

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA**

**RICKEY KIMBRIEL and PAULA
KIMBRIEL, on behalf of themselves
and all others similarly situated,**

Plaintiffs,

v.

**ABB INC., and BALDOR
ELECTRIC COMPANY N/K/A ABB
MOTORS AND MECHANICAL
INC.,**

Defendants.

Case No. 5:19-cv-00215

CLASS ACTION COMPLAINT

JURY DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Rickey and Paula Kimbriel (“Plaintiffs”), individually and on behalf of the class set forth below, bring the following class action complaint against defendants ABB, Inc. (“ABB”) and Baldor Electric Company N/K/A ABB Motors and Mechanical, Inc. (“Baldor”) (collectively, “Defendants”):

PRELIMINARY STATEMENT

1. This case is about a substantial data security breach, affecting nearly 18,000 employees and their family members who are participants in the ABB health benefits plan (the “Plan”).

2. As a result of this breach, Plaintiffs and the class members whose personal information was not safeguarded have suffered identity theft and have been forced to expend substantial time and money to protect themselves from the substantial risk of further injury from identity theft, credit and reputational injury, false tax claims, or even extortion they now face.

3. Prior to August 25, 2017, hackers, utilizing a well-known “phishing” or scam email scheme, compromised Plan accounts containing participants’ personally identifying information (“PII”). This PII included sensitive information such as names, addresses, plan member IDs, birth dates, social security numbers, FMLA information, and direct deposit information.

4. ABB did not publicly acknowledge the data breach or begin notifying the Plan participants until on or after September 7, 2017.

5. According to its Form 5500 filed with the United States Department of Labor, there were approximately 17,996 active participants in the Plan as of the end of 2016. All of those 17,996 Plan participants had their PII compromised by the data breach.

6. The data security breach was caused by ABB’s knowing violation of its obligation to secure its employees’ and their family members’ personal information.

7. ABB failed to comply with security standards and allowed the Plan participants’ PII to be compromised.

8. As a consequence of the data security breach, Plaintiffs and Class Members have suffered damages by taking measures to deter, detect, and stop identity theft. Class Members have been required to take the time, which they otherwise would have dedicated to other life demands (such as work), and effort to mitigate the actual and potential impact of the data breach on their lives including, inter alia; placing “freezes” and “alerts” with credit reporting agencies, contacting their financial institutions, closing or modifying financial accounts, scheduling and attending appointments with the IRS, closely reviewing and monitoring their credit reports and accounts for unauthorized activity, responding to unauthorized activity on their credit reports, contacting the Social Security office, and filing police reports.

9. No one can know what else the cyber criminals will do with the employees' PII. However, what is known is that the purpose of the phishing scheme was to obtain participants' PII. ABB employees and their family members are now, and for the rest of their lives will be, at a heightened risk of further identity theft and fraud. For all Class Members, fear and anxiety of identity theft or fraud is the new norm.

10. Plaintiffs seek redress individually, and on behalf of those similarly situated, for the injuries that they and class members sustained as a result of ABB's negligent and intentional violations of law.

11. Plaintiffs assert these claims on behalf of a nationwide class of participants in the Plan for monetary relief, injunctive relief, corresponding declaratory relief, and other appropriate relief for ABB's unlawful conduct, as described herein.

PARTIES

12. Plaintiffs are Arkansas citizens residing in Franklin County, Arkansas. Plaintiff Rickey Kimbriel works for Baldor Electric Company in Ozark, Arkansas, which, beginning March 1, 2018, changed its name to ABB Motors and Mechanical Inc. He has been a participant in the Plan since at least 2015. Plaintiff Paula Kimbriel is Rickey Kimbriel's spouse, his dependent, and has been a beneficiary covered by the Plan since at least 2015.

13. Defendant ABB, Inc. ("ABB") is an industrial technologies company incorporated in Delaware, with its principal place of business in Cary, North Carolina. ABB may be served with process upon its registered agent C T Corporation System, 160 Mine Lake Court, Suite 200, Raleigh, North Carolina.

14. Defendant Baldor Electric Company n/k/a ABB Motors and Mechanical Inc. ("Baldor") is a Missouri corporation, with its principal place of business in Fort Smith, Arkansas.

ABB Motors and Mechanical Inc. may be served with process upon its registered agent CT Corporation System, 120 South Central Avenue, Clayton, MO 63105.

