

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT HARTIGAN, on behalf of)	
themselves and all others similarly situated,)	
) Case No. 20-10551
Plaintiff,)	
)
vs.)	
) NOTICE OF REMOVAL
MACY’S, INC.,)	
)
Defendant.)	
)
)
)

PLEASE TAKE NOTICE that Defendant Macy’s, Inc. (“Defendant”) hereby removes this case from the Superior Court of the Commonwealth of Massachusetts to the United States District Court for the District of Massachusetts. In support of removal, Defendant states as follows.

STATEMENT OF JURISDICTION

On November 26, 2019, Plaintiff Robert Hartigan (“Plaintiff”) filed a Class Action Complaint (“Complaint”) against Defendant in Suffolk County Superior Court of the Commonwealth of Massachusetts, Case No. 2019-CV-03718-BLS1 (the “State Court Action”). A First Amended Complaint was then filed on or about February 14, 2020. Copies of the pleadings and papers Defendant is aware of having been filed in the State Court Action are collected and attached as Exhibit A.

This case is removable under 28 U.S.C. § 1453(b) because it meets the requirements of the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.) (hereinafter “CAFA”). A defendant’s notice of removal under CAFA need only contain

a short and plain statement of the grounds for removal. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551-53, 190 L. Ed. 2d 495 (2014).

**THIS CASE IS REMOVABLE UNDER 28 U.S.C. § 1453(b) BECAUSE IT
QUALIFIES AS A “CLASS ACTION” THAT MEETS THE
REQUIREMENTS OF 28 U.S.C. § 1332(d)(2)**

This case qualifies as a “class action” in which the putative class includes at least 100 members, the amount Plaintiffs have put into controversy exceeds \$5,000,000, exclusive of interest and costs, and one or more members of the putative class and Defendant are citizens of different states. *See* 28 U.S.C. § 1332(d). Consequently, this action is removable pursuant to 28 U.S.C. § 1453, which provides that a “class action” may be removed to federal court in accordance with 28 U.S.C. § 1446(b). Defendant denies, however, that this case could be certified as a class action, and expressly reserves its right to oppose any motion for class certification filed in this action.

A. The Putative Class Includes At Least 100 Members

Plaintiff purports to bring this action “on behalf of himself and similarly situated individuals.” See Ex. A, First Amended Complaint ¶ 93. Plaintiff defines the putative class as follows: “All Massachusetts individuals whose Class Information was stolen, distributed, or accessed by unauthorized third-parties as a result of The Breach.” Id. ¶ 94. The First Amended Complaint defines “Class Information” as “Class Member’s personal information, including: first and last names, addresses, phone numbers, and credit card information.” Id. ¶ 23. The data incident that is the subject of the complaint potentially impacted 4,951 consumers in the Commonwealth of Massachusetts. Declaration of Michael McCullough, ¶ 5. Thus, the putative class easily exceeds the 100-member requirement imposed by CAFA.

B. The Amount in Controversy Exceeds \$5,000,000

“The amount in controversy is simply an estimate of the total amount in dispute, not a

prospective assessment of defendant's liability." *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). "When the plaintiff's complaint does not state the amount in controversy, the defendant's notice of removal may do so." *Dart Cherokee Basin Operating Co.*, 135 S. Ct. at 551.

Plaintiffs allege, *inter alia*, a violation of M.G.L. c. 214, § 1B, a common law claim for negligence for allegedly breaching a duty of care owed to its card holders by failing to prevent the criminal acts of an unknown third party. Ex. A, First Amended Complaint ¶¶ 102-120; 121-142. Plaintiff also alleges a claim for breach of contract and M.G.L. c. 93A, § 2, M.G.L. c. 93H and for declaratory judgment all based on the same operative set of facts. Id. ¶¶ 143-197. Although Defendant denies the material allegations in the Complaint, denies any wrongdoing, and denies that Plaintiff would be entitled to recovery in any amount, the amount placed in controversy by Plaintiff's class-based claims exceeds \$5,000,000.

Plaintiff alleges damages for the costs the putative class will incur to pay for credit monitoring to avoid identity theft, damages for breach of their privacy and public disclosure of private facts, and damages for loss of time. The putative class also seeks recovery of attorneys' fees. Of import, Plaintiff's counsel sent Macy's a settlement demand letter dated December 31, 2019, in which he demanded compensation in the amount of 10 years of identity monitoring (or the cash equivalent) and \$10,000 for each member of the putative class. As there were 4,951 Massachusetts consumers potentially affected by the data incident, at \$10,000 each, the settlement demand was over \$49 million. In order for the amount in controversy to be less than \$5,000,000, each class member could not recover more than \$1,010 on average. In light of the six counts for which damages are sought, the number of potential putative class members (4,951) and the damages sought due to the potential for identity theft, the risk of "financial detriment" and the payment of "costly identity monitoring", in addition to attorneys' fees and costs, there

is no doubt that the amount in controversy clearly exceeds the \$5,000,000 jurisdictional threshold. McCullough Decl. at ¶¶ 4-5.

It is well-settled in this jurisdiction that settlement demands are relevant to establish that the jurisdictional threshold has been met. *Garick v. Mercedes-Benz USA*, 2018 U.S. Dist. LEXIS 53980, *5 (rationale for finding the amount in controversy was met included: 1) the complaint sought double or treble damages, 2) plaintiff made a pre-litigation demand of \$50 million and 3) the amount would be satisfied if every class member only received \$13). Other federal jurisdictions likewise have relied on settlement letters as relevant evidence of the amount in controversy. See *Chase v. Shop 'N Save Warehouse Foods, Inc.*, 110 F.3d 424, 428-30 (7th Cir. 1997) (plaintiff's settlement offer is properly consulted in determining "plaintiff's assessment of the value of her case"); *Wilson v. Belin*, 20 F.3d 644, 651 n. 8 (5th Cir. 1994) ("Because the record contains a letter, which plaintiff's counsel sent to defendants stating that the amount in controversy exceeded \$ 50,000, it is 'apparent' that removal was proper."); *Cohn v. Petsmart, Inc.* (9th Cir. 2002) 281 F.3d 837, 840 (demand letter sufficient to establish amount in controversy).

In this case, even a conservative estimate of the penalties Plaintiff seeks for Defendant's purported failure to prevent the data incident – at 4,951 consumers – quickly surpasses the \$5,000,000 threshold, and removal under the CAFA is appropriate.

C. Plaintiff and Defendant Are Citizens of Different States

Plaintiff is a citizen of the State of Massachusetts as alleged in the Complaint. Ex. A, First Amended Complaint ¶ 5.

For diversity jurisdiction purposes, a corporation is deemed to be a citizen of the state in which it is incorporated as well as the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 130 S. Ct. 1181, 175 L. Ed. 2d 1029

(2010) (holding “‘principal place of business’ is best read as referring to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities. It is the place that Courts of Appeals have called the corporation’s ‘nerve center.’”).

At the time Plaintiff filed the State Court Action, Defendant was incorporated under the laws of the State of Delaware. Defendant is still incorporated under the laws of the state of Delaware. Declaration of Steven R. Watts (“Watts Decl.”), ¶ 3. At the time Plaintiff filed the State Court Action, Defendant’s principal place of business was in New York, New York. Defendant’s principal place of business is still in New York, New York. Id. ¶ 4. This is demonstrated by the fact that Macy’s, Inc.’s corporate offices are located in New York. Defendant is also only qualified to do business in Ohio, New York and Oregon (not Massachusetts). Also important to the analysis of Defendant’s principal place of business is that its board of directors meets in New York; the members of its executive management team are located in New York; and its other principal corporate officers are also located in New York. Accordingly, as the decisions of the board of directors, executive management team and corporate officers (the individuals responsible for directing, controlling and coordinating the activities of Macy’s, Inc.) are rendered from New York, under *Hertz*, Defendant’s principal place of business is New York. Id.

In accordance with 28 U.S.C. § 1332, there is complete diversity of citizenship because Plaintiff (Massachusetts) and Defendant (Delaware/New York) are citizens of different States. *See* 28 U.S.C. § 1332(a)(1),(c)(1).

