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12 Attorneys for Representative Plaintiff  
13 and the Plaintiff Class

14  
15 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16  
17 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

18 PILAR CASTILLO, individually, and on  
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 RECOLOGY INC.,

23 Defendant.

Case No.

**CGC-24-617356**

**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 COMPETITION LAW (CAL.  
BUS. & PROF. CODE §§ 17200).

**[JURY TRIAL DEMANDED]**

24  
25 **INTRODUCTION**

26 1. Representative Plaintiff Pilar Castillo (“Representative Plaintiff”) brings this class  
27 action against Recology, Inc. (“Defendant”) for its failure to properly secure and safeguard  
28 Representative Plaintiff’s and/or Class Members’ protected health information personally  
identifiable information stored within Defendant’s information network, including, without  
limitation, name, date of birth, Social Security Numbers, driver’s license/state ID numbers,  
medical treatment/diagnosis information, and health insurance information (these types of

ELECTRONICALLY

**FILED**

Superior Court of California,  
County of San Francisco

**08/19/2024**

**Clerk of the Court**

BY: AUSTIN LAM

Deputy Clerk

1 information, *inter alia*, being thereafter referred to, collectively, as “protected health information”  
2 or “PHI”<sup>1</sup> and “personally identifiable information” or “PII”).<sup>2</sup> All such information is referred to  
3 in the aggregate herein as “Private Information.”

4         2. With this action, Representative Plaintiff seeks to hold Defendant responsible for  
5 the harms it caused and will continue to cause Representative Plaintiff and other similarly situated  
6 persons in the massive and preventable cyberattack purportedly discovered by Defendant on  
7 November 2, 2023 by which cybercriminals infiltrated Defendant’s inadequately protected  
8 network and accessed the Private Information which was being kept under-protected (the “Data  
9 Breach”).

10         3. Representative Plaintiff further seeks to hold Defendant responsible for not  
11 ensuring that the Private Information was maintained in a manner consistent with industry, the  
12 Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) Privacy Rule (45 CFR,  
13 Part 160 and Parts A and E of Part 164), the HIPAA Security Rule (45 CFR Part 160 and Subparts  
14 A and C of Part 164) and other relevant standards.

15         4. While Defendant claims to have discovered the breach as early as November 2,  
16 2023 Defendant did not begin informing victims of the Data Breach until May 7, 2024 and failed  
17 to inform victims when or for how long the Data Breach occurred. Indeed, Representative Plaintiff  
18 and Class Members were wholly unaware of the Data Breach until they received letters from  
19 Defendant informing them of it. The Notice received by Representative Plaintiff was dated May  
20 7, 2024.

21  
22  
23 <sup>1</sup> Protected health information (“PHI”) is a category of information that refers to an individual’s  
24 medical records and history, which is protected under the Health Insurance Portability and  
25 Accountability Act. *Inter alia*, PHI includes test results, procedure descriptions, diagnoses,  
26 personal or family medical histories and data points applied to a set of demographic information  
27 for a particular patient.

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

1           5. Defendant acquired, collected and stored Representative Plaintiff's and Class  
2 Members' Private Information. Therefore, at all relevant times, Defendant knew or should have  
3 known that Representative Plaintiff and Class Members would use Defendant's services to store  
4 and/or share sensitive data, including highly confidential Private Information.

5           6. HIPAA establishes national minimum standards for the protection of individuals'  
6 medical records and other protected health information. HIPAA generally applies to health plans  
7 and insurers, healthcare clearinghouses and those healthcare providers that conduct certain  
8 healthcare transactions electronically and sets minimum standards for Defendant's maintenance of  
9 Representative Plaintiff's and Class Members' Private Information. More specifically, HIPAA  
10 requires appropriate safeguards be maintained by organizations such as Defendant to protect the  
11 privacy of protected health information and sets limits and conditions on the uses and disclosures  
12 that may be made of such information without customer/patient authorization. HIPAA also  
13 establishes a series of rights over Representative Plaintiff's and Class Members' Private  
14 Information, including rights to examine and obtain copies of their health records and to request  
15 corrections thereto.

16           7. Additionally, the HIPAA Security Rule establishes national standards to protect  
17 individuals' electronic protected health information that is created, received, used or maintained  
18 by a covered entity. The HIPAA Security Rule requires appropriate administrative, physical and  
19 technical safeguards to ensure the confidentiality, integrity and security of electronic protected  
20 health information.

21           8. By obtaining, collecting, using and deriving a benefit from Representative  
22 Plaintiff's and Class Members' Private Information, Defendant assumed legal and equitable duties  
23 to those individuals. These duties arise from HIPAA and other state and federal statutes and  
24 regulations as well as common law principles. Representative Plaintiff does not bring claims in  
25 this action for direct violations of HIPAA, but charges Defendant with various legal violations  
26 merely predicated upon the duties set forth in HIPAA.