15. Collectively, ABB and Baldor will be referred to herein as “ABB” or “Defendants.”

16. Upon information and belief, ABB’s wrongful acts and omissions leading to this data security breach occurred nationwide and in this district.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds \$5 million exclusive of interest and costs. Plaintiff, the class members, and ABB are citizens of different states. There are more than 100 putative class members.

18. This court has personal jurisdiction over ABB because Plaintiffs’ claims arise out of ABB’s contacts with North Carolina.

19. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b), (c), and (d). ABB is registered to do business, transacted business, were founded in, and had agents in this district; a substantial part of the events giving rise to the Plaintiffs’ claims arose in this district, and a substantial portion of the affected interstate commerce described below has been carried out in this district.

ALLEGATIONS OF FACT

20. Plaintiff Rickey Kimbriel has worked as a machine operator at Baldor’s facility in Ozark, Arkansas since 2015.

21. At all relevant times, Baldor was a subsidiary of ABB.

22. Baldor's employee handbook received by Plaintiff makes the following pledges to its employees:

a) The Company's code of ethics is "I will not lie, cheat, steal, nor tolerate those who do."

b) The Company "work[s] hard every day to be the safest place to work."

c) The Company "will attempt to keep you fully informed about matters that affect you" and "will be honest in [its] communications and dealings with you"

d) The Company "will do what is right."

e) The Company believes [i]t is important to have current and correct information about you. We need the information for Social Security, withholding taxes, insurance, and emergencies."

23. Plaintiff Rickey Kimbriel was a participant in the Plan at all relevant times. The Plan includes health care coverage, short term disability, long term disability, life insurance, and 401(k).

24. Plaintiff Rickey Kimbriel gave ABB information with respect to his checking account at the Bank of the Ozarks for the purpose of direct deposit of his paycheck.

25. When Plaintiff Rickey Kimbriel enrolled in the Plan, he provided sensitive personal information about himself and his dependent Paula Kimbriel, including full legal names, addresses, birth dates, and social security numbers.

26. Upon information and belief, this information was entered into the Plan's database under Plaintiff Rickey Kimbriel's account, which ABB and Baldor stored and maintained in electronic form along with other information pertinent to Plaintiff Rickey Kimbriel's employee benefits, such as plan member ID.

27. Upon information and belief, the same sensitive personal information regarding Plaintiff Rickey Kimbriel's account maintained and accessible in the Plan's database was maintained and/or accessible through certain ABB employee email accounts.

28. The Company called a meeting near the end of August, 2017 to inform Plaintiff Rickey Kimbriel and other employees on his shift that there had been a breach of their data, and that they would follow up with more information in the near future. In that same meeting, the Company informed the employees it would provide at least one year of credit monitoring.

29. Nearly two weeks later in September 2017, Plaintiff Rickey Kimbriel received a letter from the Head of Human Resources at ABB, Dorothea Klein, to his home address dated September 7, 2017 titled "**Notice of Data Breach.**" (Attached as **Exhibit A**). The letter stated that Plaintiff Rickey Kimbriel and his dependents' sensitive personally identifying information ("PII") associated with the Plan's benefits may have been exposed as a result of a phishing scheme on ABB employee email accounts. The letter identified that the compromised accounts may have specifically exposed names, addresses, plan member IDs, birth dates, and social security numbers. The letter also represented that before notifying Plaintiff Rickey Kimbriel, ABB had already conducted a "full assessment to determine the scope of the data exposed and identify any potentially affected individuals."

30. According to the Federal Trade Commission ("FTC"), "phishing" is when a scammer uses fraudulent emails or texts, or copycat websites to get someone to share valuable personal information, "such as account numbers, social security numbers, or your login IDs and passwords," and then uses this information to steal money or identity or both.¹ By acknowledging that Plaintiff Rickey Kimbriel's personal information was exposed as the result of a "phishing scheme," ABB has acknowledged that the data thief intentionally targeted

¹ <https://www.consumer.ftc.gov/articles/how-recognize-and-avoid-phishing-scams>

Plaintiff Rickey Kimbriel and class members' personal information which was compromised in the ABB data breach.

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

32. Social Security numbers, for example, are among the worst kind of personal information to have stolen because they may be put to a variety of fraudulent uses and are difficult for an individual to change.

