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Attorneys for Defendants Ally Bank and Ally Financial Inc.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BILL CORNICK and DAVID ABBOTT,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

ALLY BANK, ALLY FINANCIAL INC., and
DOES 1-50,

Defendants.

Case No.: 21-cv-09439

NOTICE OF REMOVAL

(Monterey County Superior Court Case
No. 21CV003506)

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that Defendants Ally Bank and Ally Financial Inc. (together, “Ally”) hereby jointly remove to this Court the state court action described below pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. For its short and plain statement of the grounds for removal, Ally asserts as follows:

I. STATEMENT OF THE CASE¹

1. On November 2, 2021, Plaintiffs Bill Cornick and David Abbott (together, “Plaintiffs”) filed a lawsuit in the Superior Court of California, County of Monterey, captioned *Bill Cornick, et al. v. Ally Bank, et al.*, and designated as Case No. 21CV003506 (the “State Court Action”). On November 5, 2021, Defendant Ally Bank was served with the Summons and Class Action Complaint. On November 8, 2021, Defendant Ally Financial Inc. was served with the Summons and Class Action Complaint. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons, Class Action Complaint, and all associated papers served upon Ally are attached hereto as Exhibits A.

2. Plaintiffs’ Class Action Complaint asserts the following seven causes of action against Ally: (i) negligence; (ii) negligence *per se*; (iii) violation of the California Customer Records Act (“CCRA”), Cal. Civ. Code §§ 1798.80, *et seq.*; (iv) violation of the California Consumer Privacy Act (“CCPA”), Cal. Civ. Code §§ 1798.100, *et seq.*; (v) violation of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*; (vi) breach of implied contract; and (vii) invasion of privacy. Plaintiffs generally allege that Ally failed to adequately safeguard customer information, specifically certain customers’ usernames and passwords, and that such information was inadvertently exposed to certain third parties with whom Ally has business relationships. *See, e.g.*, Compl. ¶¶ 1–2. Plaintiffs seek restitution, damages

¹ For purposes of removal only, Ally assumes the truth of the allegations and causes of action set forth in the Class Action Complaint. Ally denies that it has any liability to Plaintiffs or the class they seek to represent, and denies that Plaintiffs or the putative class members are entitled to recover the damages, restitution, or other relief requested in the Class Action Complaint. Ally also submits that this action does not satisfy the requirements for class certification under Federal Rule of Civil Procedure 23.

(including statutory and punitive damages), and disgorgement, as well as attorney's fees, litigation expenses and costs, and injunctive and declaratory relief. *See id.* at Prayer for Relief.

II. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

3. Removal of this action is timely. Ally Bank was served with the Summons and Class Action Complaint on November 5, 2021; Ally Financial was served with the Summons and Complaint on November 8, 2021. *See Ex. A.* This Notice of Removal, dated December 6, 2021, was "filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based[.]" 28 U.S.C. § 1446(b)(1); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999) ("[A] named defendant's time to remove is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, 'through service or otherwise,' after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service.").

4. Does 1–50 have not been named or served and need not consent to this Notice of Removal. *See Soliman v. Philip Morris Inc.*, 311 F.3d 966, 971 (9th Cir. 2002).

5. Venue in this Court is proper under 28 U.S.C. § 1441(a) and Local Rule 3-2(e) because the Complaint was filed in this District and Division, which embraces the Monterey County Superior Court in which the State Court Action was filed.

6. As stated above, pursuant to 28 U.S.C. § 1446(a), true and correct copies of all pleadings and orders served upon Ally in the State Court Action are attached hereto as Exhibits A.

7. Written notice of the filing of this Notice of Removal will be promptly served upon Plaintiffs. Defendants will also promptly file a copy of this Notice with the Clerk of the Superior Court of California, County of Monterey.

III. THE BASIS FOR REMOVAL IS DIVERSITY OF CITIZENSHIP

8. Section 1441(a) provides that "[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

28 U.S.C. § 1441(a).

9. This Court has original jurisdiction over this Action pursuant to 28 U.S.C. § 1332(a)(1) because there is complete diversity between the parties and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

A. The Parties Are Citizens Of Different States

10. The diversity requirement is satisfied because Defendants are citizens of different states than Plaintiffs.

11. Plaintiffs are citizens of California and purport to represent a class comprised entirely of California citizens. *See* Compl. ¶¶ 9–10.

12. Defendant Ally Bank is, and was at the time that the State Court Action was filed, a corporation organized under the laws of the State of Utah with its principal place of business located in Utah. *See* Compl. ¶ 12.

13. Ally Financial Inc. is, and was at the time that the State Court Action was filed, a corporation organized under the laws of the State of Delaware with its principal place of business in Michigan. *See* Compl. ¶ 11.

14. The presence of Doe defendants has no bearing on whether an action may be removed from state court on the basis of diversity jurisdiction. *See* 28 U.S.C. § 1441(b)(1) (“In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious named shall be disregarded.”); *see also Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998) (“28 U.S.C. § 1441(b)(1) explicitly provides that the citizenship of defendants sued under fictitious names shall be disregarded for purposes of removal”).

B. The Amount In Controversy Exceeds \$75,000

15. In order to remove an action on diversity jurisdiction grounds, the amount in controversy must exceed \$75,000, and it is the removing party’s burden to establish, “by a preponderance of the evidence, that the aggregate amount in controversy exceeds the jurisdictional minimum.” *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013). The removing party’s burden is not “daunting,” and a removing defendant “is *not* obligated to research,

1 state, and prove the plaintiff's claim for damages." *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp.
2 2d 1199, 1204-05 (E.D. Cal. 2008) (emphasis in original).

3 16. Though the Complaint does not allege a specific amount in controversy, Plaintiffs
4 allege three California statutory violations, which permit recovery of actual or statutory damages,
5 in addition to common-law claims for negligence, negligence per se, breach of implied contract,
6 and invasion of privacy. Although Ally maintains that Plaintiffs' claims are without merit and that
7 neither Plaintiffs nor the putative class they seek to represent are entitled to any damages
8 whatsoever, it is evident that the object of the relief sought in the Complaint is more than \$75,000.
9 *See Dart Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014) ("[A] defendant's notice of
10 removal need include only a plausible allegation that the amount in controversy exceeds the
11 jurisdictional threshold."); *Campbell v. Vitran Exp., Inc.*, 471 F. App'x 646, 648 (9th Cir. 2012)
12 ("[I]n assessing the amount in controversy, a court must assume that the allegations of the complaint
13 are true and assume that a jury will return a verdict for the plaintiff on all claims made in the
14 complaint.").

15 17. Additionally, the Complaint seeks punitive damages, which further demonstrates
16 that the amount in controversy in this action exceeds the \$75,000 threshold. *See* Compl. at Prayer
17 for Relief. For purposes of diversity jurisdiction, the amount in controversy may include punitive
18 damages if recoverable under state law, which may be the case for certain of Plaintiffs' claims. *See*
19 *Hernandez v. FCA US, LLC*, No. CV 20-1058-RSWL-MAA, 2020 WL 3497399, at *4 (C.D. Cal.
20 June 29, 2020); *see also In re Yahoo! Inc. Customer Data Security Breach Lit.*, 313 F. Supp. 3d
21 1113, 1149 (N.D. Cal. 2018) (noting that punitive damages may be available on a negligence claim
22 under certain circumstances).

23 18. Plaintiffs also seek recovery of attorneys' fees; this, too, confirms that the amount
24 in controversy in this action exceeds the \$75,000 threshold. *See* Compl. at Prayer for Relief; *see*
25 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 942-43 (9th Cir. 2001) (finding attorneys' fees are
26 properly included in the amount in controversy in a class action); *see also Galt G/S v. JSS*
27 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("[W]here an underlying statute authorizes an
28 award of attorneys' fees, either with mandatory or discretionary language, such fees may be

1 included in the amount in controversy.”). Plaintiffs’ statutory causes of action allow for recovery
2 of attorneys’ fees under certain circumstances. Courts should include in their amount in
3 controversy calculation attorneys’ fees that, although not yet accrued, are reasonable to anticipate.
4 *Oganesyan v. AT&T Mobility Servs. LLC*, No. CV 14-5184-ODW-JC, 2014 WL 4665272 at *3 (C.D.
5 Cal. Sept. 18, 2014) (“[W]hen calculating the amount in controversy the Court does not merely
6 consider those fees which have already incurred; rather, it looks to the amount that can be
7 reasonably estimated.”). Based on Defendants’ experience defending against a pending action in
8 the Southern District of New York that involves substantially similar factual allegations,
9 Defendants reasonably anticipate that plaintiffs’ counsel’s attorneys’ fees in this action will exceed
10 \$75,000.

11 19. In view of the foregoing, it is clear that the amount in controversy and diversity of
12 citizenship requirements are satisfied here, and therefore this Court may properly exercise diversity
13 jurisdiction over this case.

14 **IV. RESERVATION OF DEFENSES**

15 20. As of the filing of this Notice of Removal, no further proceedings have been had in
16 the State Court Action.

17 21. Nothing in this Notice of Removal shall be interpreted as a relinquishment of Ally’s
18 right to assert any defense or affirmative matter.

19 22. Ally reserves the right to amend or supplement this Notice of Removal.

20 WHEREFORE, Ally prays that the above-captioned action be removed from the Superior
21 Court of the State of California, County of Monterey, to this Court pursuant to 28 U.S.C. §§ 1332,
22 1441, 1446, and that this Court proceed as if this case has been initiated in this Court, as required
23 by law.

Dated: December 6, 2021

By: /s/ Stephen P. Blake
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*Attorneys for Defendants Ally Bank and
Ally Financial Inc.*

Exhibit A



**Service of Process
Transmittal**

11/05/2021

CT Log Number 540538442

TO: Cindy Karaban
Ally Financial Inc.
500 Woodward Ave Fl 9
Detroit, MI 48226-3423

RE: Process Served in Utah

FOR: Ally Bank (Domestic State: UT)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: BILL CORNICK and DAVID ABBOTT, Individually and on Behalf of All Others Similarly Situated vs. Ally Bank

DOCUMENT(S) SERVED: Notice, Complaint

COURT/AGENCY: Monterey County Superior Court, CA
Case # None Specified

NATURE OF ACTION: Allegation of Violation of the California Consumer Privacy Act.

ON WHOM PROCESS WAS SERVED: C T Corporation System, Midvale, UT

DATE AND HOUR OF SERVICE: By Certified Mail on 11/05/2021 postmarked: "Not Post Marked"

JURISDICTION SERVED : Utah

APPEARANCE OR ANSWER DUE: Within 30 days of receipt

ATTORNEY(S) / SENDER(S): Alexandra K Green
Schubert Jonckheer & Kolbe LLP
Three Embarcadero Center, Suite 1650
San Francisco, CA 94111
415-788-4220

ACTION ITEMS: CT has retained the current log, Retain Date: 11/05/2021, Expected Purge Date: 11/10/2021

Image SOP

Email Notification, Cindy Karaban cynthia.karaban@ally.com

REGISTERED AGENT ADDRESS: C T Corporation System
1108 E. South Union Avenue
Midvale, UT 84047
800-448-5350
MajorAccountTeam1@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

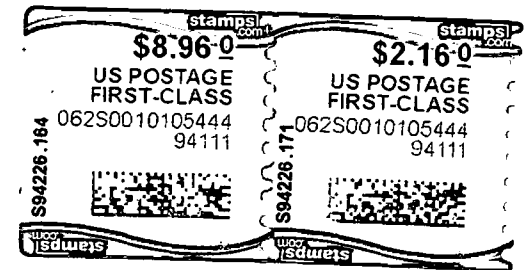
CERTIFIED MAIL

Case 5:21-cv-09439 Document 1-1 Filed 12/06/21 Page 3 of 69

Schubert Jonckheer & Kolbe
3 Embarcadero Center
Suite 1650
San Francisco, CA 94111



7017 0530 0000 3570 1908



Ally Bank
c/o CT Corporation System
1108 E South Union Avenue
Midvale, UT 84047

SCHUBERT JONCKHEER & KOLBE LLP

Attorneys at Law

Robert C. Schubert
Willem F. Jonckheer
Dustin L. Schubert
Noah M. Schubert

Of Counsel
Miranda P. Kolbe

Kathryn Y. McCauley
Gregory T. Stuart
Alexandra K. Green

November 2, 2021

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ally Financial Inc.
500 Woodward Avenue, Floor 10
Detroit, Michigan 48226

Ally Bank
200 West Civic Center Drive, Suite 201
Sandy, Utah 84070

Re: Notice of Violation of the California Consumer Privacy Act of 2018, CAL. CIV. CODE §§ 1798.100 *et seq.*

To Whom It May Concern:

Pursuant to the California Consumer Privacy Act of 2018 (“CCPA”), CAL. CIV. CODE § 1798.150(b), our clients Bill Cornick and David Abbott, individually and on behalf of all other similarly situated California citizens, hereby give notice that the following entities have engaged in conduct in violation of the CCPA by subjecting Bill Cornick, David Abbott, and putative class customers’ nonencrypted personally identifiable information (“PII”) to unauthorized access and exfiltration, theft, or disclosure: (i) Ally Financial Inc. and (ii) Ally Bank (together, “Ally”). This unauthorized disclosure occurred as a result of Ally’s violation of its duty to implement and maintain reasonable security procedures and practices appropriate to the nature and protection of this PII, which culminated in the June 11, 2021 data breach notification letter that a programming code error associated with Ally’s website inadvertently revealed Ally’s customers’ usernames and passwords to third parties with whom Ally had business relationships. Ally’s conduct and actions violated CAL. CIV. CODE § 1798.150(a).

Mr. Cornick and Mr. Abbott are both customers of Ally. Mr. Cornick received a data breach letter from Ally, dated June 11, 2021, which notified him that his PII, including his username and password, were revealed to unnamed third parties with whom Ally had business relationships. On information and belief, Mr. Abbott believes that his PII was subject to the Ally data breach. Ally claims that it first detected the programming on April 12, 2021.

3 Embarcadero Center, Suite 1650 · San Francisco, CA 94111 · (415) 788-4220 · Fax: (415) 788-0161

www.sjk.law

Ally Financial Inc.

Ally Bank

Notice of Violation of the California Consumer Privacy Act of 2018

November 2, 2021

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The breach that resulted was entirely Ally's own doing and did not result from a cyberattack by unauthorized third parties. Since Ally is an online bank, data security is essential to their business, including protecting customer usernames and passwords that provide access to customers' account information as well as other assets. However, Ally negligently revealed its customers' usernames and passwords during a routine update. Had Ally taken reasonable steps to test or monitor the security of its website, Ally would have immediately discovered and stopped revealing those usernames and passwords to third parties. Ally has acknowledged that this data breach harmed Ally's customers and has offered 24 months of credit monitoring by Equifax. However, Equifax does not fully protect Ally's customers from identity theft and 24 months is certainly not a sufficient duration of credit monitoring given the PII that was compromised in the data breach. The offered service is inadequate to protect Mr. Cornick, Mr. Abbott, and Class members from the future threats they face, particularly given the PII at issue here. The full claims, including the facts and circumstances surrounding these claims, are detailed in the attached draft Class Action Complaint which is incorporated by reference.