27           9. Defendant disregarded the rights of Representative Plaintiff and Class Members by  
28 intentionally, willfully, recklessly and/or negligently failing to take and implement adequate and

1 reasonable measures to ensure that Representative Plaintiff's and Class Members' Private  
2 Information was safeguarded, failing to take available steps to prevent an unauthorized disclosure  
3 of data, and failing to follow applicable, required and appropriate protocols, policies and  
4 procedures regarding the encryption of data, even for internal use. As a result, Representative  
5 Plaintiff's and Class Members' Private Information was compromised through disclosure to an  
6 unknown and unauthorized third party—an undoubtedly nefarious third party seeking to profit off  
7 this disclosure by defrauding Representative Plaintiff and Class Members in the future.  
8 Representative Plaintiff and Class Members have a continuing interest in ensuring their  
9 information is and remains safe and are entitled to injunctive and other equitable relief.

#### 10 11 JURISDICTION AND VENUE

12 10. This Court has jurisdiction over Representative Plaintiff's and Class Members'  
13 claims for damages and injunctive relief pursuant to, *inter alia*, (a) Cal. Civ. Code §§ 1798.80, *et*  
14 *seq.* (California Consumer Records Act), (b) Cal. Civ. Code §§ 1750, *et seq.* (California Consumer  
15 Legal Remedies Act) and (c) Cal. Bus. & Prof. Code §17200, *et seq.*, among other California state  
16 statutes.

17 11. Venue as to Defendant is proper in this judicial district pursuant to California Code  
18 of Civil Procedure § 395(a). Defendant is headquartered in, operated in, and employed numerous  
19 Class Members within this County and transacts business, has agents, and is otherwise within this  
20 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have had  
21 a direct effect on Representative Plaintiff and those similarly situated within the State of California  
22 and within this County.

#### 23 24 PLAINTIFF

25 12. Representative Plaintiff is an adult individual and, at all relevant times herein, was  
26 a resident and citizen of the State of California. Representative Plaintiff is a victim of the Data  
27 Breach.  
28

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

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

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

11           16. Representative Plaintiff received a letter from Defendant stating Representative  
12 Plaintiff's Private Information was involved in the Data Breach (the "Notice").

13           17. 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           18. Representative Plaintiff suffered actual injury in the form of damages to and  
20 diminution in the value of Representative Plaintiff's Private Information—a form of intangible  
21 property that Representative Plaintiff entrusted to Defendant, which was compromised in and as a  
22 result of the Data Breach.

23           19. 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 Private Information.

20. Representative Plaintiff suffered imminent and impending injury arising from the substantially increased risk of fraud, identity theft and misuse resulting from Representative Plaintiff's Private Information being placed in the hands of unauthorized third parties/criminals. Representative Plaintiff has a continuing interest in ensuring that Representative Plaintiff's Private Information, which, upon information and belief, remains backed up in Defendant's possession, is protected and safeguarded from future breaches.

### **DEFENDANT**

21. Defendant is a for-profit corporation with its principal place of business located in San Francisco, CA. Defendant provides waste collection, recycling, and related services.<sup>3</sup>

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

### **CLASS ACTION ALLEGATIONS**

23. Representative Plaintiff brings this action pursuant to the provisions of California Code of Civil Procedure § 382 on behalf of Representative Plaintiff and the following class (collectively, the "Class"):

"All individuals within the State of California whose Private Information was exposed to unauthorized third parties as a result of the data breach discovered by Defendant on or before November 2, 2023."

24. Excluded from the Class is the following individuals and/or entities: Defendant and Defendant's parents, subsidiaries, affiliates, officers and directors and any entity in which Defendant has a controlling interest, all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out, any and all federal, state or local

<sup>3</sup> <https://www.recology.com/about-us/mission-vision/> (last accessed Aug. 19, 2024).

1 governments, including, but not limited to, its departments, agencies, divisions, bureaus, boards,  
2 sections, groups, counsel and/or subdivisions, and all judges assigned to hear any aspect of this  
3 litigation, as well as their immediate family members.

4 25. Pursuant to California Rule of Court 3.765(b), Representative Plaintiff reserves the  
5 right to amend or modify the class definition to achieve greater specificity, by further division into  
6 sub-classes and/or by limitation to particular issues.

7 26. This action has been brought and may properly be maintained as a class action  
8 under California Code of Civil Procedure § 382 because there is a well-defined community of  
9 interest in the litigation and membership in the proposed Class is easily ascertainable.