33. The Social Security Administration has warned that identity thieves can use an individual’s Social Security number to apply for additional credit lines. Such fraud may go undetected until debt collection calls commence months, or even years, later.⁴

34. Stolen Social Security numbers also make it possible for thieves to file fraudulent tax returns, file for unemployment benefits, or apply for a job using a false identity. Each of these fraudulent activities is difficult to detect. An individual may not know that his or her Social Security number was used to file for unemployment benefits until law enforcement notifies the individual’s employer of the suspected fraud. Fraudulent tax returns are typically discovered only when an individual’s authentic tax return is rejected. What is more, it is no easy task to

² 17 C.F.R. § 248.201 (2013).

³ *Id.*

⁴ Social Security Administration, Identity Theft and Your Social Security Number, *available at* <http://www.ssa.gov/pubs/EN-05-10064.pdf> (last visited May 20, 2019).

change or cancel a stolen Social Security number. An individual cannot obtain a new Social Security number without significant paperwork and evidence of actual misuse. In other words, preventive action to defend against the possibility of misuse of a Social Security Number is not permitted; an individual must show evidence of actual, ongoing fraud activity to obtain a new number.

35. Even then, a new Social Security number may not be effective. According to Julie Ferguson of the Identity Theft Resource Center: “The credit bureaus and banks are able to link the new number very quickly to the old number, so all of that old bad information is quickly inherited into the new Social Security number.”⁵

36. Based on the foregoing, the information stolen in the data breach is significantly more valuable than the loss of, say, credit card information in a large retailer data breach such as those that occurred at Target and Home Depot. Victims affected by those retailer breaches could avoid much of the potential future harm by cancelling credit or debit cards and obtaining replacements. The information stolen in the data breach is difficult, if not impossible, to change—Social Security number, name, employment information, income data, etc.

37. This data, as one would expect, demands a much higher price on the black market. Martin Walter, senior director at cybersecurity firm RedSeal, explained, “Compared to credit card information, personally identifiable information and Social Security numbers are worth more than 10x on the black market.”⁶

⁵ *Victims of Social Security Number Theft Find It's Hard to Bounce Back*, NPR, Brian Naylor, Feb. 9, 2015, available at <http://www.npr.org/2015/02/09/384875839/data-stolen-by-anthem-s-hackershas-millions-worrying-about-identity-theft> (last visited May 20, 2019).

⁶ *Anthem Hack: Personal Data Stolen Sells for 10x Price of Stolen Credit Card Numbers*, IT World, Tim Greene, Feb. 6, 2015, available at <https://www.networkworld.com/article/2880366/anthem-hack-personal-data-stolen-sells-for-10x-price-of-stolen-credit-card-numbers.html> (last visited May 20, 2019).

38. Among other forms of fraud, identity thieves may obtain driver's licenses, government benefits, medical services, and housing or even give false information to police during an arrest.

39. The fraudulent activity resulting from the data breach may not come to light for years.

40. In the "Notice of Data Breach," ABB also represented that it would pay for Plaintiff and Class Members to have one (1) year of identity monitoring services provided by risk mitigation and response entity Kroll. The letter further advised Plaintiff as to additional steps he should take to protect himself, including placing a fraud alert with the Federal Trade Commission and placing a security freeze on his credit file. However, the letter said nothing about offering any relief like identity theft monitoring services to Plaintiff Paula Kimbriel or other similarly affected dependents.

41. In November 2017, specifically in response to the breach for fear that his information would be further compromised, Plaintiff Rickey Kimbriel stopped making his two percent (2%) deferrals to his 401(k). But for the data breach, Plaintiff Rickey Kimbriel would have made those deferrals. As a consequence, he was taxed on income that he otherwise would have invested tax-deferred, and therefore has suffered and will continue to suffer actual economic loss as a consequence.

42. Plaintiffs' fear of identity theft resulting from their compromised information has already proven well grounded. Plaintiff Paula Kimbriel was notified by a credit-monitoring service that on February 13, 2019, there were five unauthorized credit inquires with banking institutions in four different states, indicating identity theft. In response, Plaintiffs have spent

significant time to begin the process to dispute the identity theft. This has only increased Plaintiffs' fears and time spent as a result of the data breach.

43. ABB has failed to provide compensation to Plaintiffs and Class Members victimized in this data breach. ABB has not offered to provide any assistance or compensation for the costs and burdens – current and future – associated with the identity theft and fraud resulting from the data breach. ABB has not offered Plaintiffs or Class Members any assistance in dealing with the IRS or state tax agencies.