If Ally fails to cure its violations of the CCPA within thirty days of receiving this letter, then pursuant to the CCPA, Mr. Cornick and Mr. Abbott reserve their right to amend the Class Action Complaint to seek actual, punitive, and statutory damages, restitution, and any other relief individually and on behalf of the putative class that the Court deems proper as a result of Ally's CCPA violations pursuant to CAL. CIV. CODE § 1798.150(a).

If you have any questions regarding this notice, please contact me at (415) 788-4220 or agreen@sjk.law.

Respectfully,

Alexandra K. Green
Schubert Jonckheer & Kolbe LLP

Counsel for Bill Cornick, David Abbott, and the Putative Class

Encl.

cc: Ally Financial Inc.
c/o The Corporation Company
40600 Ann Arbor Road East, Suite 201
Plymouth, MI 48170

Ally Financial Inc.

Ally Bank

Notice of Violation of the California Consumer Privacy Act of 2018

November 2, 2021

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Ally Bank

c/o CT Corporation System

1108 E South Union Avenue

Midvale, UT 84047

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Attorneys for Plaintiffs and the Putative Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY**

BILL CORNICK and DAVID ABBOTT,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

ALLY BANK, ALLY FINANCIAL INC., and
DOES 1-50,

Defendants.

Case No.

Class Action Complaint

Demand for Jury Trial

Class Action Complaint

1 Upon personal knowledge as to his own acts, and based upon their own investigation, the
2 investigation of counsel, and information and belief as to all other matters, Plaintiffs Bill Cornick
3 and David Abbott, on behalf of themselves and all others similarly situated, allege as follows:

4 SUMMARY OF THE ACTION

5 1. This is a class action brought on behalf of all California citizens whose personally
6 identifiable information ("PII") was compromised as a direct result of Ally Bank's and Ally
7 Financial Inc.'s (collectively, "Ally" or "Defendants") failure to adequately safeguard Plaintiffs' PII
8 and notify Plaintiffs of the Ally Data Breach. Cornick and Abbott were harmed by Ally's
9 unauthorized disclosure that exposed Ally customers' account usernames, passwords, and other PII
10 to unnamed third parties (the "Data Breach" or "Breach").

11 2. On June 11, 2021, Ally notified customers through a data breach notification letter
12 (the "Data Breach Letter") that a programming code error associated with Ally's website
13 inadvertently revealed Ally's customers' usernames and passwords to third parties with whom Ally
14 had business relationships. The Data Breach Letter also informed customers of steps to take to
15 mitigate the increased threat of identity theft to them as a result of the Ally Data Breach.

16 3. Ally claims that it first detected the programming code error on April 12, 2021.
17 Notably, the Breach which resulted was entirely Ally's own doing and did not result from a
18 cyberattack by unauthorized third parties. Ally negligently programmed its website to reveal, in clear
19 unencrypted text, Cornick's, Abbott's, and other Class members' usernames and passwords used to
20 access their Ally accounts to Ally business partners.

21 4. Since Ally is an online bank, data security is essential to their business, including
22 protecting customer usernames and passwords that provide access to customers' account information
23 as well as other assets.

24 5. Ally claims that "security is one of Ally's top priorities."¹ Yet, Ally negligently
25 revealed its customers' usernames and passwords during a routine update. Ally also failed to
26 adequately test or monitor the security of its website. Had Ally taken reasonable steps to test or
27

28 ¹ <https://www.ally.com/security/our-approach.html> (last visited Oct. 26, 2021).

1 monitor the security of its website, Ally would have immediately discovered and stopped revealing
2 those usernames and passwords to third parties.

3 6. However, Ally delayed notifying Plaintiffs and Class members about the Data Breach
4 for almost two months.

5 7. Ally had a statutory obligation under California law to protect the PII of their
6 customers yet failed to prevent, detect, or limit the scope of the Data Breach. More specifically,
7 Defendants, *inter alia*, failed to (a) test and monitor their website to adequately safeguard the security
8 of Plaintiffs' and Class member's usernames and passwords and (b) timely notify its customers of
9 the Data Breach and provide them with adequate protection measures.

10 8. Defendants concealed the programming code error, were negligent in safeguarding
11 customer data, and violated various California statutes, including the California Consumer Privacy
12 Act of 2018, CAL. CIV. CODE §§ 1798.100 *et seq.* ("CCPA"), the California Customer Records Act,
13 CAL. CIV. CODE §§ 1798.80 *et seq.* ("CCRA"), and the California Unfair Competition Law, CAL.
14 BUS. & PROF. CODE §§ 17200 *et seq.* ("UCL"). As a direct result of the data breach, Plaintiff Cornick,
15 Plaintiff Abbott, and the Class (defined herein) suffered damages, including (a) costs associated with
16 the detection and prevention of identity theft and unauthorized use of their personal information and
17 (b) the imminent and impending costs from future fraud and identity theft. Therefore, all Class
18 members suffered damages as a result of the Ally Data Breach. Finally, all Class members face the
19 continued risk of misuse of their personal information, which remains in Ally's possession and may
20 remain in unknown third party systems, and is subject to subsequent breaches so long as Defendants
21 fail to secure their systems.

22 PARTIES

23 9. Plaintiff Cornick is, and has been, at all times relevant hereto, a citizen of the State
24 of California residing in Salinas, California. Cornick has been a customer of Ally Bank since
25 September 25, 2013 and began using Ally's brokerage services on February 3, 2020. When signing
26 up for Ally's services, Cornick believed that Ally's website was secure. Since Cornick was notified
27 of the breach, Cornick has had to change his Ally bank password. Cornick received a Data Breach
28 Letter from Ally, dated June 11, 2021, which notified Cornick that because of a programming error

1 in its customer website, Ally breached the security of Cornick's username and password revealing
2 PII to unnamed third parties with whom Ally has business relationships. On information and belief,
3 Plaintiff Cornick believes his PII was exposed in the Ally Data Breach.

4 10. Plaintiff Abbott is, and has been, at all times relevant hereto, a citizen of the State of
5 California residing in Winton, California. Abbott has been an Ally customer since at least 2013.
6 When signing up for Ally's services, Abbott believed that Ally's website was secure. Specifically,
7 Plaintiff Abbott saw and relied on the same or substantially similar terms located in Ally's security
8 policies on Ally's webpage titled "How Our Security Approach Protects You"
9 (<https://www.ally.com/security/our-approach.html>). Additionally, Abbott was aware and relied on
10 Ally's privacy policies, which Ally has sent periodically to Abbott over the years, and took these
11 policies to mean that his PII and financials were protected. On information and belief, Plaintiff
12 Abbott believes his PII was exposed in the Ally Data Breach.

13 11. Defendant Ally Financial Inc. is a Delaware corporation with its corporate
14 headquarters located at 500 Woodward Avenue, Floor 10, Detroit, Michigan 48226. Ally Financial
15 is registered as a bank holding company under the Bank Holding Company Act and a financial
16 holding company under the Gramm-Leach-Bliley Act. Ally Financial Inc. describes itself as a
17 leading digital financial-services company that is customer-centric and relentlessly focused on
18 "Doing it Right." Ally prides itself as a trusted financial-services provider to its consumer,
19 commercial, and corporate customers.

20 12. Defendant Ally Bank is a subsidiary of Ally Financial Inc. Ally Bank is incorporated
21 under the laws of the state of Utah and maintains its headquarters at 200 West Civic Center Drive,
22 Sandy, Utah 84070. Ally Bank is a FDIC Member and Equal Housing Lender, and offers an array
23 of deposit, personal lending, and mortgage products and services. Ally Bank is one of the country's
24 largest branchless online-only banks with about 2.5 million banking customers and \$139 billion in
25 total deposits.

26 13. Defendants Does 1 through 50 are presently unknown to Cornick and Abbott.
27 Pursuant with CAL. CIV. PROC. CODE § 474, Cornick and Abbott are unaware of the true names and
28 capacities of these defendants and therefore, bring suit against these defendants under fictitious

1 names. Cornick and Abbott will seek to amend this Class Action Complaint and include these Doe
2 defendants' true names and capacities when they are ascertained. Each of the fictitiously named
3 defendants is responsible in some capacity for the conduct alleged and wrongs described herein.

4 5 **JURISDICTION AND VENUE**

6 14. This Court has jurisdiction over this action pursuant to CAL. CIV. PROC. CODE
7 § 410.10 because Defendants have sufficient minimum contacts with California and/or Defendants
8 otherwise purposely avail themselves of the markets of California. The acts at issue in this Class
9 Action Complaint occurred in California, Plaintiffs are both citizens of California, and Defendants
10 conduct substantial business, including the promotion and marketing of their services, in California.
11 Defendants also provide digital direct banking services and investment services to consumers
12 throughout California. These acts render the exercise of jurisdiction by this Court permissible under
13 traditional notions of fair play and substantial justice. This action is brought as a class action on
14 behalf Plaintiffs and Class members pursuant to CAL. CIV. PROC. CODE § 382.

15 15. Venue is proper in the County of Monterey pursuant to CAL. CIV. PROC. CODE § 395.5
16 because a substantial part of the events, acts, or omissions giving rise to the unlawful conduct alleged
17 herein occurred in this County.

18 **FACTUAL ALLEGATIONS**

19 **Ally Collects Sensitive Personal Information from Its Customers**

20 16. Ally is a leading digital financial-services company and one of the country's largest
21 branchless online-only banks, with approximately 2.5 million banking customers and \$139 billion
22 in total deposits. As part of the process to sign up for it online banking services, Ally requires its
23 customers to provide PII, including full legal names, street addresses, email addresses, telephone
24 numbers, dates of birth, social security numbers, and occupation information.

17. Ally is acutely aware that the customer information it stores is highly sensitive and highly valuable to third-party marketers, and identity thieves and other criminals. On its website, Ally describes its data security policies:²

How Our Security Approach Protects You

Your *security is one of Ally's top priorities*. For your protection, only people who need your information to do their jobs have access to the personal information you provide us. . .

* * *

Transport Layer Security (TLS) Encryption

We use the latest encryption technology to help protect your information : . .

* * *

Credential Confidentiality

We never share your usernames and passwords with anyone. . . .

(Emphasis added).

18. Additionally, on its "Security Center" webpage, Ally represents:³

Protection and Peace of Mind

Keeping your accounts and personal information secure is a *top priority* for us.

(Emphasis added).

19. Additionally, Ally's Privacy Policy states:⁴

Security Of Your Personal Information

We restrict access to the personal information obtained from our website to only those employees, agents and contractors who need it to do their jobs. We *maintain administrative, technical, and physical safeguards designed to protect your personal information. . . .*

(Emphasis added).

20. "Do It Right" is Ally's promise and purported philosophy.⁵ However, Ally's Breach violated the Company's own policies, their commitment to keep confidential Plaintiffs' and the Class

² <https://www.ally.com/security/our-approach.html> (last visited Oct. 26, 2021).

³ <https://www.ally.com/security/> (last visited Oct. 26, 2021).

⁴ <https://www.ally.com/privacy/> (last visited Oct. 26, 2021).

⁵ See, e.g., <https://www.ally.com/do-it-right/> (last visited Oct. 26, 2021);

members' personal and private information, including usernames and passwords secure, and the most basic standards and practices of data security.

21. Ally's policies demonstrate that it was well aware of the need for it to protect members' highly valuable PII. By collecting and storing such extensive and detailed data, Ally obligates itself to use every reasonable means available to protect this data from falling into the hands of third-parties and criminals.

The Ally Data Breach Exposed Ally's Customers' Valuable PII

22. Ally claims that they first detected the programming code error on April 12, 2021. This programming error resulted in Ally's customers' usernames and passwords being exposed to third parties with whom Ally has business relationships.

23. Yet, Ally did not notify its customers until two months later on June 11, 2021 when notification of this data breach was sent to Ally customers.

24. Ally's Data Breach Letter states:

During a routine update to our website, a programming code error occurred that inadvertently resulted in your username and password being exposed to third parties with whom we have business relationships.

* * *

Upon detecting the error on April 12, 2021, we immediately updated the programming code to ensure it no longer included username and password information.

25. Cornick has been forced to devote time to deal with the consequences of the Data Breach, including changing his password, exploring credit monitoring and identity theft protection, and self-monitoring his accounts.

26. Ally customers have voiced concerns regarding certain statements omitted in Ally's Data Breach Letter. For instance, Ally customers are questioning:⁶

- why did it take Ally 60 days to notify customers;
- the number and identities of the third parties that received Ally customers' username and password information;

<https://www.ally.com/about/company-structure/> (last visited Oct. 26, 2021).

⁶ <https://www.youtube.com/watch?v=KQRi-3ifQTs> (last visited Oct. 26, 2021).

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- what the third parties are now doing to secure information that they now have from Ally's customers;
- how long was the programming code error active on Ally's website and revealing customers' usernames and passwords to third parties prior to Ally detecting the error;
- whether the programming error revealed usernames and passwords to the third parties in unencrypted clear text;
- how the third parties used or monetized information about Ally customers accessed via the Ally website, including usernames and passwords;
- what steps the third parties are taking to secure the PII captured from Ally customers; and
- how will Ally verify that the data captured by the third parties is actually deleted.

27. Additionally, on Ally's website, the Company states:⁷

Managing Passwords and Verification

* * *

Protect your passwords

Be cautious about sharing your usernames and passwords with people, companies and services – especially when your personal information and money are involved. **Never store your passwords in a note, memo or file** on your computer or mobile device. If you do need to save your passwords, use a more secure location like a password manager app.

(Emphasis in original).

28. Ally also recommends:⁸

Using Social Media and Sharing Information Safely

* * *

Think carefully before you provide personal details on social networks like Facebook, Twitter and LinkedIn. **Never share information that financial institutions might use to identify you** like your Social Security number (including the last 4 digits), date of birth, personal phone number, home address, where you were born or schools you attended. Criminals might use this information to gain access to your account or use it to open accounts in your name.

(Emphasis in original).

⁷ <https://www.ally.com/security/password-security-tips.html> (last visited Oct. 26, 2021).

⁸ <https://www.ally.com/security/social-media-safety.html> (last visited Oct. 26, 2021).

29. Another one of Ally's tips includes:⁹

Offline Precautions

* * *

Always shred documents that contain personal information instead of placing them in your trashcan or recycling bin. . . . **Criminals look for personal information in trashcans and use it to access your accounts or open new accounts using your identity.** . . .

(Emphasis in original).