10 a. Numerosity: A class action is the only available method for the fair and  
11 efficient adjudication of this controversy. The members of the Plaintiff  
12 Class is so numerous that joinder of all members is impractical, if not  
impossible. Membership in the Class will be determined by analysis of  
Defendant's records.

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

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

- 1 8) Whether Defendant's conduct, including its failure to act, resulted in
- 2 or was the proximate cause of the breach of its systems, resulting in the
- 3 loss of Representative Plaintiff's and Class Members' Private
- 4 Information;
- 5 9) Whether Defendant adequately addressed and fixed the vulnerabilities
- 6 which permitted the Data Breach to occur;
- 7 10) Whether Defendant engaged in unfair, unlawful or deceptive practices
- 8 by failing to safeguard Representative Plaintiff's and Class Members'
- 9 Private Information;
- 10 11) Whether Representative Plaintiff and Class Members are entitled to
- 11 actual and/or statutory damages and/or whether injunctive, corrective
- 12 and/or declaratory relief and/or an accounting is/are appropriate as a
- 13 result of Defendant's wrongful conduct; and
- 14 12) Whether Representative Plaintiff and Class Members are entitled to
- 15 restitution as a result of Defendant's wrongful conduct.
- 16 c. Typicality: Representative Plaintiff's claims are typical of the claims of the
- 17 Plaintiff Class. Representative Plaintiff and all members of the Plaintiff
- 18 Class sustained damages arising out of and caused by Defendant's common
- 19 course of conduct in violation of law, as alleged herein.
- 20 d. Adequacy of Representation: Representative Plaintiff in this class action is
- 21 an adequate representative of each of the Plaintiff Class in that the
- 22 Representative Plaintiff has the same interest in the litigation of this case as
- 23 the Class Members, is committed to vigorous prosecution of this case and
- 24 has retained competent counsel who are experienced in conducting
- 25 litigation of this nature. Representative Plaintiff is not subject to any
- 26 individual defenses unique from those conceivably applicable to other Class
- 27 Members or the Class in their entirety. Representative Plaintiff anticipates
- 28 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
- and burden of individual litigation by each member makes or may make it
- impractical for members of the Plaintiff Class to seek redress individually
- for the wrongful conduct alleged herein. Should separate actions be brought
- or be required to be brought by each individual member of the Plaintiff
- Class, the resulting multiplicity of lawsuits would cause undue hardship and
- expense for the Court and the litigants. The prosecution of separate actions
- would also create a risk of inconsistent rulings which might be dispositive
- of the interests of the Class Members who are not parties to the
- adjudications and/or may substantially impede their ability to adequately
- protect their interests.
27. 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.



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

34. Upon information and belief, the unauthorized third-party cybercriminals gained access to Representative Plaintiff's and Class Members' Private Information with the intent of misusing the Private Information, including marketing and selling Representative Plaintiff's and Class Members' Private Information.

35. Not until long after it claims to have discovered the Data Breach did Defendant begin sending the Notice to persons whose Private Information Defendant confirmed was potentially compromised as a result of the Data Breach. The Notice provided basic details of the Data Breach and Defendant's recommended next steps.

36. Representative Plaintiff and Class Members were required to provide their Private Information to Defendant in order to receive employment. Thus, Defendant created, collected and stored Representative Plaintiff's and Class Members' Private Information with the reasonable expectation and mutual understanding that Defendant would comply with its obligations to keep such information confidential and secure from unauthorized access

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

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

**Defendant Collected/Stored Class Members' Private Information**

39. Defendant acquired, collected, stored and assured reasonable security over Representative Plaintiff's and Class Members' Private Information.

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

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

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

43. Defendant could have prevented the Data Breach by properly securing and encrypting and/or more securely encrypting its servers generally, as well as Representative Plaintiff's and Class Members' Private Information.

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

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

1           46.     And yet, despite the prevalence of public announcements of data breach and data  
2 security compromises, Defendant failed to take appropriate steps to protect Representative  
3 Plaintiff's and Class Members' Private Information from being compromised.

4  
5     **Defendant Had an Obligation to Protect the Stolen Information**

6           47.     In failing to adequately secure Representative Plaintiff's and Class Member's  
7 sensitive data, Defendant breached duties it owed Representative Plaintiff and Class Members  
8 under statutory and common law.

9           48.     Representative Plaintiff and Class Members surrendered their highly sensitive  
10 Private Information to Defendant under the implied condition that Defendant would keep it private  
11 and secure. Accordingly, Defendant also has an implied duty to safeguard their Private  
12 Information, independent of any statute.