44. It is incorrect to assume that reimbursing a consumer for financial loss due to fraud makes that individual whole again. On the contrary, after conducting a study, the U.S. Department of Justice's Bureau of Justice Statistics found that "among victims who had personal information used for fraudulent purposes, 29% spent a month or more resolving problems" and that "resolving the problems caused by identity theft [could] take more than a year for some victims."⁷

45. As a result of ABB's failure to prevent the data breach, Plaintiffs Rickey and Paula Kimbriel and Class Members have suffered and will continue to suffer damages, including monetary losses, lost time, anxiety and emotional distress. They have suffered or are at increased risk of suffering:

- a. The loss of the opportunity to control how their PII is used;
- b. The diminution in value of their PII;
- c. The compromise, publication and/or theft of their PII;
- d. Out-of-pocket costs associated with the prevention, detection, recovery and remediation from identity theft or fraud;

⁷ Victims of Identity Theft, 2012 (Dec. 2013) at 10, 11, *available at* <https://www.bjs.gov/content/pub/pdf/vit12.pdf> (last visited May 20, 2019).

- e. Lost opportunity costs and lost wages associated with effort expended and the loss of productivity from addressing and attempting to mitigate the actual and future consequences of the data breach, including but not limited to efforts spent researching how to prevent, detect, contest and recover from identity theft and fraud;
- f. Delay in receipt of tax refund monies;
- g. Unauthorized use of stolen PII;
- h. The continued risk to their PII, which remains in the possession of ABB and is subject to further breaches so long as ABB fail to undertake appropriate measures to protect the PII in their possession; and
- i. Current and future costs in terms of time, effort and money that will be expended to prevent, detect, contest, remediate and repair the impact of the data breach for the remainder of the lives of Plaintiff and Class Members.

CLASS ACTION ALLEGATIONS

46. Plaintiffs and the class members, as defined below, have been damaged by ABB's negligent or reckless disregard for their personal information, as well as ABB's intentional silence regarding the existence and nature of the data security breach.

47. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

48. Plaintiffs assert the claims herein on behalf of a proposed Nationwide Class ("the Class") defined as follows:

All United States residents whose information was made accessible to an unauthorized third party in the data security breach announced by ABB on September 7, 2017.⁸

⁸ The following are excluded from the Nationwide Class: (1) the defendants, their parent companies, subsidiaries and affiliates, and any co-conspirators; and (2) any judge or magistrate presiding over this action, and members of their families. The Plaintiffs reserve the right to amend the class period and/or class definition if discovery and further investigation reveal that

49. **Numerosity.** The members of the class are so numerous that joinder of all class members is impracticable. Nearly 18,000 Plan participants are affected by the data security breach.

50. **Typicality.** Plaintiffs' claims are typical of other class members because, among other things, all class members' PII was exposed to an unauthorized third party by ABB's negligent, reckless, and intentional conduct, as described above, which caused the data security breach.

51. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the class. Furthermore, they have retained counsel experienced in class actions and complex litigation.

52. **Commonality and Predominance.** Common questions of law and fact exist as to all class members and predominate over any questions solely affecting individual members of the class, including but not limited to:

a) whether ABB owed duties under federal or state law to class members to protect their personal information, provide timely notice of unauthorized access to this information, and provide meaningful and fair redress;

b) whether ABB breached said duties;

c) whether ABB acted wrongfully by improperly monitoring, storing, and/or failing to properly safeguard the class members' personal information;

d) whether ABB knew, or reasonably should have known, about the deficiencies in its data security protocols;

e) whether ABB willfully failed to design, employ, and maintain adequate security safeguards to protect employees' personal information;

the class should be expanded, divided into additional subclasses, or modified in any way.

- f) whether ABB's representations regarding the security of its systems were false and misleading;
- g) whether ABB's acts and omissions violated applicable state consumer protection law;
- h) whether ABB's failures resulted in the data security breach at issue;
- i) whether ABB failed to properly and timely notify Plaintiffs and class members of the breach as soon as practicable after it was discovered;
- j) whether ABB's acts of concealment violated applicable state consumer protection laws; and
- k) whether class members have been damaged and, if so, the appropriate relief.