30. Despite the known risk and Ally's repeated warnings to Plaintiffs and Class members that usernames and passwords should be safeguarded, Ally did not follow its own policies. Ally knew the risks of data breach, yet failed to take reasonable steps to adequately protect their systems. For instance, on January 17, 2014, Ally warned of data breaches at other companies and explained that they "take data breaches very seriously".¹⁰

At Ally Bank, we want you to know *we take data breaches very seriously and are committing to protecting your personal and financial information.* We actively monitor our customer accounts

(Emphasis added). Additionally, on July 5, 2019, Ally posted a checklist that advised Ally's customers of how to keep their information safe online:¹¹

Unfortunately, today's tech-savvy cyber criminals are experts at nabbing your *login credentials* to access your bank, credit, card, or social media accounts. Scary...

(Emphasis added).

31. Ally's negligence in safeguarding is particularly egregious in light of its repeated warnings to customers about protecting and securing their data, as well as Ally's knowledge of the consequences from other companies' data breaches. It is also well known that PII, especially that possessed by a financial company, is a frequent target of hackers and highly sought after.

32. State lawmakers have even voiced their disapproval of the Ally Bank Data Breach.¹²

⁹ <https://www.ally.com/security/how-to-protect-yourself-offline.html> (last visited Oct. 26, 2021).

¹⁰ <https://www.ally.com/do-it-right/trends/ally-bank-data-breach-protection-frequently-asked-questions/> (last visited Oct. 26, 2021).

¹¹ <https://www.ally.com/do-it-right/trends/the-checklist-that-can-help-keep-cybercriminals-hands-off-your-money/> (last visited Oct. 26, 2021).

¹² See <https://patch.com/connecticut/milford/lawmakers-voice-disapproval-following-ally-bank-password-leak> (last visited Oct. 26, 2021).

Customer security should be foremost on business' minds, especially essential services like banks that offer services directly impacting customers' lives. For Ally Bank to not only leak customer information to marketing partners but take two months to even notify customers is a betrayal of those customers' trust. . . . They even refuse to provide information on where and who the data was leaked to, vital information that customers need to know to know how serious this issue is and protect themselves from potential financial harm. It's an abdication of their responsibilities.

* * *

The decisions made by Ally Bank in this situation seem to have been made by committee and without urgency – when customers may face serious personal harm because of them. . . . When phishing and cyber vulnerability continue to grow as threats in the modern day, it's a serious lapse of judgment for Ally to slow-walk such a precarious situation.

33. The Ally Data Breach has exposed its customers' PII, leaving Plaintiffs and Class Members at risk to identity theft. The consequences of Ally's failure to keep Plaintiffs and Class members' PII secure are severe.

34. Ally's customer usernames and passwords expose the following:

- The Customer's Full Legal Name;
- Email Addresses;
- Account Numbers;
- Account Balances;
- Checking, savings, and investment account statements of all transactions;
- Images of all checks;
- Names and dates of birth of account beneficiaries;
- Employment information;
- Linked bank account information;
- Tax forms with last four digits of Social Security Numbers; and
- Zelle account information and transaction history.

35. Ally's Data Breach Letter fails to provide its customers with sufficient detail about what PII was accessed and by whom and fails to warn customers that some data involved in the Data Breach may still be in third parties' systems. Without this critical information, Cornick, Abbott, and Class members cannot adequately protect themselves against identity theft.

36. Ally has acknowledged that the Data Breach harmed Plaintiffs and the Class by putting them at a heightened risk of identity theft when, "as a precautionary measure to help

1 safeguard” Plaintiffs’ and the Class’s information, Ally offered 24 months of credit monitoring by
 2 Equifax. However, Equifax does not fully protect Plaintiffs from identity theft and 24 months is
 3 certainly not a sufficient duration of credit monitoring given the PII that was compromised in the
 4 Data Breach.

5 **Cornick, Abbott, and the Class Suffered Actual and Impending Injuries as a Result of the**
 6 **Data Breach**

7 37. Ally’s negligence concerning its privacy and security systems, including its
 8 programming, maintenance, and monitoring of Ally’s website, has left Plaintiffs and Class Members
 9 exposed to identity theft. By failing to implement adequate and reasonable security measures to
 10 protect usernames and passwords, and other PII, Ally has caused Plaintiffs and the Class significant
 11 damages.

12 38. The Federal Trade Commission (“FTC”) defines identify theft as “when someone
 13 uses your personal or financial information without your permission.”¹³

14 39. According to the Bureau of Justice Statistics (“BJS”), it takes an average of about 7
 15 hours for each victim of identity theft to resolve the issue.¹⁴ Thus, reimbursing a consumer for
 16 financial loss due to fraud does not make the individual whole again.

17 40. Additionally, identity thieves can retain the stolen information for years. At any
 18 moment, the thief can take control of a victim’s identity, resulting in thousands of dollars in losses
 19 and lost productivity.¹⁵

20 41. Cornick and Abbott have suffered imminent and impending injury arising from the
 21 heightened threat of identity theft and other fraudulent acts resulting from their lost PII.

22 42. As a result of Defendants’ unreasonable security practices, third parties and
 23 potentially identity thieves now possess the sensitive PII of Cornick, Abbott, and the Class.

24 ¹³ https://www.consumer.ftc.gov/articles/what-know-about-identity-theft#what_is (last visited Oct.
 25 26, 2021); *See also* 17 C.F.R §248.201 (2013) (“Identity theft means a fraud committed or
 26 attempted using the identifying information of another person without authority.”); *id.*
 (“Identifying information means any name or number that may be used, alone or in conjunction
 with any other information, to identify a specific person.”).

27 ¹⁴ Victims of Identity Theft, 2014 (Nov. 30, 2017), <https://bjs.ojp.gov/content/pub/pdf/vit14.pdf>.

28 ¹⁵ <https://www.lifelock.com/learn-identity-theft-resources-lasting-effects-of-identity-theft.html>
 (last visited Oct. 26, 2021).

1 43. The PII of Cornick, Abbott, and Class members is private and sensitive in nature and
2 was left inadequately protected by Ally.

3 44. Cornick and Abbott suffered actual injury in the form of damages to and diminution
4 in the value of their PII—a form of intangible property that Cornick and Abbott entrusted to Ally for
5 the purpose of facilitating their Ally accounts, which were compromised because of the Data Breach.

6 45. Cornick and Abbott suffered lost time, annoyance, interference, and inconvenience
7 because of the Data Breach and have increased concerns for the loss of their privacy.

8 46. Cornick, Abbott, and Class members have been damaged by the Ally breach.
9 Cornick, Abbott, and Class members have had the security of their accounts compromised and have
10 had to carefully review the records of all their financial dealings for suspicious activity. Cornick,
11 Abbott, and Class members now face years of constant surveillance of their financial and personal
12 records, and have to monitor and mitigate the heightened threat of identity threat and other fraudulent
13 acts.

14 47. Cornick and Abbott have a continuing interest in ensuring that their PII which, upon
15 information and belief, remains stored in Ally's possession, is protected and safeguarded from future
16 breaches.

17 48. At all relevant times, Ally knew, or reasonably should have known, of the importance
18 of safeguarding PII and of the foreseeable consequences that would occur, including, specifically,
19 the significant costs that would be imposed on individuals as a result of a breach.

20 49. Ally's approach to maintaining the privacy and security of the PII of Cornick, Abbott,
21 and Class members was reckless, or at the very least, grossly negligent. The injuries to Cornick,
22 Abbott, and Class members was directly and proximately caused by Ally's failure to implement or
23 maintain adequate data security measures for its customers.

24 50. Ally's Data Breach Letter to its customers failed to provide adequate remediation and
25 compensation for Ally's wrongful conduct and actions described herein. Therein, Ally only offered
26 affected customers two years of credit monitoring through Equifax. The offered service is inadequate
27 to protect Cornick, Abbott, and Class members from the future threats they face, particularly given
28 the PII at issue here.

CLASS ACTION ALLEGATIONS

51. Cornick and Abbott bring this action on behalf of themselves and all other similarly situated persons as a member of a proposed Class defined as follows:

All California citizens whose PII was compromised in the data breach announced by Ally Bank on or about June 11, 2021.

52. Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class are any judges, justices, or judicial officers presiding over this matter and the members of their immediate families and judicial staff.

53. This action is brought and may be properly maintained as a class action pursuant to CAL. CIV. PROC. CODE § 382 and the procedural provisions of Rule 23 of the Federal Rules of Civil Procedures as adopted for use in California. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these rules.

54. **Numerosity.** The Class is so numerous that the individual joinder of all members is impracticable, and the disposition of the claims of all Class members in a single action will provide substantial benefits to the parties and the Court. Cornick and Abbott, on information and belief, allege that the Class includes at least tens of thousands of persons. Ally Bank has at least 2.45 million deposit customers and 503,000 brokerage accounts.

55. **Commonality.** Common legal and factual questions exist that predominate over any questions affecting only individual members. These common questions, which do not vary among Class members and which may be determined without reference to any Class member's individual circumstances, include, but are not limited to:

a. Whether Defendants owed a duty to Cornick, Abbott and the Class to adequately protect their personal information;

b. Whether Defendants owed a duty to provide timely and accurate notice of the data breach to Cornick, Abbott, and the Class;

1 c. Whether Defendants were negligent in monitoring the operation and
2 programming of their website such that unencrypted clear text customer usernames and passwords
3 were revealed to third parties;

4 d. How long the programming error that revealed usernames and passwords
5 went undetected by Defendants;

6 e. The extent of dissemination of usernames and passwords revealed due to the
7 website programming error;

8 f. Whether Defendants' security practices were adequate and reasonable to
9 protect the Class's PII in light of industry standard practices;

10 g. The PII of Cornick, Abbott, and the Class accessible with their usernames and
11 passwords;

12 h. Whether Defendants' conduct, including their failure to take reasonable
13 security precautions, resulted in the loss of tens of thousands of consumers' PII;

14 i. Whether Defendants failed to timely and sufficiently notify consumers of the
15 breach of their PII in violation of the CCRA, CAL. CIV. CODE §§ 1798.80 *et seq.*;

16 j. Whether the Defendants violated the CCPA, CAL. CIV. CODE § 1798.100, *et*
17 *seq.* by subjecting consumers' nonencrypted PII to unauthorized access and exfiltration, theft, or
18 disclosure as a result of their violation of their duties to implement and maintain reasonable security
19 procedures and practices appropriate to the nature and protection of that information;

20 k. Whether Defendants engaged in unfair, unlawful, or deceptive business
21 practices in violation of the UCL, CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;

22 l. Whether Cornick, Abbott, and the Class have been damaged by the wrongs
23 alleged and are entitled to compensatory or punitive damages; and

24 m. Whether Cornick, Abbott, and the Class are entitled injunctive or other
25 equitable relief, including restitution.

26 56. Each of these common questions is also susceptible to a common answer that is
27 capable of class wide resolution and will resolve an issue central to the validity of the claims.
28

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1 57. **Typicality.** Cornick's and Abbott's claims are typical of the Class members' claims.
2 Cornick and Abbott, like all proposed members of the Class, had their PII compromised in the data
3 breach. Defendants' uniformly unlawful course of conduct injured Cornick and Abbott and the Class
4 members from the same wrongful acts, practices, and omissions. Likewise, Cornick and Abbott and
5 other Class members must prove the same facts in order to establish the same claims.

6 58. **Adequacy of Representation.** Cornick and Abbott are adequate representatives of
7 the Class because they are members of the Class and their interests do not conflict with the interests
8 of the Class. Cornick and Abbott have retained counsel competent and experienced in complex
9 litigation and consumer protection class action matters such as this action, and Plaintiffs and their
10 counsel intend to vigorously prosecute this action for the Class's benefit and have the resources to
11 do so. Plaintiffs and their counsel have no interests adverse to those of the other members of the
12 Class.

13 59. **Predominance and Superiority.** A class action is superior to all other available
14 methods for the fair and efficient adjudication of this controversy because individual litigation of
15 each Class member's claim is impracticable. The damages, harm, and losses suffered by the
16 individual members of the Class will likely be small relative to the burden and expense of individual
17 prosecution of the complex litigation necessitated by Defendants' wrongful conduct. Even if each
18 Class member could afford individual litigation, the Court system could not. It would be unduly
19 burdensome if thousands of individual cases proceeded. Individual litigation also presents the
20 potential for inconsistent or contradictory judgments, the prospect of a race to the courthouse, and
21 the risk of an inequitable allocation of recovery among those individuals with equally meritorious
22 claims. Individual litigation would increase the expense and delay to all parties and the Courts
23 because it requires individual resolution of common legal and factual questions. By contrast, the
24 class action device presents far fewer management difficulties and provides the benefit of a single
25 adjudication, economies of scale, and comprehensive supervision by a single court.

26 60. As a result of the foregoing, class treatment is appropriate.
27
28

FIRST CAUSE OF ACTION
Negligence
(Against All Defendants and Does 1-50)

61. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

62. Defendants required Cornick, Abbott and members of the Class to create usernames and passwords and to submit non-public financial and other PII to open, use, and maintain banking and brokerage accounts at Ally.

63. Defendants were entrusted with collecting and storing the PII of Cornick, Abbott, and Class members. By accepting Cornick's, Abbott's, and Class members' nonpublic PII, and using it for commercial gain, Defendants assumed a duty requiring them to use reasonable and, at the very least, industry-standard care to secure such information against theft and misuse. This duty included, *inter alia*, securing and safeguarding Plaintiffs' and Class members' PII to prevent unauthorized disclosure and to safeguard the privacy of that private information. Defendants' duties also included taking other reasonable security measures, like implementing procedures and practices to secure the PII from inadvertent unauthorized disclosure.

64. Defendants also assumed a duty to timely disclose to Cornick, Abbott, and the Class that their PII had been or was reasonably believed to have been compromised. Timely disclosure was imperative so that Cornick, Abbott, and the Class could report identify theft to the relevant agencies and legal authorities, monitor their credit reports for identity fraud, undertake appropriate measures to avoid unauthorized charges on their debit and credit cards, and change or cancel their debit and credit card PINs to mitigate the risks of fraud.

65. Defendants knew, or should have known, of the risks inherent in collecting and storing the PII of Cornick, Abbott, and the Class. If companies like Ally are not held responsible for failing to take reasonable security measures to protect their customers' PII, these customers will not be protected against future data breaches. Only Ally was in a position to program its website and to

1 ensure that its website was safe for customers to use such that their PII entrusted with Ally was
2 secure.

3 66. Ally breached its duty to exercise reasonable care in protecting the PII of Cornick,
4 Abbott, and the Class by failing to use reasonable measures to protect Cornick's, Abbott's, and Class
5 members' PII.

6 67. Specifically, the negligent acts and omissions committed by Ally include, but are not
7 limited to, the following: (a) programming its website in a manner that revealed rather than
8 safeguarded customers' PII, (b) failing to adequately monitor its computer systems and the operation
9 of their website; (c) failing to timely discover the programming errors; (d) failing to encrypt
10 usernames and passwords; and (e) sharing customers' usernames and passwords with persons who
11 did not need such private information to do their jobs.

12 68. Ally further breached its duty of care by failing to promptly and completely inform
13 Cornick, Abbott, and the Class that their PII had been compromised, even though Ally admits it was
14 aware of the programming error as early as April 12, 2021.