REMOVAL IS TIMELY

This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is being filed within 30 days of the service of the Summons and Complaint by Defendant. The Summons and Complaint were served on Defendant on February 19, 2020.

VENUE

Venue is proper in this district because the Suffolk County Superior Court of the Commonwealth of Massachusetts is located within the federal District of Massachusetts and this is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

NOTICE TO PLAINTIFF

As required by 28 U.S.C. § 1446(d), Defendant will provide prompt written notice of the filing of this Notice of Removal to Plaintiff.

NOTICE TO THE MASSACHUSETTS SUPERIOR COURT

As required by 28 U.S.C. § 1446(d), Defendant will promptly file this Notice of Removal with the Clerk of the Suffolk County Superior Court for the Commonwealth of Massachusetts.

WHEREFORE, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant removes this case from the Suffolk County Superior Court of the Commonwealth of Massachusetts to the United States District Court for the District of Massachusetts.

Respectfully submitted,

Dated: March 19, 2020

By: /s/ Brenda R. Sharton
Brenda R. Sharton (BBO No. 556909)
David S. Kantrowitz (BBO No. 676231)
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dkantrowitz@goodwinlaw.com

Attorneys for Defendant Macy's, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on March 19, 2020 via email on all counsel or parties of record listed below and will be sent via first class mail upon request:

David J. Relethford
Forrest, LaMothe, Mazow, McCullough, Yasi & Yasi PC
2 Salem Green, Suite 2
Salem, MA 01970
Email: drelethford@forrestlamothe.com

Michael C. Forrest
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/s/ Brenda R. Sharton

Brenda R. Sharton

EXHIBIT A

Commonwealth of Massachusetts

SUFFOLK, SS.

TRIAL COURT OF THE COMMONWEALTH

SUPERIOR COURT DEPARTMENT

CIVIL DOCKET NO. SUCV2019-CV_03718-BLS1

ROBERT HARTIGAN,
on behalf of himself and
all others similarly, PLAINTIFF(S),
situated

v.
MACYS, INC

_____, DEFENDANT(S)

SUMMONS

THIS SUMMONS IS DIRECTED TO MACYS, INC (Defendant's name)

You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Suffolk Superior Court. **YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.**

1. **You must respond to this lawsuit in writing within 20 days.** If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. **If you need more time to respond, you may request an extension of time in writing from the Court.**

2. **How to Respond.** To respond to this lawsuit, you must file a written response with the court and mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:

- a. Filing your **signed original** response with the Clerk's Office for Civil Business, Suffolk Court, Superior

3 Pemberton Square (address), by mail or in person, **AND**

- b. Delivering or mailing a copy of your response to the Plaintiff's Attorney/Plaintiff at the following address: 2 Salem Green, Suite 2, Salem MA 01970

3. **What to include in your response.** An "Answer" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as **counterclaims**) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must **specifically** request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a **"Motion to Dismiss,"** if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under Mass. R. Civ. P. 12. If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at www.mass.gov.courts/case-legal-res/rules of court.

2020 MAR - 5 PM 1:34
 CIVIL CLERK'S OFFICE
 SUFFOLK SUPERIOR COURT
 3 PEBERTON SQUARE
 SALEM, MA 01970

4. Legal Assistance. You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at www.mass.gov/courts/selfhelp.
5. Required information on all filings: The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss. You should refer to yourself as the "Defendant."

Witness Hon. Judith Fabricant, Chief Justice on February 14, 20 20.

Michael Joseph Donovan
 Michael Joseph Donovan
 Clerk-Magistrate

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

PROOF OF SERVICE OF PROCESS

I hereby certify that on February 19, 20 20 I served a copy of this summons, together with a copy of the complaint in this action, on the defendant named in this summons, in the following manner (See Mass. R. Civ. P. 4 (d)(1-5)):

Certified Mail, Return Receipt Requested.

Dated: March 2, 20 20

Signature: [Signature]

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p><u>Macy's Inc</u> <u>7 West 75 Street</u> <u>Cincinnati, OH 45202</u></p>		<p>A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>D. J. H. S. Co.</u></p> <p>C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label) <u>7018 3090 0001 9186 3677</u></p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA. NO. *19-3718A*

ROBERT HARTIGAN, on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

MACY'S, INC.,

Defendant.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2019 NOV 26 A 10: 58
FOLIO 11 OF 11
CLERK / REGISTRE

**PLAINTIFF'S CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff, Robert Hartigan ("Plaintiff" or "Hartigan") seeks to represent himself and all other similarly situated individuals ("Class" or "Class Members") in claims against Macy's, Inc. ("Macy's" or "Defendant").

In October 2019, Macy's, a well-known department store chain, had its data security breached, impacting and disclosing thousands of customers' financial information ("The Breach").

More precisely, between October 7, 2019 and October 15, 2019, hackers stole personal customer information from Macy's website. Macy's website was hacked by an unauthorized third-party which permitted the third-party to capture customer's checkout and wallet-page information.

The information unlawfully accessed and disclosed included customers' first and last names; addresses; phone numbers; email addresses; and credit card numbers (with security codes and expiration dates).

As Macy's described in a public statement issued shortly after The Breach, "we are aware of a highly sophisticated and targeted data security incident related to www.macys.com."

In a letter dated November 14, 2019, Macy's explained that Mr. Hartigan's and the Class's personal information was the subject of a recent data breach and that Macy's would provide a year of credit monitoring ("Breach Notification Letter").

The Breach Notification Letter informed customers that identify theft and financial crimes were possible as a result of Macy's loss of sensitive financial information it had collected from Mr. Hartigan and others.

Macey's went on to task Mr. Hartigan, and other customers, with being vigilant and taking myriad steps to avoid identity theft.

However, Macy's neither offered financial compensation nor an opportunity to obtain, free of charge, certain professional monitoring for the purposes of preventing the victims from identity theft beyond one year's time.

Plaintiff alleges that Macy's unlawfully, negligently, and unfairly failed to ensure the security of, and protect, Plaintiff and Class Member's information.

As such, Plaintiff contends that Macy's actions constituted violations of the Massachusetts common-law, statutory law and regulations.

By way of this action, Plaintiff asserts that: (1) Macy's breached its duty and obligation to keep customer's information confidential; (2) Macy's negligently violated the privacy rights of Plaintiff and the putative class by failing to protect sensitive information in conformity with its duties; and (3) Macy's did not adequately fulfill its duty to prevent and mitigate actual or potential damages caused by The Breach.

Plaintiff contends that the foregoing acts and omissions constitute violations of Massachusetts law; and further, that Plaintiff and all Class Members have suffered cognizable

injuries due to the acts and omissions of Macy's.

PARTIES

1. Plaintiff, Robert Hartigan is an individual with a principal residence in Suffolk County, Massachusetts.
2. Defendant, Macy's, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in Cincinnati, Ohio.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over Macy's by virtue of its continuous transactions, conducting of trade and business throughout the Commonwealth at all times relevant hereto.
4. This Court has jurisdiction over the claims contained herein as they relate to Plaintiff because the claims for damages for Plaintiff and the putative class exceed twenty-five thousand dollars (\$25,000.00).
5. Venue in this matter is proper as Plaintiff resides Suffolk County, Massachusetts.

FACTUAL ALLEGATIONS – THE BREACH

6. Plaintiff repeats and re-alleges the allegations set forth above.
7. On October 10, 2019 at 9:46:43 P.M. EDT, Plaintiff purchased items from Macy's through its website, www.macys.com, order #1816647941 ("Purchases"). See Exhibit 1 ("*e-mail confirmation of Plaintiff's purchase from Macy's*")(*redacted*).
8. Plaintiff's Purchases were made using a Visa Credit Card.
9. Plaintiff's Purchases were to be sent to his home address, with premium shipping.
10. Plaintiff and the Class were customers of Macy's who purchased items from Macy's via www.macys.com.
11. In October of 2019, Plaintiff and the Class purchased items from Macy's through Macy's website; Macy's.com.