53. **Superiority.** Consistent with Rule 23(b)(3), a class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The present litigation involves a textbook example of the superior quality of a class action mechanism to resolve millions of claims in a single litigation that may otherwise be uneconomical to pursue in individual litigation. The burden and expense of litigating the present case in an individual capacity is comparatively high compared to the individual recovery of any individual Plaintiff or putative class member. Without the Rule 23 class mechanism, Plaintiffs and the Class would be without a practical path to remedy defendants' wrongful conduct.

54. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because the defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

55. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the class predominate over any questions affecting only individual members of the class, and because a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

56. ABB's conduct as described in this complaint stems from common and uniform policies and practices, resulting in a colossal data security breach as well as a deliberate and systematic cover-up scheme to hide the extent and nature of the breach from regulators as well as those affected by the breach.

57. The class members do not have an interest in pursuing separate individual actions against ABB, as the amount of each class member's individual claims are small compared to the expense and burden of individual prosecution.

58. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning ABB's practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all class members' claims in a single forum.

59. Plaintiffs intend to send notice to all class members to the extent required by Rule 23.

CLAIMS FOR RELIEF

COUNT I – VIOLATION OF NORTH CAROLINA UNFAIR OR FRAUDULENT BUSINESS PRACTICES (On behalf of the Nationwide Class)

60. Plaintiffs, on behalf of the Nationwide Class, allege and incorporate by reference the allegations in the preceding paragraphs.

61. ABB, as a North Carolina based entity, is subject to the laws and regulations of the State of North Carolina, including but not limited to the North Carolina Unfair & Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 (“North Carolina UDTPA”). The North Carolina UDTPA “declare[s] unlawful” all “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.” *Id.* § 75-1.1(a).

62. For purposes of North Carolina UDTPA, the term “‘commerce’ includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession.” *Id.* § 75-1.1(b).

63. ABB violated the North Carolina UDTPA by engaging in unlawful, unfair, or deceptive business acts and practices in or affecting commerce, as well as unfair, deceptive, untrue, or misleading advertising that constitute acts of “unfair competition” prohibited in the North Carolina UDTPA.

64. ABB engaged in unlawful acts and practices with respect to their services by establishing inadequate security practices and procedures described herein; by soliciting and collecting Plaintiffs’ and class members’ personal information with knowledge that such information would not be adequately protected; and by gathering Plaintiffs’ and class members’ personal information in an unsecure electronic environment in violation of North Carolina’s data breach statute, the Identity Theft Protection Act, N.C. Gen. Stat. § 75-60, *et seq.*, which requires ABB to undertake reasonable methods of safeguarding the personal information of Plaintiffs Rickey Kimbriel, Paula Kimbriel and the class members.

65. In addition, ABB engaged in unlawful acts and practices when it failed to discover and then disclose the data security breach to Plaintiffs and the class members in a timely and accurate manner, contrary to the duties imposed by N.C. Gen. Stat. § 75-65.

66. To date, ABB still has not provided sufficient information regarding the data security breach to Plaintiffs and the class members.

67. As a direct and proximate result of ABB's unlawful acts and practices, Plaintiffs and the class members were injured and lost money or property, including but not limited to the loss of their legally protected interests in the confidentiality and privacy of their personal information.

68. ABB knew or should have known that their data security practices were inadequate to safeguard Plaintiffs and the class members' personal information, that the risk of a data security breach was significant, and that their system was, in fact, breached.

69. ABB's actions in engaging in the above-named unlawful practices were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiffs and the class members.

70. Plaintiffs and the class members seek relief under the North Carolina UDTPA including, but not limited to: restitution to Plaintiffs and class members of money and property that ABB has acquired by means of unlawful and unfair business practices; disgorgement of all profits accruing to ABB because of its unlawful and unfair business practices; treble damages (pursuant to N.C. Gen. Stat. § 75-16); declaratory relief; attorneys' fees and costs (pursuant to N.C. Gen. Stat. § 75-16.1); and injunctive or other equitable relief.

COUNT II – BREACH OF FIDUCIARY DUTIES
(On behalf of the Nationwide Class)

71. Plaintiffs, on behalf of the nationwide class, allege and incorporate by reference the allegations in the preceding paragraphs.

72. ABB, by virtue of its possession, custody, and/or control of Plaintiffs and the class members' personal information, and ABB's duty to properly monitor and safeguard said

information, was, and continues to be, in a confidential, special, and/or fiduciary relationship with Plaintiffs and the class members.