15 69. Ally acted with wanton disregard for the security of Cornick, Abbott, and the Class
16 members' PII.

17 70. As a direct and proximate result of Defendants' failure to take reasonable care and
18 use, at a minimum, industry-standard measures to protect the PII in their care, Cornick, Abbott, and
19 the Class had their PII stolen, causing direct and measurable monetary losses, threat of future losses,
20 identity theft, and the threat of future identity theft. But for Defendants' actions and breaches of their
21 duties, Cornick, Abbott, and the Class members' information would be secure and they would not
22 have been compromised. It was reasonably foreseeable that Defendants' conduct as alleged herein
23 would harm Cornick, Abbott, and the Class. Defendants knew or should have known that their failure
24 to adequately protect user information would cause harm to Cornick, Abbott, and the Class.

25 71. Cornick, Abbott, and the Class did not contribute to Defendants' misconduct.

26 72. Cornick, Abbott, and the Class have suffered injury in fact in an amount to be proven
27 at trial, including monetary damages, and will continue to be injured and incur damages as a direct
28 result of Defendants' negligence. This includes identity theft, damage to credit scores and reports,

1 time and expenses resolving fraud claims, and the costs of purchasing credit monitoring services not
2 otherwise necessary.

3 **SECOND CAUSE OF ACTION**
4 **Negligence *Per Se***
5 **(Against All Defendants and Does 1-50)**

6 73. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference
7 all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully
8 set forth herein.

9 74. Pursuant to the California Consumer Privacy Act of 2018, CAL. CIV. CODE §§
10 1798.100 *et seq.*, Defendants owed a duty to Cornick, Abbott, and Class members to implement and
11 maintain reasonable security procedures and practices to safeguard their PII.

12 75. Defendants violated the California Consumer Privacy Act of 2018 by failing to
13 provide fair, reasonable, or adequate computer systems and data security practices to safeguard the
14 PII of Cornick, Abbott, and Class members.

15 76. Defendants' failure to comply with the California Consumer Privacy Act of 2018
16 constitutes negligence *per se*.

17 77. But for Defendants' wrongful and negligent breach of their duties owed to Cornick,
18 Abbott, and Class members, they would not have been injured.

19 78. The injury and harm suffered by Cornick, Abbott, and Class members was the
20 reasonably foreseeable result of Defendants' breaches of their duties. Defendants knew or should
21 have known that they were failing to meet their duties, and that Defendants' breaches would cause
22 Cornick, Abbott, and Class members to experience the foreseeable harms associated with the
23 exposure of their PII.

24 79. As a direct and proximate result of Defendants' negligent conduct, Cornick, Abbott,
25 and Class members have suffered injury and are entitled to damages in an amount to be proven at
26 trial.

THIRD CAUSE OF ACTION
Violation of the CCRA, CAL. CIV. CODE §§ 1798.80 *et seq.*
(Against All Defendants and Does 1-50)

80. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

81. Businesses that own or license computerized data that includes personal information are required to notify California residents when their PII has been acquired (or has reasonably believed to have been acquired) by unauthorized persons in a data security breach “in the most expedient time possible and without unreasonable delay.” CAL. CIV. CODE § 1798.82. Among other requirements, the security breach notification must include “the types of personal information that were or are reasonably believed to have been the subject of a breach.” CAL. CIV. CODE § 1798.82.

82. Defendants are businesses that own or license computerized data that includes personal information as defined by CAL. CIV. CODE § 1798.82.

83. Cornick’s, Abbott’s, and Class members’ PII includes personal information such as their usernames and passwords, and is thereby covered by CAL. CIV. CODE §§ 1798.80(e) and 1798.82.

84. The Ally Data Breach constituted a breach of Defendants’ security systems.

85. Because Ally reasonably believed that Cornick’s, Abbott’s and Class members’ PII was acquired by unauthorized persons during the Ally Data Breach, Ally had an obligation to disclose the data breach in a timely and accurate fashion as mandated by CAL. CIV. CODE § 1798.82.

86. Ally unreasonably delayed informing Cornick, Abbott, and Class members about the breach of security of their PII after they knew the breach had occurred.

87. Upon information and belief, no law enforcement agency instructed Ally that notification to Class members would impede an investigation.

88. Thus, by failing to disclose the Ally Data Breach in a timely and accurate manner, the Ally Defendants also violated CAL. CIV. CODE § 1798.82.

89. Pursuant to CAL. CIV. CODE § 1798.84, “[a]ny waiver of a provision of this title is contrary to public policy and is void and unenforceable,” “[a]ny customer injured by a violation of this title may institute a civil action to recover damages,” and “[a]ny business that violates, proposed to violate, or has violated this title may be enjoined.”

90. As a direct and proximate result of Defendants’ violation of CAL. CIV. CODE § 1798.82, Cornick, Abbott, and Class members were (and continue to be) injured and suffered (and will continue to suffer) damages, as described above.

91. Cornick, Abbott, and Class members seek relief under CAL. CIV. CODE § 1798.84, including, but not limited to, actual damages, any applicable statutory damages, and equitable and injunctive relief.

FOURTH CAUSE OF ACTION
Violation of the CCPA, CAL. CIV. CODE §§ 1798.100 *et seq.*
(Against All Defendants and Does 1-50)

92. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

93. The CCPA was enacted to protect consumers’ PII from collection and use by businesses without appropriate notice and consent.

94. At all times during Cornick, Abbott and Class members’ interactions with Ally, Defendants were aware of the confidential and sensitive nature of Plaintiffs’ and Class members’ PII that they provided to Defendants.

95. Cornick, Abbott, and Class members provided Ally “personal information” within the meaning of CAL. CIV. CODE § 1798.140(v).

96. Through the conduct and actions complained of herein, Defendants violated the CCPA by subjecting Plaintiffs and Class members’ nonencrypted PII to unauthorized access and exfiltration, theft, or disclosure as a result of Defendants’ violation of their duties to implement and maintain reasonable security procedures and practices appropriate to the nature and protection of that information. Defendants thereby violated CAL. CIV. CODE § 1798.150(a).

1 97. Cornick, Abbott, and Class members are “consumers” within the meaning of CAL.
2 CIV. CODE § 1798.140(g).

3 98. Defendants are “businesses” within the meaning of CAL. CIV. CODE § 1798.140(c).

4 99. Pursuant to CAL. CIV. CODE § 1798.150(b), prior to the filing of this Class Action
5 Complaint, on November 2, 2021, counsel for Cornick and Abbott served Defendants with notice of
6 these CCPA violations by certified mail, return receipt requested.

7 100. On behalf of Class members, Cornick and Abbott seek injunctive relief in the form
8 of an order enjoining Defendants from continuing to violate the CCPA. Unless and until Defendants
9 are restrained by order of the Court, Defendants’ wrongful conduct will continue to cause irreparable
10 injury to Cornick, Abbott, and the Class.

11 101. Notwithstanding any other statements in this Complaint, and in accordance with CAL.
12 CIV. CODE § 1798.150(b), Cornick and Abbott do not seek monetary damages (including statutory
13 damages) in connection with their CCPA claim—and will not do so—unless Defendants fail to
14 rectify or cure the CCPA violations described herein within 30 days of Plaintiffs’ CCPA notice.

15 102. If Defendants fail to rectify or otherwise cure the CCPA violations described herein,
16 individually and on behalf of the Class, Cornick and Abbott reserve their right to amend this
17 complaint to seek actual, punitive, and statutory damages, restitution, and any other relief the Court
18 deems proper as a result of Defendants’ CCPA violations pursuant to CAL. CIV. CODE § 1798.150(a).

19 **FIFTH CAUSE OF ACTION**
20 **Violation of the UCL, CAL. BUS. & PROF. CODE §§ 17200, *et seq.***
21 **(Against All Defendants and Does 1-50)**

22 103. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference
23 all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully
24 set forth herein.

25 104. Cornick and Abbott have standing to pursue this claim as they have suffered injury
26 in fact and have lost money or property as a result of Defendants’ actions as set forth above. All
27 Class members have been injured by the significant costs of protecting themselves from identity
28 theft.

105. Defendants' actions as alleged in this Class Action Complaint constitute an "unlawful" practice as encompassed by CAL. BUS. & PROF. CODE §§ 17200 *et seq.* because Defendants' actions: (a) violated the Gramm-Leach-Bliley Act ("GLBA"), 15 U.S.C. §§ 6801 *et seq.*, (b) violated the California Financial Information Privacy Act ("CalFIPA"), CAL. FIN. CODE §§ 4050 *et seq.*, (c) CCRA, CAL. CIV. CODE §§ 1798.80 *et seq.*, (d) violated the CCPA, CAL. CIV. CODE §§ 1798.100 *et seq.*, and (e) constituted negligence. Ally's actions were additionally "unlawful" because they (a) violated their implied contract to adequately protect their customers' sensitive PII, and (b) violated CAL. BUS. & PROF. CODE § 22576, which prohibits website operators that collect PII from failing to comply with posted privacy policies (i) knowingly and willfully, or (ii) negligently and materially.

106. Ally's actions as alleged in this Class Action Complaint constitute a "fraudulent" practice as encompassed by CAL. BUS. & PROF. CODE §§ 17200 *et seq.*, because Ally's failure to adequately disclose their lax security practices was likely to deceive consumers, including Cornick, Abbott, and the Class. A reasonable consumer who provides extraordinarily sensitive PII to a financial company would expect the company to provide adequate, industry-standard security to protect that information. Ally's failure to disclose these inadequate security practices, especially in light of their commitments to safeguard user data as contained in their privacy policies, constitutes a material omission in violation of the UCL.

107. Ally's actions as alleged in this Class Action Complaint constitute an "unfair" practice as encompassed by CAL. BUS. & PROF. CODE §§ 17200 *et seq.*, because they offend established public policy and are immoral, unethical, oppressive, unscrupulous, and substantially injurious. The harm caused by Defendants' wrongful conduct outweighs any utility of such conduct and has caused—and will continue to cause—substantial injury to the Class. There were ample reasonably available alternatives that would have furthered Defendants' legitimate business practices, including undertaking appropriate safeguards and data security practices and policies consistent with industry standards to protect user data. Defendants also unreasonably delayed notifying Cornick, Abbott, and Class members regarding the unauthorized release and disclosure of the PII. Additionally, Defendants' conduct was "unfair" because it violated the legislatively declared

1 policies reflected by the California's strong data-breach and online-privacy laws, including the
2 CCRA, CAL. CIV. CODE §§ 1798.80 *et seq.*

3 108. As a result of Defendants' unlawful, unfair, and fraudulent conduct, Cornick, Abbott,
4 and the Class were damaged. Class members have been injured by the significant costs of protecting
5 themselves from identity theft and face ongoing and impending damages related to theft of their PII.

6 109. Defendants' wrongful practices constitute a continuing course of unfair competition
7 because, on information and belief, Defendants have failed to remedy the lax security practices or
8 even fully notify all affected Class members. Cornick, Abbott, and the Class seek equitable relief
9 pursuant to CAL. BUS. & PROF. CODE § 17203 to end Defendants' wrongful practices and require
10 Defendants to maintain adequate and reasonable security measures to protect the PII of Cornick,
11 Abbott, and the Class.

12 110. Cornick, Abbott, and the Class also seek an order requiring Defendants to make full
13 restitution of all monies they have wrongfully obtained from Class members, together with all other
14 relief permitted under CAL. BUS. & PROF. CODE §§ 17200 *et seq.*

15 **SIXTH CAUSE OF ACTION**
16 **Breach of Implied Contract**
17 **(Against All Defendants and Does 1-50)**

18 111. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference
19 all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully
20 set forth herein.

21 112. As part of the process to sign up for Ally's services, Cornick, Abbott, and the Class
22 were required to disclose their sensitive PII to Ally to obtain financial services. As a result, Cornick,
23 Abbott, and the Class entered into an implied contract with the Ally under which Ally agreed to
24 take reasonable measures to safeguard and protect such information and to timely and accurately
25 notify Cornick, Abbott, and the Class if their data had been breached or compromised.

26 113. As part of its regular business practices, Ally solicited and invited prospective
27 customers to provide their PII through Ally's website. These Class members accepted Ally's offers
28 and provided their PII to Ally. In entering such implied contracts, Plaintiffs and members of the

Class assumed that Ally would “Do it Right” and undertake appropriate safeguards and data security practices and policies consistent with industry standard, and that Ally would use part of the fees paid by Plaintiffs and the members of the Class to pay for adequate and reasonable data security practices. This implied contract includes the terms of Ally’s privacy policy¹⁶ and Ally’s security approach.¹⁷

114. Cornick, Abbott, and members of the Class would not have used Ally’s website or entrusted their PII with Ally in the absence of the implied contract between them and Ally, by which Ally would keep their usernames, passwords, and other PII secure.

115. Cornick, Abbott, and the Class fully performed their obligations under the implied contracts with Ally.

116. By failing to adequately safeguard and protect Cornick’s, Abbott’s, and Class members’ PII and failing to timely and accurately notify Cornick, Abbott, and the Class of the Ally data breach, Ally violated the express terms of their privacy and security policies.

117. By breaching their implied contracts with Cornick, Abbott, and the Class, Ally is not entitled to retain the benefits they received.

118. As a direct and proximate result of Ally’s breach of the implied contracts, Cornick, Abbott, and Class members have suffered actual losses and damages. These losses and damages include, *inter alia*, (a) a substantially increased risk of identity theft, (b) the improper disclosure of their PII to unauthorized individuals, and (c) lost time and money incurred to mitigate and remediate the effects of the Ally Data Breach.

SEVENTH CAUSE OF ACTION
Invasion of Privacy
(Against All Defendants and Does 1-50)

119. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

¹⁶ See <https://www.ally.com/privacy/> (last visited Oct. 26, 2021).

¹⁷ See <https://www.ally.com/security/our-approach.html> (last visited Oct. 26, 2021).

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120. Cornick, Abbott, and the Class had a reasonable expectation of privacy in the PII that Ally disclosed without authorization.

121. By failing to keep Cornick, Abbott, and Class members' PII safe and disclosing PII to unauthorized parties for unauthorized use, Ally unlawfully invaded Cornick's, Abbott's, and Class members' privacy by, *inter alia*: (a) intruding into their private affairs in a manner that would be highly offensive to a reasonable person, (b) invading their privacy by improperly using their PII properly obtained for a specific purpose for other purposes, or disclosing it to third parties, (c) failing to adequately secure their PII from disclosure to unauthorized persons, and (d) enabling the disclosure of their PII without consent.

122. Ally knew, or acted with reckless disregard that, a reasonable person in the position of Cornick, Abbott, and Class members would consider Ally's actions and conduct highly offensive.

123. Ally invaded Cornick's, Abbott's, and Class members' right to privacy and intruded into their private affairs by disclosing their PII to unauthorized persons without their informed, voluntary, affirmative, or clear consent.

