attempt to measure the harm resulting  
24 from data breaches cannot necessarily rule out all future harm.<sup>2</sup>

25 61. If cyber criminals manage to access to personally sensitive data—as they did here—  
26 there is no limit to the amount of fraud to which Defendants may have exposed Representative  
27 Plaintiff and Class Members.

28 <sup>2</sup> *Report to Congressional Requesters*, GAO, at 29 (June 2007), available at:  
<http://www.gao.gov/new.items/d07737.pdf> (last accessed November 4, 2021).

1           62.     And data breaches are preventable.<sup>3</sup> As Lucy Thompson wrote in the DATA BREACH  
2 AND ENCRYPTION HANDBOOK, “[i]n almost all cases, the data breaches that occurred could have  
3 been prevented by proper planning and the correct design and implementation of appropriate  
4 security solutions.”<sup>4</sup> Ms. Thompson added that “[o]rganizations that collect, use, store, and share  
5 sensitive personal data must accept responsibility for protecting the information and ensuring that  
6 it is not compromised . . . .”<sup>5</sup>

7           63.     Most of the reported data breaches are a result of lax security and the failure to  
8 create or enforce appropriate security policies, rules, and procedures . . . . Appropriate information  
9 security controls, including encryption, must be implemented and enforced in a rigorous and  
10 disciplined manner so that a *data breach never occurs*.<sup>6</sup>

11           64.     Here, Defendants knew, or should have known, of the importance of safeguarding  
12 PII and financial information and of the foreseeable consequences that would occur if  
13 Representative Plaintiff’s and Class Members’ PII and financial information was stolen, including  
14 the significant costs that would be placed on Representative Plaintiff and Class Members as a result  
15 of a breach of this sort. Defendants have the resources to deploy robust cybersecurity protocols.  
16 They knew, or should have known, that the development and use of such protocols were necessary  
17 to fulfill their statutory and common law duties to Representative Plaintiff and Class Members.  
18 Their failure to do so is, therefore, intentional, willful, reckless, and/or grossly negligent.

19           65.     Defendants disregarded the rights of Representative Plaintiff and Class Members  
20 by, *inter alia*, (i) intentionally, willfully, recklessly, or negligently failing to take adequate and  
21 reasonable measures to ensure that their network servers were protected against unauthorized  
22 intrusions; (ii) failing to disclose that they did not have adequately robust security protocols and  
23 training practices in place to adequately safeguard Representative Plaintiff’s and Class Members’  
24 PII and/or financial information; (iii) failing to take standard and reasonably available steps to  
25

26 <sup>3</sup> Lucy L. Thompson, “Despite the Alarming Trends, Data Breaches Are Preventable,” *in*  
27 DATA BREACH AND ENCRYPTION HANDBOOK (Lucy Thompson, ed., 2012)

28 <sup>4</sup> *Id.* at 17.

<sup>5</sup> *Id.* at 28.

<sup>6</sup> *Id.*

1 prevent the Data Breach; (iv) concealing the existence and extent of the Data Breach for an  
2 unreasonable duration of time; and (v) failing to provide Representative Plaintiff and Class  
3 Members prompt and accurate notice of the Data Breach.

4  
5  
6 **FIRST CAUSE OF ACTION**  
**Negligence**

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

9 67. At all times herein relevant, Defendants owed Representative Plaintiff and Class  
10 Members a duty of care, *inter alia*, to act with reasonable care to secure and safeguard their PII  
11 and financial information and to use commercially reasonable methods to do so. Defendants took  
12 on this obligation upon accepting and storing the PII and financial information of Representative  
13 Plaintiff and Class Members in their computer systems and on their networks.

14 68. Among these duties, Defendants were expected:

- 15 a. to exercise reasonable care in obtaining, retaining, securing, safeguarding,  
16 deleting and protecting the PII and financial information in their possession;
- 17 b. to protect Representative Plaintiff's and Class Members' PII and financial  
18 information using reasonable and adequate security procedures and systems  
19 that were/are compliant with industry-standard practices;
- 20 c. to implement processes to quickly detect the Data Breach and to timely act  
21 on warnings about data breaches; and
- 22 d. to promptly notify Representative Plaintiff and Class Members of any data  
23 breach, security incident, or intrusion that affected or may have affected  
24 their PII and financial information.