73. As a fiduciary, ABB owed, and continues to owe, Plaintiffs and the class members:

- (a) the commitment to deal fairly and honestly;
- (b) the duties of good faith and undivided loyalty; and
- (c) integrity of the strictest kind.

74. ABB was, and continues to be, obligated to exercise the highest degree of care in carrying out the responsibilities to Plaintiffs and class members under such confidential, special, and/or fiduciary relationships.

75. ABB breached its fiduciary duties to Plaintiffs and the class members when it failed to adequately store, monitor, and protect Plaintiff Rickey and Paula Kimbriel's and class members' personal information.

76. ABB willfully and wantonly breached its fiduciary duties to Plaintiffs and the class members or, at the very least, committed these breaches with conscious indifference and reckless disregard of Plaintiffs and the class members' rights and interests.

COUNT III – NEGLIGENCE
(On behalf of Nationwide Class)

77. Plaintiffs, on behalf of the Nationwide Class, allege and incorporate by reference the allegations in the preceding paragraphs.

78. ABB was, and continues to be, in a confidential, special, and/or fiduciary relationship with Plaintiffs and the class members by virtue of being trusted with their personal information.

79. Upon accepting and storing the personal information of Plaintiffs and the class

members in its computer systems and on its networks, ABB undertook and owed a duty to Plaintiffs and the class members to exercise reasonable care to secure and safeguard that information and to use commercially reasonable methods to do so. ABB knew that the personal information was private and confidential and should be protected as such.

80. At the very least, ABB assumed a duty, and had duties imposed upon it by regulations, to comply with applicable security standards, regulations, and statutes, and to otherwise use reasonable care to safeguard Plaintiffs and the class members' personal information. ABB owed a duty of care to Plaintiffs and the class members to safeguard their personal information because Plaintiffs and the class members were foreseeable and probable victims of any cyberattack that successfully stole or obtained personal information stored within ABB's data security systems.

81. ABB knew, or should have known, of the risks inherent in collecting and storing personal information, the vulnerabilities of its data security systems, and the importance of adequate security. ABB knew, or should have known, that its data systems and networks did not adequately safeguard the personal information of Plaintiffs and the class members.

82. ABB's own conduct also created a foreseeable risk of harm to Plaintiffs and the class members and their personal information. Upon information and belief, ABB's misconduct included failing to: (1) secure its systems, despite knowing their vulnerabilities; (2) comply with industry standard security practices; (3) implement adequate system and event monitoring; and (4) implement the systems, policies, and procedures necessary to prevent this type of data breach.

83. Through ABB's acts and omissions described herein, including ABB's failure to provide adequate security and its failure to protect the personal information of Plaintiffs and the

class members from being foreseeably accessed, captured, stolen, disseminated, and misused, ABB unlawfully breached its duty to use reasonable care to adequately protect and secure the personal information of Plaintiffs and the class members during the time it was in ABB's possession or control.

84. ABB also had a duty to timely inform Plaintiffs and the class members of the data security breach, and of the fact that their personal information had been compromised and/or stolen; furthermore, upon learning of the breach, ABB had a duty to take immediate action to protect Plaintiffs and the class members from the foreseeable consequences of the breach.

85. By its acts and omissions as described herein, ABB unlawfully breached its duty and Plaintiffs and the class members were harmed as a direct result.

86. ABB knew, or should have known, that its system for processing and storing class members' personal information was replete with security vulnerabilities.

87. ABB was negligent by continuing to accept, process, and store such information in light of its computer system vulnerabilities and the sensitivity of the personal information stored therein.

88. The data security breach, and resulting damages suffered by Plaintiffs and the class members, were the direct and proximate result of a number of actions and omissions, including but not limited to:

- (a) ABB's improper retention and storage of Plaintiffs and class members' personal information;
- (b) ABB's failure to use reasonable care to implement and maintain appropriate security procedures reasonably designed to protect such information;
- (c) ABB's delay before notifying Plaintiff Rickey Kimbriel and class members about

the breach; and

(d) ABB's failure to take immediate and effective action to protect Plaintiffs and class members from potential and foreseeable damage.

89. ABB's wrongful actions, as described above, reflect a breach of the duty of reasonable care and, therefore, constitute negligence.

90. Plaintiffs and the class members have not in any way contributed to the data security breach or theft of their personal information.

COUNT IV – NEGLIGENCE PER SE
(On behalf of the Nationwide Class)

91. Plaintiffs, on behalf of the Nationwide Class, allege and incorporate by reference the allegations in the preceding paragraphs.