124. As a proximate result of such unauthorized disclosures, Cornick's, Abbott's and Class members' reasonable expectations of privacy in their PII was unduly frustrated and thwarted. Ally's conduct and actions constitute a serious invasion of Cornick's, Abbott's and Class members' protected privacy interests.

125. In failing to protect Cornick's, Abbott's and Class members' PII, and in disclosing their information without authorization, Ally acted with malice and oppression and in conscious disregard of their rights to have such information kept confidential and private.

126. Cornick, Abbott, and the Class seek injunctive relief, restitution (plus interest), and all other available damages and relief.

PRAYER FOR RELIEF

WHEREFORE, Cornick and Abbott, on behalf of themselves and the Class, request that the Court order the following relief and enter judgment against Defendants as follows:

- A. an Order certifying the proposed Class under CAL. CIV. PROC. CODE § 382 and appointing Cornick and Abbott and their counsel to represent the Class;

- 1 B. an Order declaring that Defendants engaged in the illegal conduct alleged herein in
 2 violation of the CCRA (CAL. CIV. CODE §§ 1798.80 *et seq.*), CCPA (CAL. CIV. CODE
 3 §§ 1798.100 *et seq.*), and California's UCL (CAL. BUS. & PROF. CODE §§ 17200 *et*
 4 *seq.*), and constitutes negligence, negligence *per se*, invasion of privacy, and breach
 5 of implied contract;
 6 C. an Order that Defendants be permanently enjoined from their improper activities and
 7 conduct described herein;
 8 D. a Judgment awarding Cornick, Abbott, and the Class restitution, damages (including
 9 statutory and punitive damages where applicable), and disgorgement in amounts
 10 according to proof at trial, including an award of pre- and post- judgment interest, to
 11 the extent allowable;
 12 E. an Order awarding Cornick, Abbott, and the Class their reasonable litigation
 13 expenses, costs, and attorneys' fees;
 14 F. an Order awarding such other injunctive and declaratory relief as is necessary to
 15 protect the interests of Cornick, Abbott, and the Class; and
 16 G. an Order awarding such other and further relief as the Court may deem necessary,
 17 just, and proper.

18 DEMAND FOR JURY TRIAL

19 Cornick and Abbott demand a trial by jury for all claims and issues so triable.

20
 21 Dated: November 2, 2021

Schubert Jonckheer & Kolbe LLP

/s/ Alexandra K. Green

Robert C. Schubert (No. 62684)

Noah M. Schubert (No. 278696)

Alexandra K. Green (No. 333271)

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**Service of Process
Transmittal**

11/08/2021

CT Log Number 540550460

TO: Cindy Karaban
Ally Financial Inc.
500 Woodward Ave Fl 9
Detroit, MI 48226-3423

RE: Process Served in Michigan

FOR: Ally Financial Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Re: Bill Cornick and David Abbott // To: Ally Financial Inc.
DOCUMENT(S) SERVED:	Notice
COURT/AGENCY:	None Specified Case # None Specified
NATURE OF ACTION:	Letter of Intent - Threatening Litigation
ON WHOM PROCESS WAS SERVED:	The Corporation Company, Plymouth, MI
DATE AND HOUR OF SERVICE:	By Certified Mail on 11/08/2021 postmarked: "Not Post Marked"
JURISDICTION SERVED :	Michigan
APPEARANCE OR ANSWER DUE:	Within 30 days after service
ATTORNEY(S) / SENDER(S):	SCHUBERT JONCKHEER & KOLBE LLP 3Embarcadero Center Suite 1650 San Francisco, CA 94111
ACTION ITEMS:	CT has retained the current log, Retain Date: 11/09/2021, Expected Purge Date: 11/14/2021 Image SOP
REGISTERED AGENT ADDRESS:	The Corporation Company 40600 Ann Arbor Road E Suite 201 Plymouth, MI 48170 800-448-5350 MajorAccountTeam1@wolterskluwer.com

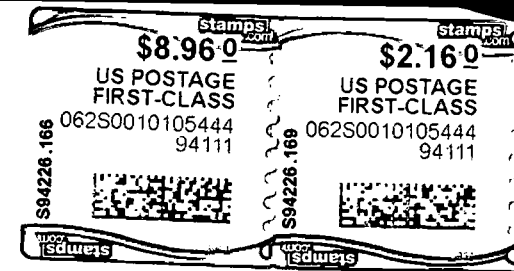
The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

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7017 0530 0000 3570 1922



Ally Financial Inc.
c/o The Corporation Company
40600 Ann Arbor Road East, Suite 201
Plymouth, MI 48170

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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 11/2/2021 5:16 PM
By: Rowena Esquerra, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY**

BILL CORNICK and DAVID ABBOTT,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

ALLY BANK, ALLY FINANCIAL INC., and
DOES 1-50,

Defendants.

Case No. 21CV003506

Class Action Complaint

Demand for Jury Trial

Class Action Complaint

1 Upon personal knowledge as to his own acts, and based upon their own investigation, the
2 investigation of counsel, and information and belief as to all other matters, Plaintiffs Bill Cornick
3 and David Abbott, on behalf of themselves and all others similarly situated, allege as follows:

4 SUMMARY OF THE ACTION

5 1. This is a class action brought on behalf of all California citizens whose personally
6 identifiable information ("PII") was compromised as a direct result of Ally Bank's and Ally
7 Financial Inc.'s (collectively, "Ally" or "Defendants") failure to adequately safeguard Plaintiffs' PII
8 and notify Plaintiffs of the Ally Data Breach. Cornick and Abbott were harmed by Ally's
9 unauthorized disclosure that exposed Ally customers' account usernames, passwords, and other PII
10 to unnamed third parties (the "Data Breach" or "Breach").

11 2. On June 11, 2021, Ally notified customers through a data breach notification letter
12 (the "Data Breach Letter") that a programming code error associated with Ally's website
13 inadvertently revealed Ally's customers' usernames and passwords to third parties with whom Ally
14 had business relationships. The Data Breach Letter also informed customers of steps to take to
15 mitigate the increased threat of identity theft to them as a result of the Ally Data Breach.

16 3. Ally claims that it first detected the programming code error on April 12, 2021.
17 Notably, the Breach which resulted was entirely Ally's own doing and did not result from a
18 cyberattack by unauthorized third parties. Ally negligently programmed its website to reveal, in clear
19 unencrypted text, Cornick's, Abbott's, and other Class members' usernames and passwords used to
20 access their Ally accounts to Ally business partners.

21 4. Since Ally is an online bank, data security is essential to their business, including
22 protecting customer usernames and passwords that provide access to customers' account information
23 as well as other assets.

24 5. Ally claims that "security is one of Ally's top priorities."¹ Yet, Ally negligently
25 revealed its customers' usernames and passwords during a routine update. Ally also failed to
26 adequately test or monitor the security of its website. Had Ally taken reasonable steps to test or
27

28 ¹ <https://www.ally.com/security/our-approach.html> (last visited Oct. 26, 2021).

1 monitor the security of its website, Ally would have immediately discovered and stopped revealing
2 those usernames and passwords to third parties.

3 6. However, Ally delayed notifying Plaintiffs and Class members about the Data Breach
4 for almost two months.

5 7. Ally had a statutory obligation under California law to protect the PII of their
6 customers yet failed to prevent, detect, or limit the scope of the Data Breach. More specifically,
7 Defendants, *inter alia*, failed to (a) test and monitor their website to adequately safeguard the security
8 of Plaintiffs' and Class member's usernames and passwords and (b) timely notify its customers of
9 the Data Breach and provide them with adequate protection measures.

10 8. Defendants concealed the programming code error, were negligent in safeguarding
11 customer data, and violated various California statutes, including the California Consumer Privacy
12 Act of 2018, CAL. CIV. CODE §§ 1798.100 *et seq.* ("CCPA"), the California Customer Records Act,
13 CAL. CIV. CODE §§ 1798.80 *et seq.* ("CCRA"), and the California Unfair Competition Law, CAL.
14 BUS. & PROF. CODE §§ 17200 *et seq.* ("UCL"). As a direct result of the data breach, Plaintiff Cornick,
15 Plaintiff Abbott, and the Class (defined herein) suffered damages, including (a) costs associated with
16 the detection and prevention of identity theft and unauthorized use of their personal information and
17 (b) the imminent and impending costs from future fraud and identity theft. Therefore, all Class
18 members suffered damages as a result of the Ally Data Breach. Finally, all Class members face the
19 continued risk of misuse of their personal information, which remains in Ally's possession and may
20 remain in unknown third party systems, and is subject to subsequent breaches so long as Defendants
21 fail to secure their systems.

22 PARTIES

23 9. Plaintiff Cornick is, and has been, at all times relevant hereto, a citizen of the State
24 of California residing in Salinas, California. Cornick has been a customer of Ally Bank since
25 September 25, 2013 and began using Ally's brokerage services on February 3, 2020. When signing
26 up for Ally's services, Cornick believed that Ally's website was secure. Since Cornick was notified
27 of the breach, Cornick has had to change his Ally bank password. Cornick received a Data Breach
28 Letter from Ally, dated June 11, 2021, which notified Cornick that because of a programming error

1 in its customer website, Ally breached the security of Cornick's username and password revealing
2 PII to unnamed third parties with whom Ally has business relationships. On information and belief,
3 Plaintiff Cornick believes his PII was exposed in the Ally Data Breach.

4 10. Plaintiff Abbott is, and has been, at all times relevant hereto, a citizen of the State of
5 California residing in Winton, California. Abbott has been an Ally customer since at least 2013.
6 When signing up for Ally's services, Abbott believed that Ally's website was secure. Specifically,
7 Plaintiff Abbott saw and relied on the same or substantially similar terms located in Ally's security
8 policies on Ally's webpage titled "How Our Security Approach Protects You"
9 (<https://www.ally.com/security/our-approach.html>). Additionally, Abbott was aware and relied on
10 Ally's privacy policies, which Ally has sent periodically to Abbott over the years, and took these
11 policies to mean that his PII and financials were protected. On information and belief, Plaintiff
12 Abbott believes his PII was exposed in the Ally Data Breach.

13 11. Defendant Ally Financial Inc. is a Delaware corporation with its corporate
14 headquarters located at 500 Woodward Avenue, Floor 10, Detroit, Michigan 48226. Ally Financial
15 is registered as a bank holding company under the Bank Holding Company Act and a financial
16 holding company under the Gramm-Leach-Bliley Act. Ally Financial Inc. describes itself as a
17 leading digital financial-services company that is customer-centric and relentlessly focused on
18 "Doing it Right." Ally prides itself as a trusted financial-services provider to its consumer,
19 commercial, and corporate customers.

20 12. Defendant Ally Bank is a subsidiary of Ally Financial Inc. Ally Bank is incorporated
21 under the laws of the state of Utah and maintains its headquarters at 200 West Civic Center Drive,
22 Sandy, Utah 84070. Ally Bank is a FDIC Member and Equal Housing Lender, and offers an array
23 of deposit, personal lending, and mortgage products and services. Ally Bank is one of the country's
24 largest branchless online-only banks with about 2.5 million banking customers and \$139 billion in
25 total deposits.

26 13. Defendants Does 1 through 50 are presently unknown to Cornick and Abbott.
27 Pursuant with CAL. CIV. PROC. CODE § 474, Cornick and Abbott are unaware of the true names and
28 capacities of these defendants and therefore, bring suit against these defendants under fictitious

1 names. Cornick and Abbott will seek to amend this Class Action Complaint and include these Doe
2 defendants' true names and capacities when they are ascertained. Each of the fictitiously named
3 defendants is responsible in some capacity for the conduct alleged and wrongs described herein.

4 5 **JURISDICTION AND VENUE**

6 14. This Court has jurisdiction over this action pursuant to CAL. CIV. PROC. CODE
7 § 410.10 because Defendants have sufficient minimum contacts with California and/or Defendants
8 otherwise purposely avail themselves of the markets of California. The acts at issue in this Class
9 Action Complaint occurred in California, Plaintiffs are both citizens of California, and Defendants
10 conduct substantial business, including the promotion and marketing of their services, in California.
11 Defendants also provide digital direct banking services and investment services to consumers
12 throughout California. These acts render the exercise of jurisdiction by this Court permissible under
13 traditional notions of fair play and substantial justice. This action is brought as a class action on
14 behalf Plaintiffs and Class members pursuant to CAL. CIV. PROC. CODE § 382.

15 15. Venue is proper in the County of Monterey pursuant to CAL. CIV. PROC. CODE § 395.5
16 because a substantial part of the events, acts, or omissions giving rise to the unlawful conduct alleged
17 herein occurred in this County.

18 **FACTUAL ALLEGATIONS**

19 **Ally Collects Sensitive Personal Information from Its Customers**

20 16. Ally is a leading digital financial-services company and one of the country's largest
21 branchless online-only banks, with approximately 2.5 million banking customers and \$139 billion
22 in total deposits. As part of the process to sign up for it online banking services, Ally requires its
23 customers to provide PII, including full legal names, street addresses, email addresses, telephone
24 numbers, dates of birth, social security numbers, and occupation information.

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17. Ally is acutely aware that the customer information it stores is highly sensitive and highly valuable to third-party marketers, and identity thieves and other criminals. On its website, Ally describes its data security policies:²

How Our Security Approach Protects You

Your *security is one of Ally's top priorities*. For your protection, only people who need your information to do their jobs have access to the personal information you provide us. . .

* * *

Transport Layer Security (TLS) Encryption

We use the latest encryption technology to help protect your information . . .

* * *

Credential Confidentiality

We never share your usernames and passwords with anyone. . . .

(Emphasis added).

18. Additionally, on its "Security Center" webpage, Ally represents:³

Protection and Peace of Mind

Keeping your accounts and personal information secure is a *top priority* for us.

(Emphasis added).

19. Additionally, Ally's Privacy Policy states:⁴

Security Of Your Personal Information

We restrict access to the personal information obtained from our website to only those employees, agents and contractors who need it to do their jobs. We *maintain administrative, technical, and physical safeguards designed to protect your personal information. . . .*

(Emphasis added).

20. "Do It Right" is Ally's promise and purported philosophy.⁵ However, Ally's Breach violated the Company's own policies, their commitment to keep confidential Plaintiffs' and the Class

² <https://www.ally.com/security/our-approach.html> (last visited Oct. 26, 2021).

³ <https://www.ally.com/security/> (last visited Oct. 26, 2021).

⁴ <https://www.ally.com/privacy/> (last visited Oct. 26, 2021).

⁵ See, e.g., <https://www.ally.com/do-it-right/> (last visited Oct. 26, 2021);

1 members' personal and private information, including usernames and passwords secure, and the
2 most basic standards and practices of data security.

3 21. Ally's policies demonstrate that it was well aware of the need for it to protect
4 members' highly valuable PII. By collecting and storing such extensive and detailed data, Ally
5 obligates itself to use every reasonable means available to protect this data from falling into the
6 hands of third-parties and criminals.