25 69. Defendants knew, or should have known, that the PII and financial information was  
26 private and confidential and should be protected as private and confidential and, thus, Defendants  
27 owed a duty of care not to subject Representative Plaintiff and Class Members to an unreasonable  
28 risk of harm because they were foreseeable and probable victims of any inadequate security  
practices.



1 70. Defendants knew, or should have known, of the risks inherent in collecting and  
2 storing PII and financial information, the vulnerabilities of their data security systems, and the  
3 importance of adequate security. Defendants knew about numerous, well-publicized data breaches.

4 71. Defendants knew, or should have known, that their data systems and networks did  
5 not adequately safeguard Representative Plaintiff's and Class Members' PII and financial  
6 information.

7 72. Only Defendants were in the position to ensure that their systems and protocols  
8 were sufficient to protect the PII and financial information that Representative Plaintiff and Class  
9 Members had entrusted to it.

10 73. Defendants breached their duties to Representative Plaintiff and Class Members by  
11 failing to provide fair, reasonable, or adequate computer systems and data security practices to  
12 safeguard the PII and financial information of Representative Plaintiff and Class Members.

13 74. Because Defendants knew that a breach of their systems could damage thousands  
14 of individuals, including Representative Plaintiff and Class Members, Defendants had a duty to  
15 adequately protect their data systems and the PII and financial information contained thereon.

16 75. Representative Plaintiff's and Class Members' willingness to entrust Defendants  
17 with their PII and financial information was predicated on the understanding that Defendants  
18 would take adequate security precautions. Moreover, only Defendants had the ability to protect  
19 their systems and the PII and financial information they stored on them from attack. Thus,  
20 Defendants had a special relationship with Representative Plaintiff and Class Members.

21 76. Defendants also had independent duties under state and federal laws that required  
22 Defendants to reasonably safeguard Representative Plaintiff's and Class Members' PII and  
23 financial information and promptly notify them about the Data Breach. These "independent duties"  
24 are untethered to any contract between Defendants and Representative Plaintiff and/or the  
25 remaining Class Members.

26 77. Defendants breached their general duty of care to Representative Plaintiff and Class  
27 Members in, but not necessarily limited to, the following ways:  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- a. by failing to provide fair, reasonable, or adequate computer systems and data security practices to safeguard the PII and financial information of Representative Plaintiff and Class Members;
- b. by failing to timely and accurately disclose that Representative Plaintiff's and Class Members' PII and financial information had been improperly acquired or accessed;
- c. by failing to adequately protect and safeguard the PII and financial information by knowingly disregarding standard information security principles, despite obvious risks, and by allowing unmonitored and unrestricted access to unsecured PII and financial information;
- d. by failing to provide adequate supervision and oversight of the PII and financial information with which they were and are entrusted, in spite of the known risk and foreseeable likelihood of breach and misuse, which permitted an unknown third-party to gather PII and financial information of Representative Plaintiff and Class Members, misuse the PII and intentionally disclose it to others without consent.
- e. by failing to adequately train their employees to not store PII and financial information longer than absolutely necessary;
- f. by failing to consistently enforce security policies aimed at protecting Representative Plaintiff's and the Class Members' PII and financial information;
- g. by failing to implement processes to quickly detect data breaches, security incidents, or intrusions; and
- h. by failing to encrypt Representative Plaintiff's and Class Members' PII and financial information and monitor user behavior and activity in order to identify possible threats.

78. Defendants' willful failure to abide by these duties was wrongful, reckless and grossly negligent in light of the foreseeable risks and known threats.

79. As a proximate and foreseeable result of Defendants' grossly negligent conduct, Representative Plaintiff and Class Members have suffered damages and are at imminent risk of additional harms and damages (as alleged above).

80. The law further imposes an affirmative duty on Defendants to timely disclose the unauthorized access and theft of the PII and financial information 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 and financial information.

1 81. Defendants breached their duty to notify Representative Plaintiff and Class  
2 Members of the unauthorized access by waiting months after learning of the Data Breach 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 Defendants have not provided sufficient information to Representative Plaintiff and Class  
6 Members regarding the extent of the unauthorized access and continues to breach their disclosure  
7 obligations to Representative Plaintiff and Class Members.