92. Section 5 of the FTC Act prohibits “unfair . . . practices in or affecting commerce,” including, as interpreted and enforced by the FTC, the unfair act or practice by businesses, such as ABB, of failing to use reasonable measures to protect personal information. The FTC has pursued numerous enforcement actions under Section 5 of the FTC Act against businesses, which, as a result of their failure to employ reasonable data security measures and avoid unfair and deceptive practices, caused the same harm as that suffered by Plaintiffs and class members.

93. ABB violated Section 5 of the FTC Act by failing to use reasonable measures to protect the personal information of Plaintiffs and the class members and not complying with applicable industry standards, as described in detail herein. ABB's conduct was particularly unreasonable given the nature and amount of personal information it obtained and stored, and the foreseeable consequences of a data breach at a corporation such as ABB, including, specifically, the immense damages that would result to Plaintiffs and the class members.

94. ABB's violation of Section 5 of the FTC Act constitutes negligence per se.

95. Plaintiffs and the class members are within the class of persons that the FTC Act was intended to protect.

96. The harm that occurred as a result of the data breach is the type of harm the FTC Act was intended to guard against.

97. As a direct and proximate result of ABB's negligence per se, Plaintiffs and class members have suffered, and continue to suffer, injuries and damages arising from the data breach as described herein.

COUNT VI – BAILMENT
(On behalf of the Nationwide Class)

98. Plaintiffs, on behalf of the Nationwide Class, allege and incorporate by reference the allegations in the preceding paragraphs.

99. Plaintiffs and the class members' personal information is their property, which they delivered to ABB for the sole and specifying purpose of completing one or more commercial transactions.

100. ABB accepted Plaintiff Rickey Kimbriel, Paula Kimbriel and class members' personal information and, thus, served as a bailee with respect to the above-referenced transaction(s).

101. ABB, as a bailee, owed a duty to Plaintiffs and class members and, in fact, had an express and/or implied contract with them to protect their personal information from theft, compromise, or unauthorized disclosure.

102. ABB breached its duty and/or express and implied contracts with Plaintiffs and class members by improperly storing and inadequately protecting their personal information from theft, compromise, and/or unauthorized disclosure, which directly and proximately caused

Plaintiff and class members to suffer damages.

103. ABB's wrongful actions constitute breaches of their duty (and/or express and/or implied contracts) with Plaintiffs and the class members arising from the bailment.

COUNT VII– BREACH OF CONTRACT
(On behalf of the Nationwide Class)

104. Plaintiffs incorporate by reference those paragraphs set out above as if fully set forth herein.

105. ABB has a contractual obligation to maintain the security of its employees and their family members' PII, which ABB itself recognizes in its handbook.

106. ABB breached that contractual obligation by failing to safeguard and protect the PII of Plaintiffs and members of the Class and by failing to provide timely and accurate notice to them that their PII was compromised in and as a result of the ABB data breach.

107. The losses and damages sustained by Plaintiffs and Class members as described herein were the direct and proximate result of ABB's breaches of the contracts between ABB and Plaintiffs and members of the Class.

COUNT VIII – BREACH OF IMPLIED CONTRACT
(On behalf of the Nationwide Class)

108. Plaintiffs, on behalf of the Nationwide Class, allege and incorporate by reference the allegations in the preceding paragraphs.

109. Plaintiffs and Class members were required to provide their PII, including names, addresses, Social Security numbers, and other personal information, to ABB as a condition of their employment.

110. Implicit in the employment agreement between ABB and its employees was the

obligation that both parties would maintain information confidentially and securely.

111. ABB had an implied duty of good faith to ensure that the PII of Plaintiffs and Class members in its possession was only used to provide the Plan and other employment benefits from ABB.

112. ABB had an implied duty to reasonably safeguard and protect the PII of Plaintiffs and Class members from unauthorized disclosure or uses.

113. Additionally, ABB implicitly promised to retain this PII only under conditions that kept such information secure and confidential.

114. Plaintiffs and Class members fully performed their obligations under the implied contract with ABB. ABB did not.

115. Plaintiffs and Class members would not have provided their confidential PII to ABB in the absence of their implied contracts with ABB, and would have instead retained the opportunity to control their PII for uses other than the Plan and employment benefits from ABB.