12. In October of 2019, Plaintiff and the Class entered into a contract with Macy's to purchase items from its website.
13. In October of 2019, Macy's offered Plaintiff and the Class certain items from its online store in exchange for a price.
14. In October of 2019, Plaintiff and the Class accepted Macy's offers for certain items from its store in exchange for a price.
15. In October of 2019, Plaintiff and the Class and Macy's entered into binding contracts for the exchange of currency for goods and/or services.
16. In October of 2019, Plaintiff and the Class provided personal information to Macy's through its website; www.macys.com.
17. In October of 2019, Plaintiff and the Class provided Macy's their respective first names for the purpose of buying items from Macy's through its website.
18. In October of 2019, Plaintiff and the Class provided Macy's their respective last names for the purpose of buying items from Macy's through its website.
19. In October of 2019, Plaintiff and the Class provided Macy's their respective addresses for the purpose of buying items from Macy's through its website.
20. In October of 2019, Plaintiff and the Class provided Macy's their respective phone numbers for the purpose of buying items from Macy's through its website.
21. In October of 2019, Plaintiff and the Class provided Macy's their respective credit card numbers for the purpose of buying items from Macy's through its website.
22. In October of 2019, Plaintiff and the Class provided Macy's security codes to their respective credit cards for the purpose of buying items from Macy's through its website.

23. In October of 2019, Plaintiff and the Class provided Macy's the expiration dates to their respective credit cards for the purpose of buying items from Macy's through its website.
24. Macy's collected and maintained personal and financial information about Plaintiff and the Class.
25. Macy's collected and maintained information about Plaintiff and the Class, including first and last names, addresses, phone numbers and credit card information, including the numbers, the security codes and the expiration dates ("Class Information")
26. Macy's collected and maintained Class Information in its computer system.
27. Macy's collected and maintained Class Information on its website.
28. Macy's collected and maintained Class Information on its servers.
29. Plaintiff and the Class had the expectation that Macy's would protect Class Information.
30. Plaintiff and the Class had the expectation that Macy's would not share Class Information with anyone other than authorized persons.
31. Macy's had the duty to protect Class Information.
32. Macy's had the duty to prevent disclosure of Class Information.
33. Macy's had the duty to prevent disclosure of Class Information personal information to unauthorized and/or nefarious individuals.
34. Macy had the duty to prevent disclosure of Class Information against known and unknown risks.
35. Macy had the duty to prevent disclosure of Class Information against malicious third parties, insiders, third party hackers and malware (software intentionally designed to cause damage to a computer, server, client, or computer network).
36. Macy had the duty to prevent disclosure of Class Information through web skimming (a form of internet fraud whereby a payment page on a website is compromised when malware is injected

onto the page via a third-party script service in order to steal payment information).

37. On or before October 7, 2019, hackers installed malware on Macy's website.
38. Between October 7, 2019 and October 15, 2019, hackers stole data, including Class Information, from Macy's website.
39. Between October 7, 2019 and October 15, 2019, hackers stole Class Information from Macy's website to perpetrate identity theft.
40. Between October 7, 2019 and October 15, 2019, malicious third parties accessed and obtained Class Information.
41. Between October 7, 2019 and October 15, 2019, malicious third parties were permitted by Macy's to access Class Information.
42. Unknown third parties were not authorized access or view Class Information.
43. Macy's allowed Class Information to be accessed in an unauthorized manner.
44. Macy's allowed Class Information to be accessed and/or disseminated in an unauthorized manner.
45. Unknown third-party access, receipt, and/or review of Class Information constituted unauthorized disclosures of the same.
46. Macy's has breached Plaintiff and the Class' interest in privacy.
47. Macy's has made private facts regarding Plaintiff and the Class public.
48. Third parties' access of Class Information constituted an unauthorized disclosure by Macy's.
49. Plaintiff and the Class did not consent to the disclosure of their information to any unauthorized individual.
50. Macy's maintained a policy whereby its customers' personal information would not be disclosed to unauthorized parties ("Macy's Privacy Policy"). See Exhibit 2 ("*Macy's and www.macys.com Notice of Privacy Practices*").

51. Macy's Privacy Policy states, "we at Macy's understand that you entrust your data to us. We value that trust. Our collection and use of customer data is guided by our corporate principle of Customers First and subject to our Macy's Responsible Information Management program."
52. Macy's Privacy Policy states, "macys.com, macysbackstage.com, and mx.macys.com have put in place various procedural, technical, and administrative measures to safeguard the information we collect and use."
53. Macy's Privacy Policy states, "[w]e designed our technology-enabled services to accept orders only from Web and mobile browsers that permit communication through a Secure Socket Layer (SSL). SSL is an encryption standard that provides a layer of security while information is being transmitted over the Internet."
54. Macy's Privacy Policy states, "[a]s a matter of policy, we do not disclose details regarding our security measures as this could be beneficial information to criminals and other bad actors."
55. Macy's Privacy Policy states, "sometimes bad actors attempt to use our brand to create fake web pages; send fake texts or emails, and conduct other illegal activities to commit fraud or attempt to breach consumers' security. We actively monitor for these illegal scams and shams."
56. Macy's did not comply with its policy to ensure that its customers personal information not be disclosed to unauthorized parties.
57. Macy's promulgated rules to protect customers' personal information.
58. Macy's did not comply with its own rules enacted to protect customers' personal information.
59. Macy's promulgated rules to be followed by its employees in order to ensure the confidentiality of customers' personal information.
60. Macy's did not ensure employees followed the rules promulgated to ensure the confidentiality of

customers' personal information.

61. Macy's had contractual relationships with Plaintiff and the Class that it would protect Class Information.

62. Macy's did not comply with its contractual duties to Plaintiff and the Class.

FACTUAL ALLEGATIONS – THE BREACH NOTIFICATION

63. On or about November 14, 2019, Macy's sent a breach notification ("*Breach Notification Letter*") to Plaintiff and Class Members. See Exhibit 3 (Redacted).

64. The Breach Notification Letter informed Plaintiff and the Class that Macy's had a recent incident that involved personal information about Plaintiff and the Class on www.macys.com.

65. The Breach Notification Letter informed Plaintiff and the Class that Macy's deeply regretted the incident occurred.

66. The Breach Notification Letter informed Plaintiff and the Class that Macy's takes security of personal information seriously.

67. The Breach Notification Letter informed Plaintiff and the Class that Macy's recommended Plaintiff and the Class review the letter and take steps to protect against misuse of Class Information.

68. The Breach Notification Letter informed Plaintiff and the Class that Macy's arranged for complimentary identity monitoring services for 12 months.

69. The Breach Notification Letter informed Plaintiff and the Class that Macy's arranged for Internet Surveillance Services, which protects against dark web scanning for identity and credit card information.

70. The Breach Notification Letter informed Plaintiff and the Class they could only receive identity monitoring within 12 months from the date of the Breach Notification Letter.

71. The Breach Notification Letter informed Plaintiff and the Class they should remain vigilant by regularly reviewing account statements and credit reports.
72. The Breach Notification Letter informed Plaintiff and the Class they should report suspicious or unusual activity to their respective financial institutions.
73. The Breach Notification Letter informed Plaintiff and the Class they should contact the Federal Trade Commission or law enforcement to report incidents of identity theft and to learn about the steps to protect themselves.
74. The Breach Notification Letter informed Plaintiff and the Class they could visit the Federal Trade Commission website to research identity theft.
75. The Breach Notification Letter informed Plaintiff and the Class they could periodically obtain credit reports from each nationwide reporting agency.
76. The Breach Notification Letter informed Plaintiff and the Class they could contact Equifax, Experian and TransUnion to obtain free copies of their credit reports.
77. The Breach Notification Letter informed Plaintiff and the Class they could add a fraud alert to help protect credit information.
78. The Breach Notification Letter informed Plaintiff and the Class they could obtain a police report in regard to the incident.
79. The Breach Notification Letter informed Plaintiff and the Class they should place a security freeze on their credit.
80. The Breach Notification Letter informed Plaintiff and the Class that Macy's would "provide as much assistance as we can."
81. Macy's was required to protect Class Information from unauthorized access.