13           49.     Defendant was also prohibited by the Federal Trade Commission Act (the "FTC  
14 Act") (15 U.S.C. § 45) from engaging in "unfair or deceptive acts or practices in or affecting  
15 commerce." The Federal Trade Commission (the "FTC") has concluded that a company's failure  
16 to maintain reasonable and appropriate data security for consumers' sensitive personal information  
17 is an "unfair practice" in violation of the FTC Act. *See, e.g., FTC v. Wyndham Worldwide Corp.*,  
18 799 F.3d 236 (3d Cir. 2015).

19           50.     In addition to its obligations under federal and state laws, Defendant owed a duty  
20 to Representative Plaintiff and Class Members to exercise reasonable care in obtaining, retaining,  
21 securing, safeguarding, deleting and protecting the Private Information in Defendant's possession  
22 from being compromised, lost, stolen, accessed, and misused by unauthorized persons. Defendant  
23 owed a duty to Representative Plaintiff and Class Members to provide reasonable security,  
24 including consistency with industry standards and requirements, and to ensure that its computer  
25 systems, networks and protocols adequately protected Representative Plaintiff's and Class  
26 Members' Private Information.

1           51. Defendant owed a duty to Representative Plaintiff and Class Members to design,  
2 maintain and test its computer systems, servers and networks to ensure that all Private Information  
3 in its possession was adequately secured and protected.

4           52. Defendant owed a duty to Representative Plaintiff and Class Members to create and  
5 implement reasonable data security practices and procedures to protect all Private Information in  
6 its possession, including not sharing information with other entities who maintained sub-standard  
7 data security systems.

8           53. Defendant owed a duty to Representative Plaintiff and Class Members to  
9 implement processes that would immediately detect a breach of its data security systems in a timely  
10 manner.

11          54. Defendant owed a duty to Representative Plaintiff and Class Members to act upon  
12 data security warnings and alerts in a timely fashion.

13          55. Defendant owed a duty to Representative Plaintiff and Class Members to disclose  
14 if its computer systems and data security practices were inadequate to safeguard individuals'  
15 Private Information from theft because such an inadequacy would be a material fact in the decision  
16 to entrust their Private Information to Defendant.

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

19          57. Defendant owed a duty to Representative Plaintiff and Class Members to encrypt  
20 and/or more reliably encrypt Representative Plaintiff's and Class Members' Private Information  
21 and monitor user behavior and activity in order to identify possible threats.

22  
23 **Value of the Relevant Sensitive Information**

24          58. While the greater efficiency of electronic health records translates to cost savings  
25 for providers, it also comes with the risk of privacy breaches. These electronic health records  
26 contain a plethora of sensitive information (e.g., patient data, patient diagnosis, lab results, medical  
27 prescriptions, treatment plans, etc.) that is valuable to cybercriminals. One patient's complete  
28 record can be sold for hundreds of dollars on the dark web. As such, Private Information is a

1 valuable commodity for which a “cyber black market” exists in which criminals openly post stolen  
2 payment card numbers, Social Security numbers and other personal information on a number of  
3 underground internet websites.

4 59. The high value of Private Information to criminals is further evidenced by the prices  
5 they will pay for it through the dark web. Numerous sources cite dark web pricing for stolen  
6 identity credentials. For example, personal information can be sold at a price ranging from \$40 to  
7 \$200, and bank details have a price range of \$50 to \$200.<sup>4</sup> Experian reports that a stolen credit or  
8 debit card number can sell for \$5 to \$110 on the dark web.<sup>5</sup> Criminals can also purchase access to  
9 entire company data breaches from \$999 to \$4,995.<sup>6</sup>

10 60. Between 2005 and 2019, at least 249 million people were affected by healthcare  
11 data breaches.<sup>7</sup> Indeed, during 2019 alone, over 41 million healthcare records were exposed,  
12 stolen, or unlawfully disclosed in 505 data breaches.<sup>8</sup> In short, these sorts of data breaches are  
13 increasingly common, especially among healthcare systems, which account for 30.03 percent of  
14 overall health data breaches, according to cybersecurity firm Tenable.<sup>9</sup>

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

21  
22  
23 <sup>4</sup> *Your personal data is for sale on the dark web. Here's how much it costs*, Digital Trends, Oct.  
24 16, 2019, available at: [https://www.digitaltrends.com/computing/personal-data-sold-on-the-](https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/)  
[dark-web-how-much-it-costs/](https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/)

25 <sup>5</sup> *Here's How Much Your Personal Information Is Selling for on the Dark Web*, Experian, Dec.  
26 6, 2017, available at: [https://www.experian.com/blogs/ask-experian/heres-how-much-your-](https://www.experian.com/blogs/ask-experian/heres-how-much-your-personal-information-is-selling-for-on-the-dark-web/)  
[personal-information-is-selling-for-on-the-dark-web/](https://www.experian.com/blogs/ask-experian/heres-how-much-your-personal-information-is-selling-for-on-the-dark-web/).