8 82. Further, through their failure to provide timely and clear notification of the Data  
9 Breach to Representative Plaintiff and Class Members, Defendants prevented Representative  
10 Plaintiff and Class Members from taking meaningful, proactive steps to secure their PII and  
11 financial information.

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

19 84. Defendants' wrongful actions, inactions, and omissions constituted (and continue  
20 to constitute) common law negligence.

21 85. The damages Representative Plaintiff and Class Members have suffered (as alleged  
22 above) and will suffer were and are the direct and proximate result of Defendants' grossly  
23 negligent conduct.

24 86. Additionally, 15 U.S.C. §45 (FTC Act, Section 5) prohibits "unfair . . . practices in  
25 or affecting commerce," including, as interpreted and enforced by the FTC, the unfair act or  
26 practice by businesses, such as Defendants, of failing to use reasonable measures to protect PII  
27 and financial information. The FTC publications and orders described above also form part of the  
28 basis of Defendants' duty in this regard.

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

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

22           89. As a direct and proximate result of Defendants' 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,  
25 and other economic and non-economic losses.

26           90. Additionally, as a direct and proximate result of Defendants' negligence and  
27 negligence *per se*, Representative Plaintiff and Class Members have suffered and will suffer the  
28 continued risks of exposure of their PII and financial information, which remain in Defendants'

1 possession and are subject to further unauthorized disclosures so long as Defendants fail to  
2 undertake appropriate and adequate measures to protect the PII and financial information in their  
3 continued possession.

4  
5  
6 **SECOND CAUSE OF ACTION**  
**Invasion of Privacy**

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

9 92. Representative Plaintiff and Class Members had a legitimate expectation of privacy  
10 to their PII and financial information and were entitled to the protection of this information against  
11 disclosure to unauthorized third-parties.

12 93. Defendants owed a duty to Representative Plaintiff and Class Members to keep  
13 their PII and financial information confidential.

14 94. Defendants failed to protect and released to unknown and unauthorized third-  
15 parties the PII and financial information of Representative Plaintiff and Class Members.

16 95. Defendants allowed unauthorized and unknown third-parties access to and  
17 examination of the PII and financial information of Representative Plaintiff and Class Members,  
18 by way of Defendants' failure to protect the PII and financial information.

19 96. The unauthorized release to, custody of, and examination by unauthorized third-  
20 parties of the PII and financial information of Representative Plaintiff and Class Members is highly  
21 offensive to a reasonable person.

22 97. The unauthorized intrusion was into a place or thing which was private and is  
23 entitled to be private. Representative Plaintiff and Class Members disclosed their PII and financial  
24 information to Defendants as part of obtaining services from Defendants, but privately with an  
25 intention that the PII and financial information would be kept confidential and would be protected  
26 from unauthorized disclosure. Representative Plaintiff and Class Members were reasonable in their  
27 belief that such information would be kept private and would not be disclosed without their  
28 authorization.

1 98. The Data Breach constitutes an intentional interference with Representative  
2 Plaintiff's and Class Members' interests in solitude or seclusion, either as to their persons or as to  
3 their private affairs or concerns, of a kind that would be highly offensive to a reasonable person.

4 99. Defendants acted with a knowing state of mind when they permitted the Data  
5 Breach to occur because it was with actual knowledge that their information security practices  
6 were inadequate and insufficient.

7 100. Because Defendants acted with this knowing state of mind, they had notice and  
8 knew the inadequate and insufficient information security practices would cause injury and harm  
9 to Representative Plaintiff and Class Members.

10 101. As a proximate result of the above acts and omissions of Defendants, the PII and  
11 financial information of Representative Plaintiff and Class Members was disclosed to third-parties  
12 without authorization, causing Representative Plaintiff and Class Members to suffer damages.

13 102. Unless and until enjoined, and restrained by order of this Court, Defendants'  
14 wrongful conduct will continue to cause great and irreparable injury to Representative Plaintiff  
15 and Class Members in that the PII and financial information maintained by Defendants can be  
16 viewed, distributed, and used by unauthorized persons for years to come. Representative Plaintiff  
17 and Class Members have no adequate remedy at law for the injuries in that a judgment for  
18 monetary damages will not end the invasion of privacy for Representative Plaintiff and/or Class  
19 Members.