82. As a result of The Breach, Plaintiff and the Class have been harmed.
83. As a result of The Breach, Plaintiff and the Class have been subjected to a heightened risk for identity theft and harm.
84. Neither Plaintiff nor members of the Class consented to the disclosure of Class Information to any third party or any other unauthorized individual.
85. As a result of The Breach, Plaintiff and the Class have been exposed to the heightened risk of personal identity theft which will require individuals to undertake continuing efforts and to invest significant money in order to monitor their personal identity profile.
86. One year of credit monitoring is not satisfactory to protect Plaintiff and the Class from the heightened risk of personal identity theft.
87. As a result of the acts and omissions of Macy's, Plaintiff and the Class have suffered harm, including but not limited to, emotional distress, a breach in interest in privacy, public disclosure of private facts and loss of time.

CLASS ALLEGATIONS

88. Plaintiff repeats and re-alleges the allegations set forth above.
89. Plaintiff, on behalf of himself and similarly situated individuals, brings this action as a class action in accordance with Massachusetts Rule of Civil Procedure 23.
90. Plaintiff and the Class are defined as follows:

All individuals whose Class Information was stolen, distributed or accessed by unauthorized third parties as a result of The Breach.
91. The members of the Class are so numerous that joinder of all members would be impracticable.
92. The members of the Class are easily ascertainable through Macy's records.
93. Plaintiff's claims are typical of the claims of other members of the Class, as all members of the Class have been similarly affected by Macy's unlawful acts and omissions.

94. Plaintiff will fairly and adequately protect the interests of the Class and is represented by counsel experienced in complex class action litigation.
95. Common questions of law and fact exist and predominate over any questions of law or fact which may affect only individual Class Members. Common questions of law and fact include:
- A. Whether the acts and omissions of Macy's constituted violations of: (1) M.G.L. c. 214, § 1B;
 - B. Whether the acts and omissions of Macy's constituted (1) Negligence; and/or (2) Breach of Contract;
 - C. What is the applicable statute of limitations on any and all of the causes of action; and
 - D. Whether Plaintiff and the Class are entitled to damages, and if so, the proper measure of damages.
96. A class action will cause an orderly and expeditious administration of the claims of Class Members.
97. A class action will foster economies of time, effort and expense to ensure uniformity of decisions, presenting the most efficient manner of adjudicating the claims set forth herein.

COUNT I
VIOLATION OF M.G.L. c. 214, § 1B

98. Plaintiff repeats and re-alleges the allegations set forth above.
99. Macy's had a legal duty to protect Class Information.
100. Macy's had a legal duty to diligently protect against and monitor and detect potential or actual breaches of Class Information.
101. Macy's had a legal duty to ensure Class Information was not stolen.
102. Macy's had a legal duty to ensure Class Information was not distributed to third parties.
103. Macy's had a legal duty to ensure that its agents/employees complied with all applicable state laws

pertaining to the protection and confidentiality of Class Information.

104. Class Information was stolen while under the protection of Macy's.

105. Class Information was distributed to third parties while under the protection of Macy's.

106. Macy's did not adequately protect Class Information.

107. Macy's did not detect and/or prevent unauthorized access to Class Information.

108. Macy's failure to protect Class Information led to an unreasonable, substantial and serious interference of their privacy.

109. The acts and omissions of Macy's as described above constitute a violation of M.G.L. c 214, § 1B.

110. The acts and omissions of Macy's have caused unreasonable, substantial and/or serious interference with Plaintiff's and Class Members' interest in privacy.

111. The acts and omissions of Macy's exposed Plaintiff and Class Members to the heightened risk of personal identity theft as a result of Macy's actions and omissions as described herein.

112. The acts and omissions of Macy's have exposed Plaintiff and Class Members to the heightened risk of serious financial detriment.

113. The acts and omissions of Macy's shall require Plaintiff and Class Members to incur costly identity monitoring to ensure they are not victims of identity theft.

114. As a result of the acts and omissions of Macy's, Plaintiff and the Class Members have suffered harm, including but not limited to, the costs associated with credit monitoring, a breach in their interest in privacy, public disclosure of private facts and loss of time.

WHEREFORE, Plaintiff and the Class respectfully request that this Court enter Judgment against Macy's for its violations of M.G.L. c. 214, § 1B and award damages to adequately compensate Plaintiff and the Class.

COUNT II
NEGLIGENCE

115. Plaintiff repeats and re-alleges the allegations set forth above.
116. Macy's owed Plaintiff and the Class a duty to protect Class Information.
117. Macy's had a duty to monitor Class Information.
118. Macy's had a duty to ensure Class Information was not stolen.
119. Macy's had a duty to ensure Class Information was not distributed to third parties.
120. Macy's had a duty to take action to protect against known risks which could lead to Class Information being accessed in an unauthorized manner.
121. Macy's had a duty to ensure that its employees comply with any and all state laws pertaining to the protection and confidentiality of Class Information.
122. Macy's failed to monitor Class Information.
123. Macy's failed to ensure Class Information was not stolen.
124. Macy's failed to ensure Class Information was not distributed to third parties.
125. Macy's failed to take action to protect against known risks which led Class Information being accessed in an unauthorized manner.
126. Macy's failed to ensure that its employees comply with any and all state laws pertaining to the protection and confidentiality of Class Information.
127. All of the aforementioned acts and omissions constitute breaches of Macy's duties.
128. As a direct and proximate cause of Macy's breach of its duties, Class information was stolen.
129. As a direct and proximate cause of Macy's breach of its duties, Class information was distributed to third parties.
130. As a direct and proximate cause of Macy's negligence, Plaintiff and members of the Class have suffered breaches of their interest in privacy.
131. As a direct and proximate cause of Macy's negligence, Plaintiff and members of the Class have

been exposed to unauthorized disclosure of Class Information.

132. As a direct and proximate cause of Macy's negligence, Plaintiff and members of the Class have been exposed to an unreasonable, substantial and/or serious interference with their interest in privacy.

133. As a direct and proximate cause of Macy's negligence, Plaintiff and members of the Class have been exposed to the heightened risk of personal identity theft.

134. As a direct and proximate cause of Macy's negligence, Plaintiff and members of the Class have been exposed to the heightened risk of serious financial detriment.

135. As a direct and proximate cause of Macy's negligence, Plaintiff and members of the Class may incur costly identity monitoring to ensure they are not victims of identity theft.

136. As a direct and proximate cause of Macy's negligence, Plaintiff and members of the Class have suffered harm, including but not limited to, the costs associated with credit monitoring, a breach in their interest in privacy, public disclosure of private facts and loss of time.

WHEREFORE, Plaintiff and the Class respectfully request that this Court enter Judgment against Macy's for its negligence and award damages to adequately compensate Plaintiff and the Class.

COUNT III
BREACH OF CONTRACT

137. Plaintiff repeats and re-alleges the allegations set forth above.

138. Plaintiff and the Class sought to purchase items from Macy's through its website.

139. Macy's provided items to Plaintiff and the Class in consideration of payment for said items.

140. Plaintiff and the Class Members each had a binding and enforceable contract with Macy's, whereby Plaintiff and Class Members received items in exchange for payment.

141. Protecting and ensuring the confidentiality of Class Information was a term and condition of the

contracts between Macy's and Plaintiff and members of the Class.

142. Protecting and ensuring the confidentiality of Class Information was ensured by Macy's Privacy Policy. See Exhibit 2.

143. Macy's failed to maintain the security and protection of Class Information as prescribed by its own policies and Massachusetts law.

144. Macy's breached its contracts with Plaintiff and Class Members.

145. Macy's failure to maintain the security and protection of Class Information as prescribed by its own policies and Massachusetts law constituted breaches of contract.

146. As a result of Macy's acts and omissions, Macy's breached the terms of the contract with Plaintiff and members of the Class.

147. As a result of Macy's breaches of contracts, Plaintiff and members of the Class have been harmed.

148. As a direct and proximate cause of Macy's breaches of contract, Plaintiff and members of the Class have suffered damages.