27 <sup>6</sup> *In the Dark*, VPNOOverview, 2019, available at:  
<https://vpnooverview.com/privacy/anonymous-browsing/in-the-dark/>.

28 <sup>7</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7349636/#B5-healthcare-08-00133/>.

<sup>8</sup> <https://www.hipaajournal.com/december-2019-healthcare-data-breach-report/>.

<sup>9</sup> [https://www.tenable.com/blog/healthcare-security-ransomware-plays-a-prominent-role-in-](https://www.tenable.com/blog/healthcare-security-ransomware-plays-a-prominent-role-in-covid-19-era-breaches/)  
[covid-19-era-breaches/](https://www.tenable.com/blog/healthcare-security-ransomware-plays-a-prominent-role-in-covid-19-era-breaches/).

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

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

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

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

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

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.<sup>10</sup>

3 66. The harm to Representative Plaintiff and Class Members is especially acute given  
4 the nature of the leaked data. Medical identity theft is one of the most common, most expensive  
5 and most difficult-to-prevent forms of identity theft. According to Kaiser Health News, “medical-  
6 related identity theft accounted for 43 percent of all identity thefts reported in the United States in  
7 2013,” which is more than identity thefts involving banking and finance, the government and the  
8 military, or education.<sup>11</sup>

9 67. “Medical identity theft is a growing and dangerous crime that leaves its victims  
10 with little to no recourse for recovery,” reported Pam Dixon, executive director of World Privacy  
11 Forum. “Victims often experience financial repercussions and worse yet, they frequently discover  
12 erroneous information has been added to their personal medical files due to the thief’s activities.”<sup>12</sup>

13 68. When cybercriminals access financial information, health insurance information  
14 and other personally sensitive data—as they did here—there is no limit to the amount of fraud to  
15 which Defendant may have exposed Representative Plaintiff and Class Members.

16 69. A study by Experian found that the average total cost of medical identity theft is  
17 “about \$20,000” per incident, and that a majority of victims of medical identity theft were forced  
18 to pay out-of-pocket costs for healthcare they did not receive in order to restore coverage.<sup>13</sup> Almost  
19 half of medical identity theft victims lose their healthcare coverage as a result of the incident, while  
20 nearly one-third saw their insurance premiums rise, and 40 percent were never able to resolve their  
21 identity theft at all.<sup>14</sup>

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23  
24 <sup>10</sup> *Report to Congressional Requesters*, GAO, at 29 (June 2007), available at:  
<http://www.gao.gov/new.items/d07737.pdf>.

25 <sup>11</sup> Michael Ollove, “The Rise of Medical Identity Theft in Healthcare,” Kaiser Health News,  
Feb. 7, 2014, <https://khn.org/news/rise-of-identity-theft/>.

26 <sup>12</sup> *Id.*

27 <sup>13</sup> Elinor Mills, “Study: Medical Identity Theft is Costly for Victims,” CNET (Mar, 3, 2010),  
<https://www.cnet.com/news/study-medical-identity-theft-is-costly-for-victims/>.

28 <sup>14</sup> *Id.*; see also Healthcare Data Breach: What to Know About them and What to Do After One,  
EXPERIAN, <https://www.experian.com/blogs/ask-experian/healthcare-data-breach-what-to-know-about-them-and-what-to-do-after-one/>.

1           70. And data breaches are preventable.<sup>15</sup> As Lucy Thompson wrote in the DATA  
2 BREACH AND ENCRYPTION HANDBOOK, “[i]n almost all cases, the data breaches that occurred could  
3 have been prevented by proper planning and the correct design and implementation of appropriate  
4 security solutions.”<sup>16</sup> She added that “[o]rganizations that collect, use, store, and share sensitive  
5 personal data must accept responsibility for protecting the information and ensuring that it is not  
6 compromised....”<sup>17</sup>

7           71. 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>18</sup>

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

18           73. Defendant disregarded the rights of Representative Plaintiff and Class Members by,  
19 *inter alia*, (i) intentionally, willfully, recklessly and/or negligently failing to take adequate and  
20 reasonable measures to ensure that its network servers were protected against unauthorized  
21 intrusions, (ii) failing to disclose that it did not have adequately robust security protocols and  
22 training practices in place to adequately safeguard Representative Plaintiff’s and Class Members’  
23 Private Information, (iii) failing to take standard and reasonably available steps to prevent the Data  
24 Breach, (iv) concealing the existence and extent of the Data Breach for an unreasonable duration  
25

26 <sup>15</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>16</sup> *Id.* at 17.

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

<sup>18</sup> *Id.*

1 of time, and (v) failing to provide Representative Plaintiff and Class Members prompt and accurate  
2 notice of the Data Breach.