20  
21 **THIRD CAUSE OF ACTION**  
**Breach of Confidence**

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

24 104. At all times during Representative Plaintiff's and Class Members' interactions with  
25 Defendants, Defendants were fully aware of the confidential nature of the PII and financial  
26 information that Representative Plaintiff and Class Members provided to them.

27 105. As alleged herein and above, Defendants' relationship with Representative Plaintiff  
28 and the Class was governed by promises and expectations that Representative Plaintiff and Class

1 Members' PII and financial information would be collected, stored, and protected in confidence,  
2 and would not be accessed by, acquired by, appropriated by, disclosed to, encumbered by,  
3 exfiltrated by, released to, stolen by, used by, and/or viewed by unauthorized third-parties.

4 106. Representative Plaintiff and Class Members provided their respective PII and  
5 financial information to Defendants with the explicit and implicit understandings that Defendants  
6 would protect and not permit the PII and financial information to be accessed by, acquired by,  
7 appropriated by, disclosed to, encumbered by, exfiltrated by, released to, stolen by, used by, and/or  
8 viewed by unauthorized third-parties.

9 107. Representative Plaintiff and Class Members also provided their PII and financial  
10 information to Defendants with the explicit and implicit understanding that Defendants would take  
11 precautions to protect their PII and financial information from unauthorized access, acquisition,  
12 appropriation, disclosure, encumbrance, exfiltration, release, theft, use, and/or viewing, such as  
13 following basic principles of protecting their networks and data systems.

14 108. Defendants voluntarily received, in confidence, Representative Plaintiff's and  
15 Class Members' PII and financial information with the understanding that the PII and financial  
16 information would not be accessed by, acquired by, appropriated by, disclosed to, encumbered by,  
17 exfiltrated by, released to, stolen by, used by and/or viewed by the public or any unauthorized  
18 third-parties.

19 109. Due to Defendants' failure to prevent, detect, and avoid the Data Breach from  
20 occurring by, *inter alia*, not following best information security practices to secure Representative  
21 Plaintiff's and Class Members' PII and financial information, Representative Plaintiff's and Class  
22 Members' PII and financial information was accessed by, acquired by, appropriated by, disclosed  
23 to, encumbered by, exfiltrated by, released to, stolen by, used by and/or viewed by unauthorized  
24 third-parties beyond Representative Plaintiff's and Class Members' confidence, and without their  
25 express permission.

26 110. As a direct and proximate cause of Defendants' actions and/or omissions,  
27 Representative Plaintiff and Class Members have suffered damages, as alleged herein.  
28

1           111. But for Defendants’ failure to maintain and protect Representative Plaintiff’s and  
2 Class Members’ PII and financial information in violation of the parties’ understanding of  
3 confidence, their PII and financial information would not have been accessed by, acquired by,  
4 appropriated by, disclosed to, encumbered by, exfiltrated by, released to, stolen by, used by and/or  
5 viewed by unauthorized third-parties. The Data Breach was the direct and legal cause of the misuse  
6 of Representative Plaintiff’s and Class Members’ PII and financial information, as well as the  
7 resulting damages.

8           112. The injury and harm Representative Plaintiff and Class Members suffered and will  
9 continue to suffer was the reasonably foreseeable result of Defendants’ unauthorized misuse of  
10 Representative Plaintiff’s and Class Members’ PII and financial information. Defendants knew  
11 their data systems and protocols for accepting and securing Representative Plaintiff’s and Class  
12 Members’ PII and financial information had security and other vulnerabilities that placed  
13 Representative Plaintiff’s and Class Members’ PII and financial information in jeopardy.

14           113. As a direct and proximate result of Defendants’ breaches of confidence,  
15 Representative Plaintiff and Class Members have suffered and will suffer injury, as alleged herein,  
16 including, but not limited to, (a) actual identity theft; (b) the compromise, publication, and/or theft  
17 of their PII and financial information; (c) out-of-pocket expenses associated with the prevention,  
18 detection, and recovery from identity theft and/or unauthorized use of their PII and financial  
19 information; (d) lost opportunity costs associated with effort expended and the loss of productivity  
20 addressing and 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, and recover  
22 from identity theft; (e) the continued risk to their PII and financial information, which remains in  
23 Defendants’ possession and is subject to further unauthorized disclosures so long as Defendants  
24 fail to undertake appropriate and adequate measures to protect Class Members’ PII and financial  
25 information in their continued possession; (f) future costs in terms of time, effort, and money that  
26 will be expended as result of the Data Breach for the remainder of the lives of Representative  
27 Plaintiff and Class Members; (g) the diminished value of Representative Plaintiff’s and Class  
28



1 Members' PII and financial information; and (h) the diminished value of Defendants' services for  
2 which Representative Plaintiff and Class Members paid and received.