149. As a direct and proximate cause of Macy's breaches of contract, Class Information was lost.

150. As a direct and proximate cause of Macy's breaches of contract, Class Information was stolen.

151. As a direct and proximate cause of Macy's breaches of contract, Class Information was distributed to third parties.

152. As a direct and proximate cause of Macy's breach of contract, Plaintiff and members of the Class have suffered a breach of their privacy.

153. As a direct and proximate cause of Macy's breach of contract, Plaintiff and members of the Class have been exposed to the heightened risk of personal identity theft.

154. As a direct and proximate cause of Macy's breach of contract, Plaintiff and members of the Class have been exposed to the heightened risk of serious financial detriment.

155. As a direct and proximate cause of Macy's breach of contract, Plaintiff and members of the Class may incur costly and identity monitoring to ensure they are not victims of identity theft.

156. As a direct and proximate cause of Macy's breach of contract, Plaintiff and members of the Class have suffered harm, including but not limited to, the costs associated with credit monitoring, a breach in their interest in privacy, public disclosure of private facts and loss of time.

WHEREFORE, Plaintiff and the Class respectfully request that this Court enter Judgment against Macy's for its breach of contract and award damages to adequately compensate Plaintiff and the Class.

COUNT IV
DECLARATORY JUDGMENT

157. Plaintiff repeats and re-alleges the allegations set forth above.

158. There exists an actual controversy as to whether Macy's complied with the mandates of Massachusetts Law when handling Class Information.

159. Plaintiff and the Class are entitled to a declaration that Macy's had a duty to comply with the mandates of Massachusetts law to ensure the confidentiality and security of Class Information.

160. Plaintiff and the Class are entitled to a declaration as to Macy's duties to Plaintiff and Class in regard to ensuring the confidentiality and security of Class Information.

161. Plaintiff and the Class are entitled to a declaration as to Macy's obligations as it relates to further measures to ensure the confidentiality and security of Class Information Macy's currently maintains.

WHEREFORE, Plaintiff and the Class request that this Honorable Court set forth, by way of declaratory judgment, Macy's duties to Plaintiff and Class Members with regard to ensuring the confidentiality and security of Class Information.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and other similarly situated individuals, demand judgment against Macy's as follows:


- A. An order determining that this action is a proper class action, and certifying Plaintiff as representative of the putative Class;
- B. An order appointing Plaintiff's counsel as competent legal representatives of the putative Class;
- C. An order determining that the acts and omissions of Macy's constituted violations of: (1) M.G.L. c. 214, § 1B.
- D. An order determining that the acts and omissions of Macy's as described herein constituted: Negligence; and Breach of Contract;
- E. An order ensuring Macy's has taken appropriate further measures to secure Class Information it maintains;
- F. An order awarding Plaintiff and the Class damages;
- G. An order determining the appropriate statute of limitations applicable to each count of this action;
- H. An order awarding Plaintiff an appropriate stipend for acting as class representative;
- I. An order awarding Plaintiff's counsel attorneys' fees and court costs; and
- J. An order awarding Plaintiff and the Class any further relief as this Court may deem just and appropriate.

JURY DEMAND

Plaintiff, on behalf of herself and all others similarly situated, hereby demand trial by jury on all counts of this Complaint, which are triable by a jury.

Respectfully submitted,
Plaintiffs,
By its attorneys,

DATED: November 25, 2019



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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA. NO. 2019-CV-03718-BLS1

ROBERT HARTIGAN, on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

MACY'S, INC.,

Defendant.

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2020 FEB 18 P 2:20
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

**PLAINTIFF'S FIRST AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Robert Hartigan ("Plaintiff" or "Hartigan") seeks to represent himself and all other similarly situated individuals ("Class" or "Class Members") in claims against Macy's, Inc. ("Macy's" or "Defendant").

In October 2019, a data security breach at Macy's, a well-known department store chain, impacted and disclosed thousands of customers' financial information ("The Breach").

More precisely, between October 7, 2019 and October 15, 2019, Macy's website was hacked by an unauthorized third-party who captured customer's checkout and wallet-page information.

The information unlawfully accessed and disclosed included customers' first and last names; addresses; phone numbers; email addresses; and credit card numbers with security codes and expiration dates.

As Macy's described in a public statement issued shortly after The Breach, "we are aware of a highly sophisticated and targeted data security incident related to www.macys.com."

In a letter dated November 14, 2019, Macy's explained that customers' personal information (including that of Plaintiff and the Class) was the subject of the Breach, and that Macy's would provide the affected customers with a single year of credit monitoring ("Breach Notification Letter").

The Breach Notification Letter informed customers that identify theft and financial crimes were possible as a result of Macy's loss of the customers' sensitive financial information.

Rather than assist its mistreated customers, Macy's tasked them with taking a myriad of steps to avoid identity theft.

Macy's neither offered direct financial compensation, nor did Macy's offer to cover the costs of certain professional monitoring for the purposes of preventing the victims from identity theft beyond one year's time.

The allegations in this Complaint establish that Macy's unlawfully, negligently, and unfairly failed to ensure the security of Plaintiff's and Class Member's financial information. Macy's actions constituted violations of the Massachusetts common-law, statutory law, and regulations.

By way of this action, Plaintiff asserts that: (1) Macy's breached its duty and obligation to keep customer's information confidential; (2) Macy's violated the privacy rights of Plaintiff and the putative class by failing to protect sensitive information in conformity with its duties; and (3) Macy's did not adequately fulfill its duty to prevent and mitigate actual or potential damages caused by The Breach.

The foregoing acts and omissions constitute violations of Massachusetts law; and further, that Plaintiff and all Class Members have suffered cognizable injuries due to the acts and omissions of Macy's.

PARTIES

1. Plaintiff, Robert Hartigan is an individual with a principal residence in Suffolk County, Massachusetts.
2. Defendant, Macy's, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business in Cincinnati, Ohio.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over Macy's by virtue of Macy's continuous transactions and conducting of trade and business throughout the Commonwealth at all times relevant hereto.
4. This Court has jurisdiction over the claims contained herein as they relate to Plaintiff because the claims for damages suffered by Plaintiff and the putative class exceed twenty-five thousand dollars (\$25,000.00).
5. Venue in this matter is proper as Plaintiff resides Suffolk County, Massachusetts.

FACTUAL ALLEGATIONS – THE BREACH

6. Plaintiff repeats and re-alleges the allegations set forth above.
7. On October 10, 2019, at 9:46:43 P.M. EDT, Plaintiff purchased items from Macy's through Macy's website, www.macys.com, order #1816647941 ("Purchases"). See, Exhibit 1 ("e-mail confirmation of Plaintiff's purchase from Macy's")(redacted).
8. Plaintiff's Purchases were made using a Visa Credit Card.
9. Plaintiff's Purchases were to be delivered to his home address through premium shipping.
10. Plaintiff and the Class were customers of Macy's who purchased items from Macy's via Macy's website: www.macys.com.
11. In October of 2019, Plaintiff and the Class purchased items from Macy's through Macy's website; Macy's.com.
12. In October of 2019, Plaintiff and Class Members entered into purchase contracts with Macy's.

13. In October of 2019, Plaintiff and Class Members entered into purchase contracts with Macy's for the exchange of currency for goods and/or services.
14. In October of 2019, Plaintiff and Class Members provided personal information to Macy's through Macy's website; www.macys.com.
15. In October of 2019, Plaintiff and Class Members provided their respective first names to Macy's for the purpose of buying items from Macy's through Macy's website.
16. In October of 2019, Plaintiff and the Class Members provided their respective last names to Macy's for the purpose of buying items from Macy's through Macy's website.
17. In October of 2019, Plaintiff and the Class Members provided their respective addresses to Macy's for the purpose of buying items from Macy's through Macy's website.
18. In October of 2019, Plaintiff and the Class Members provided their respective phone numbers to Macy's for the purpose of buying items from Macy's through Macy's website.
19. In October of 2019, Plaintiff and the Class Members provided their respective credit card numbers to Macy's for the purpose of buying items from Macy's through Macy's website.
20. In October of 2019, Plaintiff and the Class Members provided security codes of their respective credit cards to Macy's for the purpose of buying items from Macy's through Macy's website.
21. In October of 2019, Plaintiff and the Class Members provided the expiration dates of their respective credit cards to Macy's for the purpose of buying items from Macy's through Macy's website.
22. Macy's collected and maintained Plaintiff's and Class Member's personal and financial information.