3  
4 **FIRST CAUSE OF ACTION**  
**Negligence**

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

7 75. At all times herein relevant, Defendant owed Representative Plaintiff and Class  
8 Members a duty of care, *inter alia*, to act with reasonable care to secure and safeguard their Private  
9 Information and to use commercially reasonable methods to do so. Defendant took on this  
10 obligation upon accepting and storing Representative Plaintiff's and Class Members' Private  
11 Information on its computer systems and networks.

12 76. Among these duties, Defendant was expected:

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

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

27 78. Defendant knew or should have known of the risks inherent in collecting and  
28 storing Private Information, the vulnerabilities of its data security systems and the importance of  
adequate security. Defendant knew about numerous, well-publicized data breaches.

1           79. Defendant knew or should have known that its data systems and networks did not  
2 adequately safeguard Representative Plaintiff's and Class Members' Private Information.

3           80. Only Defendant was in the position to ensure that its systems and protocols were  
4 sufficient to protect the Private Information that Representative Plaintiff and Class Members had  
5 entrusted to it.

6           81. Defendant breached its duties to Representative Plaintiff and Class Members by  
7 failing to provide fair, reasonable or adequate computer systems and data security practices to  
8 safeguard Representative Plaintiff's and Class Members' Private Information.

9           82. Because Defendant knew that a breach of its systems could damage thousands of  
10 individuals, including Representative Plaintiff and Class Members, Defendant had a duty to  
11 adequately protect its data systems and the Private Information contained thereon.

12           83. Representative Plaintiff's and Class Members' willingness to entrust Defendant  
13 with its Private Information was predicated on the understanding that Defendant would take  
14 adequate security precautions. Moreover, only Defendant had the ability to protect its systems and  
15 the Private Information it stored on them from attack. Thus, Defendant had a special relationship  
16 with Representative Plaintiff and Class Members.

17           84. Defendant also had independent duties under state and federal laws that required  
18 Defendant to reasonably safeguard Representative Plaintiff's and Class Members' Private  
19 Information and promptly notify them about the Data Breach. These "independent duties" are  
20 untethered to any contract between Defendant and Representative Plaintiff and/or the remaining  
21 Class Members.

22           85. Defendant breached its general duty of care to Representative Plaintiff and Class  
23 Members in, but not necessarily limited to, the following ways:

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

- c. by failing to adequately protect and safeguard the Private Information by knowingly disregarding standard information security principles, despite obvious risks, and by allowing unmonitored and unrestricted access to unsecured Private Information;
- d. by failing to provide adequate supervision and oversight of the Private Information with which it was and is entrusted, in spite of the known risk and foreseeable likelihood of breach and misuse, which permitted an unknown third party to gather Representative Plaintiff's and Class Members' Private Information, misuse the Private Information and intentionally disclose it to others without consent;
- e. by failing to adequately train its employees to not store Private Information longer than absolutely necessary;
- f. by failing to consistently enforce security policies aimed at protecting Representative Plaintiff's and the Class Members' Private 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' Private Information and monitor user behavior and activity in order to identify possible threats.

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

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

88. The law further imposes an affirmative duty on Defendant to timely disclose the unauthorized access and theft of the Private 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 Private Information.

89. Defendant breached its duty to notify Representative Plaintiff and Class Members of the unauthorized access by waiting almost a year after learning of the Data Breach to notify Representative Plaintiff and Class Members and then by failing and continuing to fail to provide Representative Plaintiff and Class Members sufficient information regarding the breach. To date, Defendant has not provided sufficient information to Representative Plaintiff and Class Members

1 regarding the extent of the unauthorized access and continues to breach its disclosure obligations  
2 to Representative Plaintiff and Class Members.

3 90. Further, through its failure to provide timely and clear notification of the Data  
4 Breach to Representative Plaintiff and Class Members, Defendant prevented Representative  
5 Plaintiff and Class Members from taking meaningful, proactive steps to, *inter alia*, secure and/or  
6 access their Private Information.

7 91. There is a close causal connection between Defendant's failure to implement  
8 security measures to protect Representative Plaintiff's and Class Members' Private Information  
9 and the harm suffered, or risk of imminent harm suffered, by Representative Plaintiff and Class  
10 Members. Representative Plaintiff's and Class Members' Private Information was accessed as the  
11 proximate result of Defendant's failure to exercise reasonable care in safeguarding such Private  
12 Information by adopting, implementing and maintaining appropriate security measures.

13 92. Defendant's wrongful actions, inactions and omissions constituted (and continue to  
14 constitute) common law negligence.