3  
4 **FOURTH CAUSE OF ACTION**  
5 **Information Practices Act of 1977**  
6 **(Cal. Civ. Code §1798, et seq.)**

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

9 115. Defendants were legally obligated to "establish appropriate and reasonable  
10 administrative, technical, and physical safeguards to ensure compliance with the [Information  
11 Practices Act of 1977], to ensure the security and confidentiality of records, and to protect against  
12 anticipated threats or hazards to its security or integrity which could result in any injury." Cal. Civ.  
13 Code § 1798.21.

14 116. Defendants failed to establish appropriate and reasonable administrative, technical,  
15 and physical safeguards to ensure compliance with the Information Practices Act of 1977 with  
16 regard to the PII and financial information of Representative Plaintiff and Class Members.

17 117. Defendants failed to ensure the security and confidentiality of records containing  
18 the PII and financial information of Representative Plaintiff and Class Members.

19 118. Defendants failed to protect against anticipated threats and hazards to the security  
20 and integrity of records containing the PII and financial information of Representative Plaintiff  
21 and Class Members.

22 119. As a result of these failures, Representative Plaintiff and Class Members have  
23 suffered (and will continue to suffer) economic damages and other injury and actual harm in the  
24 form of, *inter alia*, (i) an imminent, immediate and continuing increased risk of identity theft,  
25 identity fraud—risks justifying expenditures for protective and remedial services for which they  
26 are entitled to compensation; (ii) invasion of privacy; (iii) breach of the confidentiality of their PII  
27 and financial information; (iv) deprivation of the value of their PII and financial information, for  
28 which there is a well-established national and international market; and/or (v) the financial and

1 temporal cost of monitoring their credit, monitoring their financial accounts, and mitigating their  
2 damages.

3 120. Representative Plaintiff and Class Members are also entitled to injunctive relief  
4 under California Civil Code § 1798.47.

5  
6  
7 **FIFTH CAUSE OF ACTION**  
**Breach of Implied Contract**

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

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

14 123. Defendants required Representative Plaintiff and Class Members to provide and  
15 entrust their PII and financial information, full names, addresses, dates of birth, email addresses,  
16 Social Security numbers, government identification numbers, financial account numbers and  
17 security codes, and usernames and passwords.

18 124. Defendants solicited and invited Representative Plaintiff and Class Members to  
19 provide their PII and financial information as part of Defendants' regular business practices.  
20 Representative Plaintiff and Class Members accepted Defendants' offers and provided their PII  
21 and financial information to Defendants.

22 125. As a condition of being direct customers of Defendants, Representative Plaintiff  
23 and Class Members provided and entrusted their PII and financial information to Defendants. In  
24 so doing, Representative Plaintiff and Class Members entered into implied contracts with  
25 Defendants by which Defendants agreed to safeguard and protect such non-public information, to  
26 keep such information secure and confidential, and to timely and accurately notify Representative  
27 Plaintiff and Class Members if their data had been breached and compromised or stolen.

28



1 financial information, failing to timely and accurately disclose the Data Breach to Representative  
2 Plaintiff and Class Members and continued acceptance of PII and financial information and storage  
3 of other personal information after Defendants knew, or should have known, of the security  
4 vulnerabilities of the systems that were exploited in the Data Breach.

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

8  
9 **SEVENTH CAUSE OF ACTION**  
10 **Unfair Business Practices**  
11 **(Cal. Bus. & Prof. Code, §17200, et seq.)**

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

14 136. Representative Plaintiff and Class Members further bring this cause of action,  
15 seeking equitable and statutory relief to stop the misconduct of Defendants, as complained of  
16 herein.