7 **The Ally Data Breach Exposed Ally's Customers' Valuable PII**

8 22. Ally claims that they first detected the programming code error on April 12, 2021.
9 This programming error resulted in Ally's customers' usernames and passwords being exposed to
10 third parties with whom Ally has business relationships.

11 23. Yet, Ally did not notify its customers until two months later on June 11, 2021 when
12 notification of this data breach was sent to Ally customers.

13 24. Ally's Data Breach Letter states:

14 During a routine update to our website, a programming code error occurred that inadvertently
15 resulted in your username and password being exposed to third parties with whom we have
16 business relationships.

17 * * *

18 Upon detecting the error on April 12, 2021, we immediately updated the programming
19 code to ensure it no longer included username and password information.

20 25. Cornick has been forced to devote time to deal with the consequences of the Data
21 Breach, including changing his password, exploring credit monitoring and identity theft protection,
22 and self-monitoring his accounts.

23 26. Ally customers have voiced concerns regarding certain statements omitted in Ally's
24 Data Breach Letter. For instance, Ally customers are questioning:⁶

- 25 • why did it take Ally 60 days to notify customers;
- 26 • the number and identities of the third parties that received Ally customers' username
27 and password information;

28 ⁶ <https://www.ally.com/about/company-structure/> (last visited Oct. 26, 2021).

⁶ <https://www.youtube.com/watch?v=KQRi-3ifQTs> (last visited Oct. 26, 2021).

- what the third parties are now doing to secure information that they now have from Ally's customers;
- how long was the programming code error active on Ally's website and revealing customers' usernames and passwords to third parties prior to Ally detecting the error;
- whether the programming error revealed usernames and passwords to the third parties in unencrypted clear text;
- how the third parties used or monetized information about Ally customers accessed via the Ally website, including usernames and passwords;
- what steps the third parties are taking to secure the PII captured from Ally customers; and
- how will Ally verify that the data captured by the third parties is actually deleted.

27. Additionally, on Ally's website, the Company states:⁷

Managing Passwords and Verification

* * *

Protect your passwords

Be cautious about sharing your usernames and passwords with people, companies and services – especially when your personal information and money are involved. **Never store your passwords in a note, memo or file** on your computer or mobile device. If you do need to save your passwords, use a more secure location like a password manager app.

(Emphasis in original).

28. Ally also recommends:⁸

Using Social Media and Sharing Information Safely

* * *

Think carefully before you provide personal details on social networks like Facebook, Twitter and LinkedIn. **Never share information that financial institutions might use to identify you** like your Social Security number (including the last 4 digits), date of birth, personal phone number, home address, where you were born or schools you attended. Criminals might use this information to gain access to your account or use it to open accounts in your name.

(Emphasis in original).

⁷ <https://www.ally.com/security/password-security-tips.html> (last visited Oct. 26, 2021).

⁸ <https://www.ally.com/security/social-media-safety.html> (last visited Oct. 26, 2021).

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29. Another one of Ally's tips includes:⁹

Offline Precautions

* * *

Always shred documents that contain personal information instead of placing them in your trashcan or recycling bin. . . . **Criminals look for personal information in trashcans and use it to access your accounts or open new accounts using your identity. . . .**

(Emphasis in original).

30. Despite the known risk and Ally's repeated warnings to Plaintiffs and Class members that usernames and passwords should be safeguarded, Ally did not follow its own policies. Ally knew the risks of data breach, yet failed to take reasonable steps to adequately protect their systems. For instance, on January 17, 2014, Ally warned of data breaches at other companies and explained that they "take data breaches very seriously":¹⁰

At Ally Bank, we want you to know ***we take data breaches very seriously and are committing to protecting your personal and financial information.*** We actively monitor our customer accounts

(Emphasis added). Additionally, on July 5, 2019, Ally posted a checklist that advised Ally's customers of how to keep their information safe online:¹¹

Unfortunately, today's tech-savvy cyber criminals are experts at nabbing your ***login credentials*** to access your bank, credit, card, or social media accounts. Scary...

(Emphasis added).

31. Ally's negligence in safeguarding is particularly egregious in light of its repeated warnings to customers about protecting and securing their data, as well as Ally's knowledge of the consequences from other companies' data breaches. It is also well known that PII, especially that possessed by a financial company, is a frequent target of hackers and highly sought after.

32. State lawmakers have even voiced their disapproval of the Ally Bank Data Breach:¹²

⁹ <https://www.ally.com/security/how-to-protect-yourself-offline.html> (last visited Oct. 26, 2021).

¹⁰ <https://www.ally.com/do-it-right/trends/ally-bank-data-breach-protection-frequently-asked-questions/> (last visited Oct. 26, 2021).

¹¹ <https://www.ally.com/do-it-right/trends/the-checklist-that-can-help-keep-cybercriminals-hands-off-your-money/> (last visited Oct. 26, 2021).

¹² See <https://patch.com/connecticut/milford/lawmakers-voice-disapproval-following-ally-bank-password-leak> (last visited Oct. 26, 2021).

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Customer security should be foremost on business' minds, especially essential services like banks that offer services directly impacting customers' lives. For Ally Bank to not only leak customer information to marketing partners but take two months to even notify customers is a betrayal of those customers' trust. . . . They even refuse to provide information on where and who the data was leaked to, vital information that customers need to know to know how serious this issue is and protect themselves from potential financial harm. It's an abdication of their responsibilities.

* * *

The decisions made by Ally Bank in this situation seem to have been made by committee and without urgency – when customers may face serious personal harm because of them. . . . When phishing and cyber vulnerability continue to grow as threats in the modern day, it's a serious lapse of judgment for Ally to slow-walk such a precarious situation.

33. The Ally Data Breach has exposed its customers' PII, leaving Plaintiffs and Class Members at risk to identity theft. The consequences of Ally's failure to keep Plaintiffs and Class members' PII secure are severe.

34. Ally's customer usernames and passwords expose the following:

- The Customer's Full Legal Name;
- Email Addresses;
- Account Numbers;
- Account Balances;
- Checking, savings, and investment account statements of all transactions;
- Images of all checks;
- Names and dates of birth of account beneficiaries;
- Employment information;
- Linked bank account information;
- Tax forms with last four digits of Social Security Numbers; and
- Zelle account information and transaction history.

35. Ally's Data Breach Letter fails to provide its customers with sufficient detail about what PII was accessed and by whom and fails to warn customers that some data involved in the Data Breach may still be in third parties' systems. Without this critical information, Cornick, Abbott, and Class members cannot adequately protect themselves against identity theft.

36. Ally has acknowledged that the Data Breach harmed Plaintiffs and the Class by putting them at a heightened risk of identity theft when, "as a precautionary measure to help

1 safeguard” Plaintiffs’ and the Class’s information, Ally offered 24 months of credit monitoring by
2 Equifax. However, Equifax does not fully protect Plaintiffs from identity theft and 24 months is
3 certainly not a sufficient duration of credit monitoring given the PII that was compromised in the
4 Data Breach.

5 **Cornick, Abbott, and the Class Suffered Actual and Impending Injuries as a Result of the**
6 **Data Breach**

7 37. Ally’s negligence concerning its privacy and security systems, including its
8 programming, maintenance, and monitoring of Ally’s website, has left Plaintiffs and Class Members
9 exposed to identity theft. By failing to implement adequate and reasonable security measures to
10 protect usernames and passwords, and other PII, Ally has caused Plaintiffs and the Class significant
11 damages.

12 38. The Federal Trade Commission (“FTC”) defines identify theft as “when someone
13 uses your personal or financial information without your permission.”¹³

14 39. According to the Bureau of Justice Statistics (“BJS”), it takes an average of about 7
15 hours for each victim of identity theft to resolve the issue.¹⁴ Thus, reimbursing a consumer for
16 financial loss due to fraud does not make the individual whole again.

17 40. Additionally, identity thieves can retain the stolen information for years. At any
18 moment, the thief can take control of a victim’s identity, resulting in thousands of dollars in losses
19 and lost productivity.¹⁵

20 41. Cornick and Abbott have suffered imminent and impending injury arising from the
21 heightened threat of identity theft and other fraudulent acts resulting from their lost PII.

22 42. As a result of Defendants’ unreasonable security practices, third parties and
23 potentially identity thieves now possess the sensitive PII of Cornick, Abbott, and the Class.

24 ¹³ https://www.consumer.ftc.gov/articles/what-know-about-identity-theft#what_is (last visited Oct.
25 26, 2021); *See also* 17 C.F.R. §248.201 (2013) (“Identity theft means a fraud committed or
26 attempted using the identifying information of another person without authority.”); *id.*
27 (“Identifying information means any name or number that may be used, alone or in conjunction
with any other information, to identify a specific person.”).

27 ¹⁴ Victims of Identity Theft, 2014 (Nov. 30, 2017), <https://bjs.ojp.gov/content/pub/pdf/vit14.pdf>.

28 ¹⁵ <https://www.lifelock.com/learn-identity-theft-resources-lasting-effects-of-identity-theft.html>
(last visited Oct. 26, 2021).

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1 43. The PII of Cornick, Abbott, and Class members is private and sensitive in nature and
2 was left inadequately protected by Ally.

3 44. Cornick and Abbott suffered actual injury in the form of damages to and diminution
4 in the value of their PII—a form of intangible property that Cornick and Abbott entrusted to Ally for
5 the purpose of facilitating their Ally accounts, which were compromised because of the Data Breach.

6 45. Cornick and Abbott suffered lost time, annoyance, interference, and inconvenience
7 because of the Data Breach and have increased concerns for the loss of their privacy.

8 46. Cornick, Abbott, and Class members have been damaged by the Ally breach.
9 Cornick, Abbott, and Class members have had the security of their accounts compromised and have
10 had to carefully review the records of all their financial dealings for suspicious activity. Cornick,
11 Abbott, and Class members now face years of constant surveillance of their financial and personal
12 records, and have to monitor and mitigate the heightened threat of identity threat and other fraudulent
13 acts.

14 47. Cornick and Abbott have a continuing interest in ensuring that their PII which, upon
15 information and belief, remains stored in Ally's possession, is protected and safeguarded from future
16 breaches.

17 48. At all relevant times, Ally knew, or reasonably should have known, of the importance
18 of safeguarding PII and of the foreseeable consequences that would occur, including, specifically,
19 the significant costs that would be imposed on individuals as a result of a breach.

20 49. Ally's approach to maintaining the privacy and security of the PII of Cornick, Abbott,
21 and Class members was reckless, or at the very least, grossly negligent. The injuries to Cornick,
22 Abbott, and Class members was directly and proximately caused by Ally's failure to implement or
23 maintain adequate data security measures for its customers.

24 50. Ally's Data Breach Letter to its customers failed to provide adequate remediation and
25 compensation for Ally's wrongful conduct and actions described herein. Therein, Ally only offered
26 affected customers two years of credit monitoring through Equifax. The offered service is inadequate
27 to protect Cornick, Abbott, and Class members from the future threats they face, particularly given
28 the PII at issue here.

CLASS ACTION ALLEGATIONS

51. Cornick and Abbott bring this action on behalf of themselves and all other similarly situated persons as a member of a proposed Class defined as follows:

All California citizens whose PII was compromised in the data breach announced by Ally Bank on or about June 11, 2021.

52. Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class are any judges, justices, or judicial officers presiding over this matter and the members of their immediate families and judicial staff.

53. This action is brought and may be properly maintained as a class action pursuant to CAL. CIV. PROC. CODE § 382 and the procedural provisions of Rule 23 of the Federal Rules of Civil Procedures as adopted for use in California. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these rules.

54. **Numerosity.** The Class is so numerous that the individual joinder of all members is impracticable, and the disposition of the claims of all Class members in a single action will provide substantial benefits to the parties and the Court. Cornick and Abbott, on information and belief, allege that the Class includes at least tens of thousands of persons. Ally Bank has at least 2.45 million deposit customers and 503,000 brokerage accounts.

55. **Commonality.** Common legal and factual questions exist that predominate over any questions affecting only individual members. These common questions, which do not vary among Class members and which may be determined without reference to any Class member's individual circumstances, include, but are not limited to:

a. Whether Defendants owed a duty to Cornick, Abbott and the Class to adequately protect their personal information;

b. Whether Defendants owed a duty to provide timely and accurate notice of the data breach to Cornick, Abbott, and the Class;

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1 c. Whether Defendants were negligent in monitoring the operation and
2 programming of their website such that unencrypted clear text customer usernames and passwords
3 were revealed to third parties;

4 d. How long the programming error that revealed usernames and passwords
5 went undetected by Defendants;

6 e. The extent of dissemination of usernames and passwords revealed due to the
7 website programming error;

8 f. Whether Defendants' security practices were adequate and reasonable to
9 protect the Class's PII in light of industry standard practices;

10 g. The PII of Cornick, Abbott, and the Class accessible with their usernames and
11 passwords;

12 h. Whether Defendants' conduct, including their failure to take reasonable
13 security precautions, resulted in the loss of tens of thousands of consumers' PII;

14 i. Whether Defendants failed to timely and sufficiently notify consumers of the
15 breach of their PII in violation of the CCRA, CAL. CIV. CODE §§ 1798.80 *et seq.*;

16 j. Whether the Defendants violated the CCPA, CAL. CIV. CODE § 1798.100, *et*
17 *seq.* by subjecting consumers' nonencrypted PII to unauthorized access and exfiltration, theft, or
18 disclosure as a result of their violation of their duties to implement and maintain reasonable security
19 procedures and practices appropriate to the nature and protection of that information;

20 k. Whether Defendants engaged in unfair, unlawful, or deceptive business
21 practices in violation of the UCL, CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;

22 l. Whether Cornick, Abbott, and the Class have been damaged by the wrongs
23 alleged and are entitled to compensatory or punitive damages; and

24 m. Whether Cornick, Abbott, and the Class are entitled injunctive or other
25 equitable relief, including restitution.

26 56. Each of these common questions is also susceptible to a common answer that is
27 capable of class wide resolution and will resolve an issue central to the validity of the claims.
28

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1 57. **Typicality.** Cornick's and Abbott's claims are typical of the Class members' claims.
2 Cornick and Abbott, like all proposed members of the Class, had their PII compromised in the data
3 breach. Defendants' uniformly unlawful course of conduct injured Cornick and Abbott and the Class
4 members from the same wrongful acts, practices, and omissions. Likewise, Cornick and Abbott and
5 other Class members must prove the same facts in order to establish the same claims.

6 58. **Adequacy of Representation.** Cornick and Abbott are adequate representatives of
7 the Class because they are members of the Class and their interests do not conflict with the interests
8 of the Class. Cornick and Abbott have retained counsel competent and experienced in complex
9 litigation and consumer protection class action matters such as this action, and Plaintiffs and their
10 counsel intend to vigorously prosecute this action for the Class's benefit and have the resources to
11 do so. Plaintiffs and their counsel have no interests adverse to those of the other members of the
12 Class.