15 93. The damages Representative Plaintiff and Class Members have suffered (as alleged  
16 above) and will continue to suffer were and are the direct and proximate result of Defendant's  
17 grossly negligent conduct.

18 94. Additionally, 15 U.S.C. § 45 (FTC Act, Section 5) prohibits "unfair [...] practices  
19 in or affecting commerce," including, as interpreted and enforced by the FTC, the unfair act or  
20 practice by businesses, such as Defendant, of failing to use reasonable measures to protect Private  
21 Information. The FTC publications and orders described above also form part of the basis of  
22 Defendant's duty in this regard.

23 95. Defendant violated 15 U.S.C. § 45 by failing to use reasonable measures to protect  
24 Private Information and not complying with applicable industry standards, as described in detail  
25 herein. Defendant's conduct was particularly unreasonable given the nature and amount of Private  
26 Information it obtained and stored and the foreseeable consequences of the immense damages that  
27 would result to Representative Plaintiff and Class Members.

1           96. Defendant's violation of 15 U.S.C. § 45 constitutes negligence *per se*. Defendant  
2 also violated the HIPAA Privacy and Security rules which, likewise, constitutes negligence *per se*.

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

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

24           99. Additionally, as a direct and proximate result of Defendant's negligence and  
25 negligence *per se*, Representative Plaintiff and Class Members have suffered and will continue to  
26 suffer the continued risks of exposure of their Private Information, which remains in Defendant's  
27 possession and is subject to further unauthorized disclosures so long as Defendant fails to  
28

1 undertake appropriate and adequate measures to protect Private Information in its continued  
2 possession.

3  
4 **SECOND CAUSE OF ACTION**  
5 **Breach of Implied Contract**

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

8 101. Through their course of conduct, Defendant, Representative Plaintiff and Class  
9 Members entered into implied contracts for Defendant to implement data security adequate to  
10 safeguard and protect the privacy of Representative Plaintiff's and Class Members' Private  
11 Information.

12 102. Defendant solicited, invited and required Representative Plaintiff and Class  
13 Members to provide their Private Information as part of Defendant's regular business practices.  
14 Representative Plaintiff and Class Members accepted Defendant's offers and provided their  
15 Private Information to Defendant.

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

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

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

28 106. Defendant breached the implied contracts it made with Representative Plaintiff and  
Class Members by failing to safeguard and protect their Private Information and by failing to

1 provide timely and accurate notice to them that their Private Information was compromised as a  
2 result of the Data Breach.

3 107. As a direct and proximate result of Defendant's above-described breach of implied  
4 contract, Representative Plaintiff and Class Members have suffered and will continue to suffer (i)  
5 ongoing, imminent and impending threat of identity theft crimes, fraud and abuse, resulting in  
6 monetary loss and economic harm, (ii) actual identity theft crimes, fraud and abuse, resulting in  
7 monetary loss and economic harm, (iii) loss of the confidentiality of the stolen confidential data,  
8 (iv) the illegal sale of the compromised data on the dark web, (v) lost work time, and (f) other  
9 economic and noneconomic harm.

10  
11 **THIRD CAUSE OF ACTION**  
**Breach of the Implied Covenant of Good Faith and Fair Dealing**

12 108. 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 therein.

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

17 110. Representative Plaintiff and Class Members have complied with and performed all  
18 conditions of their contracts with Defendant.

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

25 112. Defendant acted in bad faith and/or with malicious motive in denying  
26 Representative Plaintiff and Class Members the full benefit of their bargains as originally intended  
27 by the parties, thereby causing them injury in an amount to be determined at trial.  
28

**FOURTH CAUSE OF ACTION  
California Unfair Competition Law  
Cal. Bus. & Prof. Code §§ 17200, *et seq.***

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

114. Defendant is a “person” as defined by Cal. Bus. & Prof. Code §17201.

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

116. Defendant’s “unfair” acts and practices include:

- a. Defendant’s failure to implement and maintain reasonable security measures to protect Representative Plaintiff’s and Class Members’ Private Information from unauthorized disclosure, release, data breaches and theft, which was a direct and proximate cause of the Data Breach. Defendant failed to identify foreseeable security risks, remediate identified security risks and adequately maintain and/or improve security following previous cybersecurity incidents. This conduct, with little if any utility, is unfair when weighed against the harm to Representative Plaintiff and Class Members, whose Private Information has been compromised;
- b. Defendant’s failure to implement and maintain reasonable security measures, which was contrary to legislatively declared public policy that seeks to protect consumers’ data and ensure that entities that are trusted with it use appropriate security measures. These policies are reflected in laws, including the FTC Act (15 U.S.C. § 45, *et seq.*);
- c. Defendant’s failure to implement and maintain reasonable security measures, which also leads to substantial consumer injuries, as described above, that are not outweighed by any countervailing benefits to consumers or competition. Moreover, because consumers could not know of Defendant’s inadequate security, consumers could not have reasonably avoided the harms that Defendant caused;
- d. Engaging in unlawful business practices by violating Cal. Civ. Code § 1798.82.