23. Macy's collected and maintained Plaintiff's and Class Member's personal information, including: first and last names, addresses, phone numbers, and credit card information (including the numbers, the security codes and the expiration dates) ("Class Information")
24. Macy's collected and maintained Class Information in its computer system.
25. Macy's collected and maintained Class Information on Macy's website.
26. Macy's collected and maintained Class Information on its servers.
27. Plaintiff and the Class had the expectation that Macy's would protect Class Information.
28. Plaintiff and the Class had the expectation that Macy's would not disclose Class Information with authorized persons.
29. Plaintiff and the Class had the expectation that Macy's would protect Class Information from access by authorized persons.
30. Macy's had the duty to protect Class Information.
31. Macy's had the duty to prevent disclosure of Class Information.
32. Macy's had the duty to prevent disclosure of Class Information to unauthorized and/or nefarious individuals.
33. Macy had the duty to protect Class Information against known and unknown risks.
34. Macy had the duty to protect Class Information against malicious third-parties, insiders, third-party hackers and malware (software intentionally designed to cause damage to a computer, server, client, or computer network).
35. Macy had the duty to prevent disclosure of Class Information through web skimming (a form of internet fraud whereby a payment page on a website is compromised when malware is injected onto the page via a third-party script service in order to steal payment information).
36. On or before October 7, 2019, hackers installed malware on Macy's website.

37. Between October 7, 2019 and October 15, 2019, hackers stole data, including Class Information, from Macy's website.

38. Between October 7, 2019 and October 15, 2019, hackers stole Class Information from Macy's website to perpetrate identity theft.

39. Between October 7, 2019 and October 15, 2019, malicious third-parties accessed and obtained Class Information.

40. Between October 7, 2019 and October 15, 2019, malicious third-parties were permitted by Macy's to access Class Information.

41. Unknown third-parties were not authorized access or view Class Information.

42. Macy's allowed Class Information to be accessed in an unauthorized manner.

43. Macy's allowed Class Information to be accessed and/or disseminated in an unauthorized manner.

44. Access, receipt, and/or review of Class Information by an unknown third-party constituted an unauthorized disclosure of Class Information.

45. Macy's breached Plaintiff and the Class' interest in privacy.

46. Macy's allowed for the public disclosure of private facts relating to Plaintiff and Class Members.

47. Access of Class Information by an unknown third-party constituted an unauthorized disclosure by Macy's.

48. Plaintiff and the Class did not consent to the disclosure of their information to any unauthorized individual.

49. Macy's maintained a policy whereby its customers' personal information would not be disclosed to unauthorized parties ("Macy's Privacy Policy"). See, Exhibit 2 ("*Macy's and www.macys.com Notice of Privacy Practices*").

50. Macy's Privacy Policy states, "we at Macy's understand that you entrust your data to us. We value that trust. Our collection and use of customer data is guided by our corporate principle of Customers First and subject to our Macy's Responsible Information Management program."
51. Macy's Privacy Policy states, "macys.com, macysbackstage.com, and mx.macys.com have put in place various procedural, technical, and administrative measures to safeguard the information we collect and use."
52. Macy's Privacy Policy states, "[w]e designed our technology-enabled services to accept orders only from Web and mobile browsers that permit communication through a Secure Socket Layer (SSL). SSL is an encryption standard that provides a layer of security while information is being transmitted over the Internet."
53. Macy's Privacy Policy states, "[a]s a matter of policy, we do not disclose details regarding our security measures as this could be beneficial information to criminals and other bad actors."
54. Macy's Privacy Policy states, "sometimes bad actors attempt to use our brand to create fake web pages, send fake texts or emails, and conduct other illegal activities to commit fraud or attempt to breach consumers' security. We actively monitor for these illegal scams and shams."
55. Macy's did not comply with Macy's Privacy Policy.
56. Macy's promulgated rules to protect customers' personal information.
57. Macy's did not comply with its own rules enacted to protect customers' personal information.
58. Macy's promulgated rules to be followed by its employees in order to ensure the confidentiality of customers' personal information.
59. Macy's did not ensure employees followed the rules promulgated to ensure the confidentiality of customers' personal information.
60. Macy's did not comply with its contractual duties to Plaintiff and the Class.

FACTUAL ALLEGATIONS – THE BREACH NOTIFICATION

61. On or about November 14, 2019, Macy's sent the Breach Notification Letter to Plaintiff and Class Members. See, Exhibit 3 (Redacted).
62. The Breach Notification Letter informed Plaintiff and Class Members that Macy's suffered an incident that involved disclosure of personal information about Plaintiff and the Class.
63. The Breach Notification Letter informed Plaintiff and the Class that Macy's recommended Plaintiff and the Class review the letter and take steps to protect against misuse of Class Information.
64. The Breach Notification Letter informed Plaintiff and the Class that Macy's arranged for complimentary identity monitoring services for a period of only 12 months.
65. The Breach Notification Letter informed Plaintiff and the Class that Macy's arranged for Internet Surveillance Services, which protects against dark web scanning for identity and credit card information.
66. The Breach Notification Letter informed Plaintiff and the Class they could only receive identity monitoring within 12 months from the date of the Breach Notification Letter.
67. The Breach Notification Letter informed Plaintiff and the Class they should remain vigilant by regularly reviewing account statements and credit reports.
68. The Breach Notification Letter informed Plaintiff and the Class they should report suspicious or unusual activity to their respective financial institutions.
69. The Breach Notification Letter informed Plaintiff and the Class they should contact the Federal Trade Commission or law enforcement to report incidents of identity theft and to learn about the steps to protect themselves.

70. The Breach Notification Letter informed Plaintiff and the Class they could visit the Federal Trade Commission website to research identity theft.
71. The Breach Notification Letter informed Plaintiff and the Class they could periodically obtain credit reports from each nationwide reporting agency.
72. The Breach Notification Letter informed Plaintiff and the Class they could contact Equifax, Experian and TransUnion to obtain free copies of their credit reports.
73. The Breach Notification Letter informed Plaintiff and the Class they could add a fraud alert to help protect credit information.
74. The Breach Notification Letter informed Plaintiff and the Class they could obtain a police report in regard to the incident.
75. The Breach Notification Letter informed Plaintiff and the Class they should place a security freeze on their credit.
76. The Breach Notification Letter informed Plaintiff and the Class that Macy's would "provide as much assistance as we can."
77. Macy's acknowledged that Plaintiff and Class Members have been harmed as a result of the Breach.
78. Macy's was required to protect Class Information from unauthorized access.
79. As a result of The Breach, Plaintiff and the Class have been harmed.
80. As a result of The Breach, Plaintiff and the Class have been subjected to a heightened risk for identity theft and harm.
81. Neither Plaintiff nor members of the Class consented to the disclosure of Class Information to any third-party or any other unauthorized individual.

82. As a result of The Breach, Plaintiff and the Class have been exposed to the heightened risk of personal identity theft, which requires Plaintiff and the Class to undertake continuing efforts and to invest significant money in order to monitor their personal identity profile.
83. One year of credit monitoring is not satisfactory to protect Plaintiff and the Class from the heightened risk of personal identity theft.
84. As a result of the acts and omissions of Macy's, Plaintiff and the Class have suffered harm, including but not limited to, emotional distress, a breach of their interest in privacy, public disclosure of private facts and loss of time.