13 59. **Predominance and Superiority.** A class action is superior to all other available
14 methods for the fair and efficient adjudication of this controversy because individual litigation of
15 each Class member's claim is impracticable. The damages, harm, and losses suffered by the
16 individual members of the Class will likely be small relative to the burden and expense of individual
17 prosecution of the complex litigation necessitated by Defendants' wrongful conduct. Even if each
18 Class member could afford individual litigation, the Court system could not. It would be unduly
19 burdensome if thousands of individual cases proceeded. Individual litigation also presents the
20 potential for inconsistent or contradictory judgments, the prospect of a race to the courthouse, and
21 the risk of an inequitable allocation of recovery among those individuals with equally meritorious
22 claims. Individual litigation would increase the expense and delay to all parties and the Courts
23 because it requires individual resolution of common legal and factual questions. By contrast, the
24 class action device presents far fewer management difficulties and provides the benefit of a single
25 adjudication, economies of scale, and comprehensive supervision by a single court.

26 60. As a result of the foregoing, class treatment is appropriate.
27
28

FIRST CAUSE OF ACTION
Negligence
(Against All Defendants and Does 1-50)

61. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

62. Defendants required Cornick, Abbott and members of the Class to create usernames and passwords and to submit non-public financial and other PII to open, use, and maintain banking and brokerage accounts at Ally.

63. Defendants were entrusted with collecting and storing the PII of Cornick, Abbott, and Class members. By accepting Cornick's, Abbott's, and Class members' nonpublic PII, and using it for commercial gain, Defendants assumed a duty requiring them to use reasonable and, at the very least, industry-standard care to secure such information against theft and misuse. This duty included, *inter alia*, securing and safeguarding Plaintiffs' and Class members' PII to prevent unauthorized disclosure and to safeguard the privacy of that private information. Defendants' duties also included taking other reasonable security measures, like implementing procedures and practices to secure the PII from inadvertent unauthorized disclosure.

64. Defendants also assumed a duty to timely disclose to Cornick, Abbott, and the Class that their PII had been or was reasonably believed to have been compromised. Timely disclosure was imperative so that Cornick, Abbott, and the Class could report identify theft to the relevant agencies and legal authorities, monitor their credit reports for identity fraud, undertake appropriate measures to avoid unauthorized charges on their debit and credit cards, and change or cancel their debit and credit card PINs to mitigate the risks of fraud.

65. Defendants knew, or should have known, of the risks inherent in collecting and storing the PII of Cornick, Abbott, and the Class. If companies like Ally are not held responsible for failing to take reasonable security measures to protect their customers' PII, these customers will not be protected against future data breaches. Only Ally was in a position to program its website and to

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1 ensure that its website was safe for customers to use such that their PII entrusted with Ally was
2 secure.

3 66. Ally breached its duty to exercise reasonable care in protecting the PII of Cornick,
4 Abbott, and the Class by failing to use reasonable measures to protect Cornick's, Abbott's, and Class
5 members' PII.

6 67. Specifically, the negligent acts and omissions committed by Ally include, but are not
7 limited to, the following: (a) programming its website in a manner that revealed rather than
8 safeguarded customers' PII, (b) failing to adequately monitor its computer systems and the operation
9 of their website; (c) failing to timely discover the programming errors; (d) failing to encrypt
10 usernames and passwords; and (e) sharing customers' usernames and passwords with persons who
11 did not need such private information to do their jobs.

12 68. Ally further breached its duty of care by failing to promptly and completely inform
13 Cornick, Abbott, and the Class that their PII had been compromised, even though Ally admits it was
14 aware of the programming error as early as April 12, 2021.

15 69. Ally acted with wanton disregard for the security of Cornick, Abbott, and the Class
16 members' PII.

17 70. As a direct and proximate result of Defendants' failure to take reasonable care and
18 use, at a minimum, industry-standard measures to protect the PII in their care, Cornick, Abbott, and
19 the Class had their PII stolen, causing direct and measurable monetary losses, threat of future losses,
20 identity theft, and the threat of future identity theft. But for Defendants' actions and breaches of their
21 duties, Cornick, Abbott, and the Class members' information would be secure and they would not
22 have been compromised. It was reasonably foreseeable that Defendants' conduct as alleged herein
23 would harm Cornick, Abbott, and the Class. Defendants knew or should have known that their failure
24 to adequately protect user information would cause harm to Cornick, Abbott, and the Class.

25 71. Cornick, Abbott, and the Class did not contribute to Defendants' misconduct.

26 72. Cornick, Abbott, and the Class have suffered injury in fact in an amount to be proven
27 at trial, including monetary damages, and will continue to be injured and incur damages as a direct
28 result of Defendants' negligence. This includes identity theft, damage to credit scores and reports,

1 time and expenses resolving fraud claims, and the costs of purchasing credit monitoring services not
2 otherwise necessary.

3 **SECOND CAUSE OF ACTION**
4 **Negligence *Per Se***
5 **(Against All Defendants and Does 1-50)**

6 73. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference
7 all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully
8 set forth herein.

9 74. Pursuant to the California Consumer Privacy Act of 2018, CAL. CIV. CODE §§
10 1798.100 *et seq.*, Defendants owed a duty to Cornick, Abbott, and Class members to implement and
11 maintain reasonable security procedures and practices to safeguard their PII.

12 75. Defendants violated the California Consumer Privacy Act of 2018 by failing to
13 provide fair, reasonable, or adequate computer systems and data security practices to safeguard the
14 PII of Cornick, Abbott, and Class members.

15 76. Defendants' failure to comply with the California Consumer Privacy Act of 2018
16 constitutes negligence *per se*.

17 77. But for Defendants' wrongful and negligent breach of their duties owed to Cornick,
18 Abbott, and Class members, they would not have been injured.

19 78. The injury and harm suffered by Cornick, Abbott, and Class members was the
20 reasonably foreseeable result of Defendants' breaches of their duties. Defendants knew or should
21 have known that they were failing to meet their duties, and that Defendants' breaches would cause
22 Cornick, Abbott, and Class members to experience the foreseeable harms associated with the
23 exposure of their PII.

24 79. As a direct and proximate result of Defendants' negligent conduct, Cornick, Abbott,
25 and Class members have suffered injury and are entitled to damages in an amount to be proven at
26 trial.

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THIRD CAUSE OF ACTION
Violation of the CCRA, CAL. CIV. CODE §§ 1798.80 *et seq.*
(Against All Defendants and Does 1-50)

80. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

81. Businesses that own or license computerized data that includes personal information are required to notify California residents when their PII has been acquired (or has reasonably believed to have been acquired) by unauthorized persons in a data security breach “in the most expedient time possible and without unreasonable delay.” CAL. CIV. CODE § 1798.82. Among other requirements, the security breach notification must include “the types of personal information that were or are reasonably believed to have been the subject of a breach.” CAL. CIV. CODE § 1798.82.

82. Defendants are businesses that own or license computerized data that includes personal information as defined by CAL. CIV. CODE § 1798.82.

83. Cornick’s, Abbott’s, and Class members’ PII includes personal information such as their usernames and passwords, and is thereby covered by CAL. CIV. CODE §§ 1798.80(e) and 1798.82.

84. The Ally Data Breach constituted a breach of Defendants’ security systems.

85. Because Ally reasonably believed that Cornick’s, Abbott’s and Class members’ PII was acquired by unauthorized persons during the Ally Data Breach, Ally had an obligation to disclose the data breach in a timely and accurate fashion as mandated by CAL. CIV. CODE § 1798.82.

86. Ally unreasonably delayed informing Cornick, Abbott, and Class members about the breach of security of their PII after they knew the breach had occurred.

87. Upon information and belief, no law enforcement agency instructed Ally that notification to Class members would impede an investigation.

88. Thus, by failing to disclose the Ally Data Breach in a timely and accurate manner, the Ally Defendants also violated CAL. CIV. CODE § 1798.82.

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89. Pursuant to CAL. CIV. CODE § 1798.84, “[a]ny waiver of a provision of this title is contrary to public policy and is void and unenforceable,” “[a]ny customer injured by a violation of this title may institute a civil action to recover damages,” and “[a]ny business that violates, proposed to violate, or has violated this title may be enjoined.”

90. As a direct and proximate result of Defendants’ violation of CAL. CIV. CODE § 1798.82, Cornick, Abbott, and Class members were (and continue to be) injured and suffered (and will continue to suffer) damages, as described above.

91. Cornick, Abbott, and Class members seek relief under CAL. CIV. CODE § 1798.84, including, but not limited to, actual damages, any applicable statutory damages, and equitable and injunctive relief.

FOURTH CAUSE OF ACTION
Violation of the CCPA, CAL. CIV. CODE §§ 1798.100 *et seq.*
(Against All Defendants and Does 1-50)

92. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

93. The CCPA was enacted to protect consumers’ PII from collection and use by businesses without appropriate notice and consent.

94. At all times during Cornick, Abbott and Class members’ interactions with Ally, Defendants were aware of the confidential and sensitive nature of Plaintiffs’ and Class members’ PII that they provided to Defendants.

95. Cornick, Abbott, and Class members provided Ally “personal information” within the meaning of CAL. CIV. CODE § 1798.140(v).

96. Through the conduct and actions complained of herein, Defendants violated the CCPA by subjecting Plaintiffs and Class members’ nonencrypted PII to unauthorized access and exfiltration, theft, or disclosure as a result of Defendants’ violation of their duties to implement and maintain reasonable security procedures and practices appropriate to the nature and protection of that information. Defendants thereby violated CAL. CIV. CODE § 1798.150(a).

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1 97. Cornick, Abbott, and Class members are “consumers” within the meaning of CAL.
2 CIV. CODE § 1798.140(g).

3 98. Defendants are “businessess” within the meaning of CAL. CIV. CODE § 1798.140(c).

4 99. Pursuant to CAL. CIV. CODE § 1798.150(b), prior to the filing of this Class Action
5 Complaint, on November 2, 2021, counsel for Cornick and Abbott served Defendants with notice of
6 these CCPA violations by certified mail, return receipt requested.

7 100. On behalf of Class members, Cornick and Abbott seek injunctive relief in the form
8 of an order enjoining Defendants from continuing to violate the CCPA. Unless and until Defendants
9 are restrained by order of the Court, Defendants’ wrongful conduct will continue to cause irreparable
10 injury to Cornick, Abbott, and the Class.

11 101. Notwithstanding any other statements in this Complaint, and in accordance with CAL.
12 CIV. CODE § 1798.150(b), Cornick and Abbott do not seek monetary damages (including statutory
13 damages) in connection with their CCPA claim—and will not do so—unless Defendants fail to
14 rectify or cure the CCPA violations described herein within 30 days of Plaintiffs’ CCPA notice.

15 102. If Defendants fail to rectify or otherwise cure the CCPA violations described herein,
16 individually and on behalf of the Class, Cornick and Abbott reserve their right to amend this
17 complaint to seek actual, punitive, and statutory damages, restitution, and any other relief the Court
18 deems proper as a result of Defendants’ CCPA violations pursuant to CAL. CIV. CODE § 1798.150(a).

19 **FIFTH CAUSE OF ACTION**
20 **Violation of the UCL, CAL. BUS. & PROF. CODE §§ 17200, *et seq.***
21 **(Against All Defendants and Does 1-50)**

22 103. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference
23 all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully
24 set forth herein.

25 104. Cornick and Abbott have standing to pursue this claim as they have suffered injury
26 in fact and have lost money or property as a result of Defendants’ actions as set forth above. All
27 Class members have been injured by the significant costs of protecting themselves from identity
28 theft.

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105. Defendants' actions as alleged in this Class Action Complaint constitute an "unlawful" practice as encompassed by CAL. BUS. & PROF. CODE §§ 17200 *et seq.* because Defendants' actions: (a) violated the Gramm-Leach-Bliley Act ("GLBA"), 15 U.S.C. §§ 6801 *et seq.*, (b) violated the California Financial Information Privacy Act ("CalFIPA"), CAL. FIN. CODE §§ 4050 *et seq.*, (c) CCRA, CAL. CIV. CODE §§ 1798.80 *et seq.*, (d) violated the CCPA, CAL. CIV. CODE §§ 1798.100 *et seq.*, and (e) constituted negligence. Ally's actions were additionally "unlawful" because they (a) violated their implied contract to adequately protect their customers' sensitive PII, and (b) violated CAL. BUS. & PROF. CODE § 22576, which prohibits website operators that collect PII from failing to comply with posted privacy policies (i) knowingly and willfully, or (ii) negligently and materially.

106. Ally's actions as alleged in this Class Action Complaint constitute a "fraudulent" practice as encompassed by CAL. BUS. & PROF. CODE §§ 17200 *et seq.*, because Ally's failure to adequately disclose their lax security practices was likely to deceive consumers, including Cornick, Abbott, and the Class. A reasonable consumer who provides extraordinarily sensitive PII to a financial company would expect the company to provide adequate, industry-standard security to protect that information. Ally's failure to disclose these inadequate security practices, especially in light of their commitments to safeguard user data as contained in their privacy policies, constitutes a material omission in violation of the UCL.

107. Ally's actions as alleged in this Class Action Complaint constitute an "unfair" practice as encompassed by CAL. BUS. & PROF. CODE §§ 17200 *et seq.*, because they offend established public policy and are immoral, unethical, oppressive, unscrupulous, and substantially injurious. The harm caused by Defendants' wrongful conduct outweighs any utility of such conduct and has caused—and will continue to cause—substantial injury to the Class. There were ample reasonably available alternatives that would have furthered Defendants' legitimate business practices, including undertaking appropriate safeguards and data security practices and policies consistent with industry standards to protect user data. Defendants also unreasonably delayed notifying Cornick, Abbott, and Class members regarding the unauthorized release and disclosure of the PII. Additionally, Defendants' conduct was "unfair" because it violated the legislatively declared

1 policies reflected by the California's strong data-breach and online-privacy laws, including the
2 CCRA, CAL. CIV. CODE §§ 1798.80 *et seq.*

3 108. As a result of Defendants' unlawful, unfair, and fraudulent conduct, Cornick, Abbott,
4 and the Class were damaged. Class members have been injured by the significant costs of protecting
5 themselves from identity theft and face ongoing and impending damages related to theft of their PII.

6 109. Defendants' wrongful practices constitute a continuing course of unfair competition
7 because, on information and belief, Defendants have failed to remedy the lax security practices or
8 even fully notify all affected Class members. Cornick, Abbott, and the Class seek equitable relief
9 pursuant to CAL. BUS. & PROF. CODE § 17203 to end Defendants' wrongful practices and require
10 Defendants to maintain adequate and reasonable security measures to protect the PII of Cornick,
11 Abbott, and the Class.

12 110. Cornick, Abbott, and the Class also seek an order requiring Defendants to make full
13 restitution of all monies they have wrongfully obtained from Class members, together with all other
14 relief permitted under CAL. BUS. & PROF. CODE §§ 17200 *et seq.*

15 **SIXTH CAUSE OF ACTION**
16 **Breach of Implied Contract**
17 **(Against All Defendants and Does 1-50)**

18 111. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference
19 all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully
20 set forth herein.