Defendant has engaged in “unlawful” business practices by violating multiple laws, including California’s Consumer Records Act, Cal. Civ. Code §§ 1798.81.5 (requiring reasonable data security measures) and 1798.82 (requiring timely breach notification), California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1780, *et seq.*, the FTC Act, 15 U.S.C. § 45, *et seq.*, and California common law.

117. Defendant’s unlawful, unfair and deceptive acts and practices include:

- a. Failing to implement and maintain reasonable security and privacy measures to protect Representative Plaintiff's and Class Members' Private Information, which was a direct and proximate cause of the Data Breach;
- b. Failing to identify foreseeable security and privacy risks, remediate identified security and privacy risks and adequately maintain and/or improve security and privacy measures, which was a direct and proximate cause of the Data Breach;
- c. Failing to comply with common law and statutory duties pertaining to the security and privacy of Representative Plaintiff's and Class Members' Private Information, including duties imposed by the FTC Act, 15 U.S.C. § 45, *et seq.*, which was a direct and proximate cause of the Data Breach;
- d. Misrepresenting that it would protect the privacy and confidentiality of Representative Plaintiff's and Class Members' Private Information, including by implementing and maintaining reasonable security measures;
- e. Misrepresenting that it would comply with common law and statutory duties pertaining to the security and privacy of Representative Plaintiff's and Class Members' Private Information, including duties imposed by the FTC Act, 15 U.S.C. § 45, *et seq.*;
- f. Omitting, suppressing and concealing the material fact that it did not reasonably or adequately secure Representative Plaintiff's and Class Members' Private Information; and
- g. Omitting, suppressing and concealing the material fact that it did not comply with common law and statutory duties pertaining to the security and privacy of Representative Plaintiff's and Class Members' Private Information, including duties imposed by the FTC Act, 15 U.S.C. § 45, *et seq.*

118. Defendant's representations and omissions were material because they were likely to deceive reasonable consumers about the adequacy of Defendant's data security and ability to protect the confidentiality of consumers' Private Information.

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

120. Defendant acted intentionally, knowingly and maliciously to violate California's Unfair Competition Law and recklessly disregarded Representative Plaintiff's and Class Members' rights.

121. Representative Plaintiff and Class Members seek all monetary and nonmonetary relief allowed by law, including restitution of all profits stemming from Defendant's unfair, unlawful and fraudulent business practices or use of their Private Information, declaratory relief, reasonable attorneys' fees and costs under California Code of Civil Procedure § 1021.5, injunctive relief and other appropriate equitable relief.

### **RELIEF SOUGHT**

**WHEREFORE**, Representative Plaintiff, on Representative Plaintiff's own behalf and on behalf of each member of the proposed Class, respectfully requests that the Court enter judgment in Representative Plaintiff's favor and for the following specific relief against Defendant (and/or each of them) as follows:

1. That the Court declare, adjudge and decree that this action is a proper class action and certify each of the proposed Class and/or any other appropriate subclasses under California Code of Civil Procedure § 382, including appointment of Representative Plaintiff's counsel as Class Counsel;

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

3. That the Court enjoin Defendant, ordering it to cease and desist from unlawful activities;

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

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

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

- 4           a. prohibiting Defendant from engaging in the wrongful and unlawful acts  
5 described herein;
- 6           b. requiring Defendant to protect, including through encryption, all data  
7 collected through the course of business in accordance with all applicable  
8 regulations, industry standards and federal, state or local laws;
- 9           c. requiring Defendant to delete and purge Representative Plaintiff's and Class  
10 Members' Private Information unless Defendant can provide to the Court  
11 reasonable justification for the retention and use of such information when  
12 weighed against the privacy interests of Representative Plaintiff and Class  
13 Members;
- 14           d. requiring Defendant to implement and maintain a comprehensive  
15 Information Security Program designed to protect the confidentiality and  
16 integrity of Representative Plaintiff's and Class Members' Private  
17 Information;
- 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' Private Information 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 security  
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 Private Information,  
as well as protecting the Private Information 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  
networks for internal and external threats, and assess whether monitoring  
tools are properly configured, tested and updated; and

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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.

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

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


and

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

**JURY DEMAND**

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

Dated: August 19, 2024

By:   
Mark T. Freeman, Esq.  
Attorney for Representative Plaintiff  
and the Plaintiff Class

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$700K Recology Settlement Ends Data Breach Lawsuit Over November 2023 Cyberattack](#)

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