17 137. Defendants have engaged in unfair competition within the meaning of California  
18 Business & Professions Code §§17200, et seq., because Defendants' conduct is unlawful, unfair  
19 and/or fraudulent, as herein alleged.

20 138. Representative Plaintiff, the Class Members, and Defendants are each a "person" or  
21 "persons" within the meaning of § 17201 of the California Unfair Competition Law ("UCL").

22 139. The knowing conduct of Defendants, as alleged herein, constitutes an unlawful  
23 and/or fraudulent business practice, as set forth in California Business & Professions Code  
24 §§17200-17208. Specifically, Defendants conducted business activities while failing to comply  
25 with the legal mandates cited herein. Such violations include, but are not necessarily limited to:

- 26 a. failure to maintain adequate computer systems and data security practices  
27 to safeguard PII and financial information;
- 28 b. failure to disclose that their computer systems and data security practices  
were inadequate to safeguard PII and financial information from theft;

- 1 c. failure to timely and accurately disclose the Data Breach to Representative
- 2 Plaintiff and Class Members;
- 3 d. continued acceptance of PII and financial information and storage of other
- 4 personal information after Defendants knew or should have known of the
- 5 security vulnerabilities of the systems that were exploited in the Data
- 6 Breach; and
- 7 e. continued acceptance of PII and financial information and storage of other
- 8 personal information after Defendants knew or should have known of the
- 9 Data Breach and before they allegedly remediated the Data Breach.

10 140. Defendants knew or should have known that their computer systems and data

11 security practices were inadequate to safeguard the PII and financial information of Representative

12 Plaintiff and Class Members, deter hackers, and detect a breach within a reasonable time and that

13 the risk of a data breach was highly likely.

14 141. In engaging in these unlawful business practices, Defendants have enjoyed an

15 advantage over their competition and a resultant disadvantage to the public and Class Members.

16 142. Defendants' knowing failure to adopt policies in accordance with and/or adhere to

17 these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders

18 an unfair competitive advantage for Defendants, thereby constituting an unfair business practice,

19 as set forth in California Business & Professions Code §§17200-17208.

20 143. Defendants have clearly established a policy of accepting a certain amount of

21 collateral damage, as represented by the damages to Representative Plaintiff and California Class

22 herein alleged, as incidental to their business operations, rather than accept the alternative costs of

23 full compliance with fair, lawful and honest business practices ordinarily borne by responsible

24 competitors of Defendants and as set forth in legislation and the judicial record.

25 144. The UCL is, by its express terms, a cumulative remedy, such that remedies under its

26 provisions can be awarded in addition to those provided under separate statutory schemes and/or

27 common law remedies, such as those alleged in the other causes of action of this Complaint. *See*

28 Cal. Bus. & Prof. Code § 17205.

145. Representative Plaintiff and Class Members request that this Court enter such

orders or judgments as may be necessary to enjoin Defendants from continuing their unfair,

1 unlawful, and/or deceptive practices and to restore to Representative Plaintiff and Class Members  
2 any money Defendants acquired by unfair competition, including restitution and/or equitable  
3 relief, including disgorgement of ill-gotten gains, refunds of moneys, interest, reasonable attorneys'  
4 fees, and the costs of prosecuting this class action, as well as any and all other relief that may be  
5 available at law or equity.

6  
7 **EIGHTH CAUSE OF ACTION**  
8 **Unjust Enrichment**

9 146. 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.

11 147. By their wrongful acts and omissions described herein, Defendants have obtained a  
12 benefit by unduly taking advantage of Representative Plaintiff and Class Members.

13 148. Defendants, prior to and at the time Representative Plaintiff and Class Members  
14 entrusted their PII and financial information to Defendants for the purpose of purchasing services  
15 from Defendants, caused Representative Plaintiff and Class Members to reasonably believe that  
16 Defendants would keep such PII and financial information secure.

17 149. Defendants were aware, or should have been aware, that reasonable consumers  
18 would have wanted their PII and financial information kept secure and would not have contracted  
19 with Defendants, directly or indirectly, had they known that Defendants' information systems were  
20 sub-standard for that purpose.

21 150. Defendants were also aware that if the substandard condition of and vulnerabilities  
22 in their information systems were disclosed, it would negatively affect Representative Plaintiff's  
23 and Class Members' decisions to seek services therefrom.