21 112. As part of the process to sign up for Ally's services, Cornick, Abbott, and the Class
22 were required to disclose their sensitive PII to Ally to obtain financial services. As a result, Cornick,
23 Abbott, and the Class entered into an implied contract with the Ally under which Ally agreed to
24 take reasonable measures to safeguard and protect such information and to timely and accurately
25 notify Cornick, Abbott, and the Class if their data had been breached or compromised.

26 113. As part of its regular business practices, Ally solicited and invited prospective
27 customers to provide their PII through Ally's website. These Class members accepted Ally's offers
28 and provided their PII to Ally. In entering such implied contracts, Plaintiffs and members of the

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Class assumed that Ally would “Do it Right” and undertake appropriate safeguards and data security practices and policies consistent with industry standard, and that Ally would use part of the fees paid by Plaintiffs and the members of the Class to pay for adequate and reasonable data security practices. This implied contract includes the terms of Ally’s privacy policy¹⁶ and Ally’s security approach.¹⁷

114. Cornick, Abbott, and members of the Class would not have used Ally’s website or entrusted their PII with Ally in the absence of the implied contract between them and Ally, by which Ally would keep their usernames, passwords, and other PII secure.

115. Cornick, Abbott, and the Class fully performed their obligations under the implied contracts with Ally.

116. By failing to adequately safeguard and protect Cornick’s, Abbott’s, and Class members’ PII and failing to timely and accurately notify Cornick, Abbott, and the Class of the Ally data breach, Ally violated the express terms of their privacy and security policies.

117. By breaching their implied contracts with Cornick, Abbott, and the Class, Ally is not entitled to retain the benefits they received.

118. As a direct and proximate result of Ally’s breach of the implied contracts, Cornick, Abbott, and Class members have suffered actual losses and damages. These losses and damages include, *inter alia*, (a) a substantially increased risk of identity theft, (b) the improper disclosure of their PII to unauthorized individuals, and (c) lost time and money incurred to mitigate and remediate the effects of the Ally Data Breach.

SEVENTH CAUSE OF ACTION
Invasion of Privacy
(Against All Defendants and Does 1-50)

119. Cornick and Abbott, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

¹⁶ See <https://www.ally.com/privacy/> (last visited Oct. 26, 2021).

¹⁷ See <https://www.ally.com/security/our-approach.html> (last visited Oct. 26, 2021).

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120. Cornick, Abbott, and the Class had a reasonable expectation of privacy in the PII that Ally disclosed without authorization.

121. By failing to keep Cornick, Abbott, and Class members' PII safe and disclosing PII to unauthorized parties for unauthorized use, Ally unlawfully invaded Cornick's, Abbott's, and Class members' privacy by, *inter alia*: (a) intruding into their private affairs in a manner that would be highly offensive to a reasonable person, (b) invading their privacy by improperly using their PII properly obtained for a specific purpose for other purposes, or disclosing it to third parties, (c) failing to adequately secure their PII from disclosure to unauthorized persons, and (d) enabling the disclosure of their PII without consent.

122. Ally knew, or acted with reckless disregard that, a reasonable person in the position of Cornick, Abbott, and Class members would consider Ally's actions and conduct highly offensive.

123. Ally invaded Cornick's, Abbott's, and Class members' right to privacy and intruded into their private affairs by disclosing their PII to unauthorized persons without their informed, voluntary, affirmative, or clear consent.

124. As a proximate result of such unauthorized disclosures, Cornick's, Abbott's and Class members' reasonable expectations of privacy in their PII was unduly frustrated and thwarted. Ally's conduct and actions constitute a serious invasion of Cornick's, Abbott's and Class members' protected privacy interests.

125. In failing to protect Cornick's, Abbott's and Class members' PII, and in disclosing their information without authorization, Ally acted with malice and oppression and in conscious disregard of their rights to have such information kept confidential and private.

126. Cornick, Abbott, and the Class seek injunctive relief, restitution (plus interest), and all other available damages and relief.

PRAYER FOR RELIEF

WHEREFORE, Cornick and Abbott, on behalf of themselves and the Class, request that the Court order the following relief and enter judgment against Defendants as follows:

- A. an Order certifying the proposed Class under CAL. CIV. PROC. CODE § 382 and appointing Cornick and Abbott and their counsel to represent the Class;

SCHUBERT JONCKHEER & KOLBE LLP
Three Embarcadero Center, Suite 1650
San Francisco, CA 94111
(415) 788-4220

- B. an Order declaring that Defendants engaged in the illegal conduct alleged herein in violation of the CCRA (CAL. CIV. CODE §§ 1798.80 *et seq.*), CCPA (CAL. CIV. CODE §§ 1798.100 *et seq.*), and California's UCL (CAL. BUS. & PROF. CODE §§ 17200 *et seq.*), and constitutes negligence, negligence *per se*, invasion of privacy, and breach of implied contract;
- C. an Order that Defendants be permanently enjoined from their improper activities and conduct described herein;
- D. a Judgment awarding Cornick, Abbott, and the Class restitution, damages (including statutory and punitive damages where applicable), and disgorgement in amounts according to proof at trial, including an award of pre- and post- judgment interest, to the extent allowable;
- E. an Order awarding Cornick, Abbott, and the Class their reasonable litigation expenses, costs, and attorneys' fees;
- F. an Order awarding such other injunctive and declaratory relief as is necessary to protect the interests of Cornick, Abbott, and the Class; and
- G. an Order awarding such other and further relief as the Court may deem necessary, just, and proper.

DEMAND FOR JURY TRIAL

Cornick and Abbott demand a trial by jury for all claims and issues so triable.

Dated: November 2, 2021

Schubert Jonckheer & Kolbe LLP

/s/ Alexandra K. Green

Robert C. Schubert (No. 62684)

Noah M. Schubert (No. 278696)

Alexandra K. Green (No. 333271)

Schubert Jonckheer & Kolbe LLP

Three Embarcadero Center, Suite 1650

San Francisco, California 94111

Telephone: (415) 788-4220

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Attorneys for Plaintiffs and the Putative Class

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alexandra K. Green (S.B.N. 333271) Schubert Jonckheer & Kolbe LLP 3 Embarcadero Center, Suite 1650 San Francisco, CA 94111 TELEPHONE NO.: (415) 788-4220 FAX NO. (Optional): (415) 788-0161 E-MAIL ADDRESS: agreen@sjk.law ATTORNEY FOR (Name): Plaintiff Cornick, Plaintiff Abbott, and the Putative Classes		FOR COURT USE ONLY ELECTRONICALLY FILED BY Superior Court of California, County of Monterey On 11/2/2021 5:16 PM By: Rowena Esquerra, Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Monterey STREET ADDRESS: 1200 Aguajito Road MAILING ADDRESS: 1200 Aguajito Road CITY AND ZIP CODE: Monterey, 94930 BRANCH NAME: Monterey Courthouse		CASE NUMBER: 21CV003506 JUDGE: DEPT.:	
CASE NAME: Bill Cornick et al. v. Ally Bank et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input checked="" type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify):
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 2, 2021

Alexandra K. Green

(TYPE OR PRINT NAME)

/s/ Alexandra K. Green

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**CM-010**

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF MONTEREY COUNTY Monterey Branch, 1200 Aguajito Road, Monterey, CA 93940	
BILL CORNICK, et al. vs. ALLY BANK, et al.	CASE NUMBER 21CV003506
	Case Management Conference

NOTICE OF ASSIGNMENT AND CASE MANAGEMENT CONFERENCE

Your case number ending EVEN is assigned for all purposes to the Hon. Marla O. Anderson- Dept. 14

Your case number ending ODD is assigned for all purposes to the Hon. Thomas W. Wills- Dept. 15

Your complex or class action case is assigned for all purposes to Assigned Visiting Judge- Dept. 13

This notice, which includes the Alternative Dispute Resolution (ADR) information packet (CI-127), must be served together with the Summons and Complaint or Petition pursuant to California Rule of Court 3.221. *Parties are required to follow the complex case instructions, case management rules as outlined in California Rule of Court 3.722 and Chapter 6 of the Local Rules of Court, all can be found on the court website at www.monterey.courts.ca.gov.* A case management statement from each party or joint statement shall be filed prior to the conference as outlined in California Rule of Court 3.725.

Date: March 08, 2022

Time: 8:30 AM

Location: Monterey Courthouse, 1200 AGUAJITO ROAD, MONTEREY, CA 93940

Telephonic appearance, two days prior to the hearing, can be arranged directly through Court Call Service at 1-888-882-6878. California Rule of Court 3.670. Authorization for telephone appearance will not be given on the day of the hearing.

Pursuant to statutes of the State of California, it is the responsibility of the court to establish procedures for the timely and effective disposition of civil cases.

The court is charged with the responsibility of ensuring all parties a fair and timely resolution of their disputes, and the court is in the best position to establish neutral rules and policies without adversely affecting all parties' right to a fair trial. Effective management of the judicial system will build continuing respect by the community of government, minimize the costs to the parties and the public, and maximize the probability that cases will be timely resolved.

The goals of the Monterey County civil case and trial management system are:

1. To provide an effective and fair procedure for the timely disposition of civil cases;
2. To provide a mechanism to gather needed case information in order to make appropriate judicial management decisions; and
3. To establish reasonable rules and policies to require that cases reporting "ready" for trial may be tried without unnecessary delays or interruptions.

Court proceedings are in English. If you or a witness in your case needs an interpreter, please complete Judicial Council form INT—300. You must file INT-300 at the first floor clerks counter (or by e-file) 15* business days prior to your hearing.

Los procedimientos judiciales son en inglés. Si usted o un testigo en su caso necesita un intérprete, complete el formulario INT-300 del Consejo Judicial. Debe presentar el INT-300 con los empleados legales de la oficina del primer piso (o mediante archivo electrónico) 15 días hábiles antes de su audiencia.*

Alternative Dispute Resolution (CI-127)
(INFORMATION PACKET)
OPTIONS FOR RESOLVING YOUR DISPUTE

There Are Alternatives to Going to Trial

Did you know that 95 percent of all civil cases filed in court are resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, known as Alternative Dispute Resolution or ADR, are typically less formal and adversarial than trial, and many use a problem-solving approach to help the parties reach an agreement.

Advantages of ADR

Here are some potential advantages of using ADR:

- **Save Time:** A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.
- **Save Money:** When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, and expert's fees.
- **Increase Control over the Process and the Outcome:** In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.
- **Preserve Relationships:** ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.
- **Increase Satisfaction:** In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.
- **Improve Attorney-Client Relationships:** Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

Because of these potential advantages, it is worth considering using ADR early in a lawsuit or even before you file a lawsuit.

What Are the ADR Options?

The most commonly used ADR processes are mediation, arbitration, neutral evaluation, and settlement conferences.

Mediation

In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties. The Monterey County Superior Court offers a Court-Directed Mediation Program.

Cases for Which Mediation May Be Appropriate: Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use.

Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate: Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration

In arbitration, a neutral person called an “arbitrator” hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed.

Arbitration may be either “binding” or “nonbinding.” Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator’s decision as final. Generally, there is no right to appeal an arbitrator’s decision in binding arbitration. Nonbinding arbitration means that the parties are free to request a trial if they do not accept the arbitrator’s decision. The Monterey County Superior Court offers a nonbinding judicial arbitration program.

Cases for Which Arbitration May Be Appropriate: Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate: If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator’s award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation

In neutral evaluation, each party gets a chance to present the case to a neutral person called an “evaluator.” The evaluator then gives an opinion on the strengths and weaknesses of each party’s evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator’s opinion is nonbinding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate: Neutral evaluation may be most appropriate in cases in which there are technical issues that require expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate: Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conference

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or neutral person called a “settlement officer” to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 11/4/2021 12:37 PM
By: Rowena Esquerra, Deputy

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

See attachment

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Bill Cornick and David Abbott, Individually and on Behalf of All Others Similar Situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of Monterey
1200 Aguajito Road, Monterey, CA 93940

CASE NUMBER: (Número del Caso):
21CV003506

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Alexandra K. Green, Schubert Jonckheer & Kolbe LLP, 3 Embarcadero Center, Suite 1650, San Francisco, CA 94111, (415) 788-4220

DATE: 11/9/2021
(Fecha)

Clerk, by /s/ Rowena Esquerra, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify):
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date):

Page 1 of 1

SUM-200(A)

SHORT TITLE:

BILL CORNICK, et al. vs. ALLY BANK, et al

CASE NUMBER:

21CV003506

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
 → If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

Ally Financial Inc.
 500 Woodward Avenue, Floor 10
 Detroit, Michigan 48226

Ally Bank
 200 West Civic Center Drive, Suite 201
 Sandy, Utah 84070

Ally Financial Inc.
 c/o The Corporation Company
 40600 Ann Arbor Road East, Suite 201
 Plymouth, MI 48170

Ally Bank
 c/o CT Corporation System
 1108 E South Union Avenue
 Midvale, UT 84047

Page ____ of ____

Page 1 of 1

Form Adopted for Mandatory Use
 Judicial Council of California
 SUM-200(A) [Rev. January 1, 2007]

ADDITIONAL PARTIES ATTACHMENT
Attachment to Summons

**For your protection and privacy, please press the Clear
 This Form button after you have printed the form.**

Print this form

Save this form

Clear this form

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
See attachment A

(b) County of Residence of First Listed Plaintiff Monterey County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
See attachment A

DEFENDANTS
See attachment A

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
See attachment A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment Of Veteran's Benefits <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury -Medical Malpractice CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities--Employment <input type="checkbox"/> 446 Amer. w/Disabilities--Other <input type="checkbox"/> 448 Education	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty OTHER <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee--Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC § 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC § 158 <input type="checkbox"/> 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent--Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC § 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC § 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation--Transfer	<input type="checkbox"/> 8 Multidistrict Litigation--Direct File
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 1332
Brief description of cause:
Alleged negligence regarding purported data breach

VII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. **DEMAND \$** **CHECK YES only if demanded in complaint: JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S), IF ANY** (See instructions): JUDGE DOCKET NUMBER **IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**
(Place an "X" in One Box Only) ☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE ☐ EUREKA-MCKINLEYVILLE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
 - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”

Date and Attorney Signature. Date and sign the civil cover sheet.

Attachment A

Attachment A

I(a). Parties

Plaintiffs: Bill Cornick and David Abbott, Individually and on Behalf of All Others
Similarly Situated

Defendants: Ally Bank, Ally Financial Inc., and Does 1-50.

I(c). Attorneys

Attorneys for Plaintiffs:

SCHUBERT JONCKHEER & KOLBE LLP
Robert C. Schubert
Noah M. Schubert
Alexandra K. Green
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Telephone: (415) 788-4220

Attorneys for Defendants:

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Palo Alto, California 94304
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Brooke E. Cucinella
Rachel S. Sparks Bradley
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ally Bank Hit with Class Action Over April 2021 Data Breach](#)