M.G.L. c. 93A ALLEGATIONS

85. Plaintiff repeats and re-alleges the allegations set forth above.
86. On or about December 31, 2019, Plaintiff sent a demand to Macy's pursuant to M.G.L. c. 93A, §§ 2 and 9.
87. On or about February 6, 2020, Macy's responded to Plaintiff's M.G.L. c. 93A demand.
88. Macy's response to Plaintiff's M.G.L. c. 93A demand was unreasonable.
89. At all times relevant hereto Macy's was/is engaged in trade and commerce as defined by M.G.L. c. 93A.
90. The acts and omissions of Macy's as set forth herein arose in a business context.
91. The acquisition, storage, and protection of Class Information was undertaken by Macy's in the conduct of business operations.

CLASS ALLEGATIONS

92. Plaintiff repeats and re-alleges the allegations set forth above.
93. Plaintiff, on behalf of himself and similarly situated individuals, brings this action as a class action in accordance with Massachusetts Rule of Civil Procedure 23 and M.G.L. c. 93A.

94. Plaintiff and the Class are defined as follows:

All Massachusetts individuals whose Class Information was stolen, distributed, or accessed by unauthorized third-parties as a result of The Breach.

95. The members of the Class are so numerous that joinder of all members would be impracticable.

96. The members of the Class are easily ascertainable through Macy's records.

97. Plaintiff's claims are typical of the claims of other members of the Class, as all members of the Class have been similarly affected by Macy's unlawful acts and omissions.

98. Plaintiff will fairly and adequately protect the interests of the Class and is represented by counsel experienced in complex class action litigation.

99. Common questions of law and fact exist and predominate over any questions of law or fact which may affect only individual Class Members. Common questions of law and fact include:

A. Whether the acts and omissions of Macy's as described herein constituted violations of:

(1) M.G.L. c. 214, § 1B;

B. Whether the acts and omissions of Macy's as described herein constituted: (1) Negligence; and/or (2) Breach of Contract;

C. Whether the acts and omissions of Macy's as described herein constituted violations of M.G.L. c. 93A.

D. What is the applicable statute of limitations on any and all of the causes of action; and

E. Whether Plaintiff and the Class are entitled to damages, and if so, the proper measure of damages.

100. A class action will cause an orderly and expeditious administration of the claims of Class Members.

101. A class action will foster economies of time, effort and expense to ensure uniformity of decisions, presenting the most efficient manner of adjudicating the claims set forth herein.

COUNT I
VIOLATION OF M.G.L. c. 214, § 1B

102. Plaintiff repeats and re-alleges the allegations set forth above.
103. Macy's had a legal duty to protect Class Information.
104. Macy's had a legal duty to diligently protect against, monitor, and detect potential or actual breaches of Class Information.
105. Macy's had a legal duty to ensure Class Information was not stolen.
106. Macy's had a legal duty to ensure Class Information was not disclosed to third-parties.
107. Macy's had a legal duty to ensure Class Information was not made public.
108. Macy's had a legal duty to ensure that its agents/employees complied with all applicable state laws pertaining to the protection and confidentiality of Class Information.
109. Class Information was accessed in an unauthorized manner while in the custody of Macy's.
110. Class Information was distributed to unauthorized third-parties while in the custody of Macy's.
111. One or more unauthorized third-parties accessed Class information that was in the custody of Macy's for the purpose of misusing the Class Information.
112. Macy's did not adequately protect Class Information.
113. Macy's did not detect and/or prevent unauthorized access to Class Information.
114. Macy's failure to protect Class Information led to an unreasonable, substantial, and serious interference of Plaintiff's and Class Member's privacy.
115. The acts and omissions of Macy's as described above constitute a violation of M.G.L. c 214, § 1B.
116. The acts and omissions of Macy's have caused unreasonable, substantial, and/or serious interference with Plaintiff's and Class Members' interest in privacy.
117. The acts and omissions of Macy's exposed Plaintiff and Class Members to the heightened risk of personal identity theft as a result of Macy's actions and omissions as described herein.

118. The acts and omissions of Macy's have exposed Plaintiff and Class Members to the heightened risk of financial detriment.

119. The acts and omissions of Macy's shall require Plaintiff and Class Members to incur costly identity monitoring to ensure they are not victims of identity theft.

120. As a result of the acts and omissions of Macy's, Plaintiff and the Class Members have suffered harm, including but not limited to, the costs associated with credit monitoring, a breach in their interest in privacy, public disclosure of private facts, and loss of time.

WHEREFORE, Plaintiff and the Class respectfully request that this Court enter Judgment against Macy's for its violations of M.G.L. c. 214, § 1B and award damages to adequately compensate Plaintiff and the Class.

COUNT II
NEGLIGENCE

121. Plaintiff repeats and re-alleges the allegations set forth above.

122. Macy's owed Plaintiff and the Class a duty to protect Class Information.

123. Macy's had a duty to monitor the protection of Class Information.

124. Macy's had a duty to ensure Class Information was not accessed by unauthorized individuals.

125. Macy's had a duty to ensure Class Information was not distributed to unauthorized third-parties.

126. Macy's had a duty to take action to protect against known risks which could lead to the unauthorized access of Class Information.

127. Macy's had a duty to ensure that its employees comply with all state laws pertaining to the protection and confidentiality of Class Information.

128. Macy's failed to monitor Class Information.

129. Macy's failed to ensure Class Information was not accessed by unauthorized third-parties.

130. Macy's failed to ensure Class Information was not distributed to unauthorized third-parties.

131. Macy's failed to take action to protect against known risks which could lead to the unauthorized access of Class Information.

132. Macy's failed to ensure that its employees complied with all state laws pertaining to the protection and confidentiality of Class Information.

133. All of the aforementioned acts and omissions constitute breaches of Macy's duties to Plaintiff and Class Members.

134. As a direct and proximate cause of Macy's breach of its duties, Class information was stolen.

135. As a direct and proximate cause of Macy's breach of its duties, Class information was distributed to unauthorized third-parties.

136. As a direct and proximate cause of Macy's negligence, Plaintiff and Class Members suffered breaches of their respective interests in privacy.

137. As a direct and proximate cause of Macy's negligence, Plaintiff and Class Members have been exposed to an unauthorized disclosure of Class Information.

138. As a direct and proximate cause of Macy's negligence, Plaintiff and members of the Class have been exposed to an unreasonable, substantial, and/or serious interference with their interest in privacy.

139. As a direct and proximate cause of Macy's negligence, Plaintiff and Class Members have been exposed to the heightened risk of personal identity theft.

140. As a direct and proximate cause of Macy's negligence, Plaintiff and Class Members have been exposed to the heightened risk of financial detriment.

141. As a direct and proximate cause of Macy's negligence, Plaintiff and Class Members will incur costs for identity monitoring.

142. As a direct and proximate cause of Macy's negligence, Plaintiff and Class Members have suffered

harm, including but not limited to, the costs associated with credit/identity monitoring, a breach in their interest in privacy, public disclosure of private facts, and loss of time.

WHEREFORE, Plaintiff and the Class respectfully request that this Court enter Judgment against Macy's for its negligence and award damages to adequately compensate Plaintiff and the Class.

COUNT III
BREACH OF CONTRACT

143. Plaintiff repeats and re-alleges the allegations set forth above.

144. Plaintiff and Class Members made purchases from Macy's through Macy's website.

145. Plaintiff and the Class Members each had a binding and enforceable contract with Macy's.

146. Macy's agreed to protect and ensure the confidentiality of Class Information as a term and condition of the contracts between Macy's and Plaintiff and Class Members.

147. Macy's ensured customers that it would protect the confidentiality of Class Information through its customer Privacy Policy. See, Exhibit 2.

148. Macy's failed to maintain the security and protection of Class Information as prescribed by Macy's policies and Massachusetts law.

149. Macy's breached its contracts with Plaintiff and Class Members.

150. Macy's failure to maintain the security and protection of Class Information constituted breaches of contract.

151. As a result of Macy's breaches of contracts, Plaintiff and Class Members have been harmed.

152. As a direct and proximate cause of Macy's breaches of contract, Plaintiff and Class Members have suffered damages.

153. As a direct and proximate cause of Macy's breaches of contract, Class Information was disclosed to unauthorized third-parties.

154. As a direct and proximate cause of Macy's breaches of contract, Class Information was stolen.

155. As a direct and proximate cause of Macy's breaches of contract, Plaintiff and Class Members have all suffered a breach in their interest in privacy.