24 151. Defendants failed to disclose facts pertaining to their substandard information  
25 systems, defects, and vulnerabilities therein before Representative Plaintiff and Class Members  
26 made their decisions to make purchases, engage in commerce therewith, and seek services or  
27 information. Instead, Defendants suppressed and concealed such information. By concealing and  
28 suppressing that information, Defendants denied Representative Plaintiff and Class Members the

1 ability to make a rational and informed purchasing decision and took undue advantage of  
2 Representative Plaintiff and Class Members.

3 152. Defendants were unjustly enriched at the expense of Representative Plaintiff and  
4 Class Members. Defendants received profits, benefits, and compensation, in part, at the expense of  
5 Representative Plaintiff and Class Members. By contrast, Representative Plaintiff and Class  
6 Members did not receive the benefit of their bargain because they paid for services that did not  
7 satisfy the purposes for which they bought/sought them.

8 153. Since Defendants' profits, benefits, and other compensation were obtained by  
9 improper means, Defendants are not legally or equitably entitled to retain any of the benefits,  
10 compensation or profits they realized from these transactions.

11 154. Representative Plaintiff and Class Members seek an Order of this Court requiring  
12 Defendants to refund, disgorge, and pay as restitution any profits, benefits and other compensation  
13 obtained by Defendants from their wrongful conduct and/or the establishment of a constructive  
14 trust from which Representative Plaintiff and Class Members may seek restitution.

15  
16 **RELIEF SOUGHT**

17 **WHEREFORE**, Representative Plaintiff, individually, as well as on behalf of each  
18 member of the proposed Class, respectfully requests that the Court enter judgment in her/their  
19 favor and for the following specific relief against Defendants as follows:

20 1. That the Court declare, adjudge, and decree that this action is a proper class action  
21 and certify the proposed class and/or any other appropriate subclasses under California Code of  
22 Civil Procedure § 382;

23 2. For an award of damages, including actual, nominal, consequential, statutory, and  
24 punitive damages, as allowed by law in an amount to be determined;

25 3. That the Court enjoin Defendants, ordering it to cease and desist from unlawful  
26 activities in further violation of California Business and Professions Code §17200, *et seq.*;

27 4. For equitable relief enjoining Defendants from engaging in the wrongful conduct  
28 complained of herein pertaining to the misuse and/or disclosure of Representative Plaintiff's and

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

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

- 6 a. prohibiting Defendants from engaging in the wrongful and unlawful acts  
7 described herein;
- 8 b. requiring Defendants 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 Defendants to implement and maintain a comprehensive  
12 Information Security Program designed to protect the confidentiality and  
13 integrity of Representative Plaintiff's and Class Members' PII and financial  
14 information;
- 15 d. requiring Defendants to engage independent third-party security auditors  
16 and internal personnel to run automated security monitoring, simulated  
17 attacks, penetration tests, and audits on Defendants' systems on a periodic  
18 basis;
- 19 e. prohibiting Defendants from maintaining Representative Plaintiff's and  
20 Class Members' PII and financial information on a cloud-based database;
- 21 f. requiring Defendants to segment data by creating firewalls and access  
22 controls so that, if one area of Defendants networks are compromised,  
23 hackers cannot gain access to other portions of Defendants' systems;
- 24 g. requiring Defendants to conduct regular database scanning and securing  
25 checks;
- 26 h. requiring Defendants to establish an information security training program  
27 that includes at least annual information security training for all employees,  
28 with additional training to be provided as appropriate based upon the  
employees' respective responsibilities with handling PII and financial  
information, as well as protecting the PII and financial information of  
Representative Plaintiff and Class Members;
- i. requiring Defendants 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 Defendants' policies, programs, and systems  
for protecting PII and financial information;
- j. 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;



COLE & VAN NOTE  
ATTORNEYS AT LAW  
555 12<sup>TH</sup> STREET, SUITE 1725  
OAKLAND, CA 94607  
TEL: (510) 891-9800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

k. 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;
- 8. For all other Orders, findings, and determinations 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: January 20, 2022

**COLE & VAN NOTE**

By:   
Cody Bolce, Esq.  
Attorneys for Representative Plaintiff  
and the Plaintiff Class