156. As a direct and proximate cause of Macy's breaches of contract, Plaintiff and Class Members have all been exposed to the heightened risk of identity theft.

157. As a direct and proximate cause of Macy's breaches of contract, Plaintiff and Class Members have all been exposed to the heightened risk of financial detriment.

158. As a direct and proximate cause of Macy's breaches of contract, Plaintiff and Class Members will incur costs for identity monitoring to ensure they are not victims of identity theft.

159. As a direct and proximate cause of Macy's breaches of contract, Plaintiff and Class Members have all suffered harm, including but not limited to, the costs associated with credit monitoring, a breach in their interest in privacy, public disclosure of private facts, and loss of time.

WHEREFORE, Plaintiff and the Class respectfully request that this Court enter Judgment against Macy's for its breaches of contract and award damages to adequately compensate Plaintiff and the Class.

COUNT IV
VIOLATION OF M.G.L. c. 93A, § 2

160. Plaintiff repeats and re-allege the allegations set forth above.

161. Macy's failure to protect, and/or prevent the loss, theft, and/or distribution of Class Information, in the manner set forth herein, was unfair and deceptive.

162. Macy's failure to comply with Macy's Privacy Policy, in the manner set forth herein, constituted an unfair and deceptive business practice.

163. The manner in which Macy's notified Plaintiff and Class Members was unfair and deceptive.

164. Macy's failure to provide identity monitoring to Plaintiff and Class Members for a period of greater than one year was unfair and deceptive.

165. Macy's failure to assist Plaintiff and Class Members with the various steps needed to protect their respective financial information was unfair and deceptive.

166. The acts and omissions of Macy's as described above were committed willfully, knowingly, and/or in bad faith.

167. As a direct and proximate cause of Macy's violations of M.G.L. c. 93A, Plaintiff and Class Members have suffered damages.

168. As a direct and proximate cause of Macy's violations of M.G.L. c. 93A, Plaintiff and Class Members have harmed.

169. As a direct and proximate cause of Macy's violations of M.G.L. c. 93A, Plaintiff and Class Members had their information accessed by malicious unauthorized persons.

170. As a direct and proximate cause of Macy's violations of M.G.L. c. 93A, Plaintiff and Class Members had their information stolen by malicious unauthorized persons.

171. As a direct and proximate cause of Macy's violations of M.G.L. c. 93A, Plaintiff and Class Members have all suffered a breach of their privacy.

172. As a direct and proximate cause of Macy's violations of M.G.L. c. 93A, as set forth above, Plaintiff and the Class have been harmed in the amount of the costs associated with credit monitoring, a breach in their interest in privacy, public disclosure of private facts, and loss of time.

WHEREFORE, Plaintiff and the Class respectfully request that this Court enter Judgment against Macy's for its violations of M.G.L. c. 93A, § 2 and award multiple damages to adequately compensate Plaintiff and the Class, and that the Court add thereto costs and attorneys' fees.

COUNT V
VIOLATIONS OF M.G.L. c. 93A, § 2
For Violations of M.G.L. c. 93H; and 201 CMR 17.00 et seq.

173. Plaintiff repeat and re-allege the allegations set forth above
174. Macy's failure to monitor, protect and/or prevent the loss, theft, and/or distribution of Class Information was unfair and deceptive.
175. Macy's failed to develop, implement and maintain a comprehensive information security program.
176. Macy's failed to develop, implement and maintain a comprehensive information security program containing administrative, technical, and physical safeguards that were appropriate for the size, scope, and type of Macy's business.
177. Macy's failed to develop, implement and maintain a comprehensive information security program containing administrative, technical, and physical safeguards that were appropriate to the amount of resources available to Macy's.
178. Macy's failed to develop, implement, and maintain a comprehensive information security program containing administrative, technical, and physical safeguards that were appropriate for the amount of data stored by Macy's.
179. Macy's failed to develop, implement and maintain a comprehensive information security program containing administrative, technical, and physical safeguards which adequately secured the confidentiality of the consumer information.
180. Macy's failed to adopt appropriate safeguards for the protection of Class Information.
181. Macy's failed to adopt appropriate safeguards for the protection of Class Information, in conformity with industry standards.
182. Macy's failed to adopt appropriate safeguards that anticipated threats or hazards to Class Information.

183. Macy's failed to adopt appropriate safeguards against unauthorized access for the protection of Class Information.

184. Macy's failed to adopt appropriate safeguards against the substantial harm or inconvenience to Plaintiff and Class Members.

185. Macy's violated 201 CMR 17.00 et seq.

186. Macy's violated 201 CMR 17.00 et seq. when it failed to protect Plaintiff and Class Member's Class Information.

187. Macy's violations of 201 CMR 17.00 et seq. constituted unfair and deceptive practices.

188. Macy's violated M.G.L. c. 93H.

189. Macy's violated M.G.L. c. 93H when it failed to protect Plaintiff and Class Member's Class Information.

190. Macy's violations of M.G.L. c. 93H constituted unfair and deceptive practices.

191. The acts and omissions of Macy's as described above were committed willfully, knowingly and/or in bad faith.

192. As a direct and proximate cause of Macy's actions and omissions, Plaintiff and the Class have been damaged in the amount of the costs associated with credit monitoring, a breach in their interest in privacy, public disclosure of private facts and loss of time.

WHEREFORE, Plaintiff and the Class respectfully request that this Court enter Judgment against Macy's for its violations of M.G.L. c. 93H, 201 CMR 17.00 et seq., and/or M.G.L. c. 93A, § 2 and award multiple damages to adequately compensate Plaintiff and Class Members, and that the Court add thereto costs and attorneys' fees.

COUNT VI
DECLARATORY JUDGMENT

193. Plaintiff repeats and re-alleges the allegations set forth above.

194. There exists an actual controversy as to whether Macy's complied with the mandates of Massachusetts Law when handling Class Information.

195. Plaintiff and the Class are entitled to a declaration that Macy's had a duty to comply with the mandates of Massachusetts law, which required Macy's to ensure the confidentiality and security of Class Information.

196. Plaintiff and the Class are entitled to a declaration as to Macy's duties to Plaintiff and Class in regard to ensuring the confidentiality and security of Class Information.

197. Plaintiff and the Class are entitled to a declaration as to Macy's obligations as they relate to further measures to ensure the confidentiality and security of Class Information that Macy's currently maintains.

WHEREFORE, Plaintiff and the Class request that this Honorable Court set forth, by way of declaratory judgment, Macy's duties to Plaintiff and Class Members with regard to ensuring the confidentiality and security of Class Information.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and other similarly situated individuals, demands judgment against Macy's as follows:

- A. An order determining that this action is a proper class action, and certifying Plaintiff as representative of the putative Class;
- B. An order appointing Plaintiff's counsel as competent legal representatives of the putative Class;


- C. An order determining that the acts and omissions of Macy's constituted violations of M.G.L. c. 214, § 1B;
- D. An order determining that the acts and omissions of Macy's as described herein constituted Negligence and Breach of Contract;
- E. An order determining that the acts and omissions of Macy's as described herein constituted violations of M.G.L. c. 93H; 201 CMR 17.00 et seq.; and/or M.G.L. c. 93A, § 2;
- F. An order ensuring that Macy's take appropriate further measures to secure Class Information;
- G. An order awarding Plaintiff and the Class damages;
- H. An order determining the appropriate statute of limitations applicable to each count of this action;
- I. An order awarding Plaintiff an appropriate stipend or incentive award for acting as Class representative;
- J. An order awarding Plaintiff's counsel attorneys' fees and court costs; and
- K. An order awarding Plaintiff and the Class any further relief as this Court may deem just and appropriate.

JURY DEMAND

Plaintiff, on behalf of himself and all others similarly situated, hereby demands trial by jury on all counts of this Complaint, which are triable by a jury.

Respectfully submitted,
Plaintiff, by his attorneys,

DATED: February 14, 2020


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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Macy's Hit with Class Action Over October 2019 Data Breach](#)