116. ABB breached the implied contracts with Plaintiffs and Class members by failing to reasonably safeguard and protect Plaintiffs' and Class members' PII, which was compromised as a result of the data breach.

117. ABB's acts and omissions have materially affected the intended purpose of the implied contracts requiring Plaintiffs and Class members to provide their PII as a condition of employment in exchange for the Plan, compensation and benefits.

118. As a direct and proximate result of ABB's breach of its implied contracts with Plaintiffs and Class members, Plaintiffs and Class members have suffered and will suffer injury, including but not limited to: (i) the loss of the opportunity how their PII is used; (ii) the

compromise, publication, and/or theft of their PII; (iii) out-of-pocket expenses associated with the prevention, detection, and recovery from identity theft, tax fraud, and/or unauthorized use of their PII; (iv) lost opportunity costs associated with effort expended and the loss of productivity addressing and attempting to mitigate the actual and future consequences of the data breach, including but not limited to efforts spent researching how to prevent, detect, contest and recover from tax fraud and identity theft; (v) costs associated with placing freezes on credit reports; (vi) the continued risk to their PII, which remain in ABB's possession and is subject to further unauthorized disclosures so long as ABB fails to undertake appropriate and adequate measures to protect the PII of employees and former employees in its continued possession; and, (vii) future costs in terms of time, effort and money that will be expended to prevent, detect, contest, and repair the impact of the PII compromised as a result of the data breach for the remainder of the lives of Plaintiffs and Class members.

PRAYER FOR RELIEF

As a direct and proximate cause of ABB's wrongful conduct, Plaintiffs and the class members sustained, and will continue to incur, damages in the form of:

- a) the unauthorized disclosure and/or compromise of their personal information;
- b) monetary losses and damage to credit from fraudulent charges made upon their accounts; and
- c) the burden and expense of credit monitoring.

Accordingly, Plaintiffs, individually and on behalf of the class, requests relief as follows:

- a) certification of the Nationwide Class pursuant to Fed. R. Civ. P. 23, as requested herein;
- b) appointment of Plaintiffs Rickey and Paula Kimbriel as class representatives, and the undersigned counsel as class counsel;
- c) an order directing that reasonable notice of this action, as provided by Fed. R. Civ. P. 23(c)(2), be given to each and every class member;

d) equitable relief to prevent any additional harm including, but not limited to, provision of credit monitoring services for a period of time to be determined by a trier of fact;

e) an injunction permanently enjoining ABB, as well as its subsidiaries and affiliates from further engaging in the same acts or omissions that led to the data security breach described above;

f) a judgment in favor of Plaintiffs and class members under the legal theories alleged herein;

g) an award to the Plaintiffs and class members of nominal damages, compensatory damages, and/or punitive damages, to the extent allowed by law;

h) an award to the Plaintiffs and class members of restitution and/or disgorgement of profits;

i) an award of pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of this complaint;

j) an award of reasonable attorneys' fees, costs, and expenses; and

k) granting such other relief as the court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the Plaintiffs and the class demand a trial by jury.

Dated: May 22, 2019

Respectfully submitted,

/s/ Narendra K. Ghosh
Narendra K. Ghosh, NC Bar No. 37649
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
nghosh@pathlaw.com

/s/ Joe P. Leniski Jr.

JOE P. LENISKI, JR. (TN BPR#22891)
(*pro hac vice* application forthcoming)

**BRANSTETTER STRANCH &
JENNINGS, PLLC**

The Freedom Center
223 Rosa L. Parks Ave., Suite 200
Nashville, Tennessee 37203
(615) 254-8801
joeyl@bsjfirm.com

James A. Streett (Ark. Bar No. 2007092)
(*pro hac vice* application forthcoming)

STREETT LAW FIRM, P.A.

107 West Main
Russellville, AR 72801
(479) 968-2030
Alex@StreettLaw.com
James@StreettLaw.com

Lynn A. Toops (Ind. Bar No. 26386-49)
(*pro hac vice* application forthcoming)

COHEN & MALAD, LLP

One Indiana Square, Suite 1400
Indianapolis, Indiana 46204
(317) 636-6481
ltoops@cohenandmalad.com

ATTORNEYS FOR PLAINTIFFS

Exhibit A



47 1 10060 *****AUTO**S-DIGIT 72830

RICKEY KIMBRIEL
408 HENDRIX ST
ALTUS, AR 72821-9129

September 7, 2017



Notice of Data Breach

Dear Rickey Kimbriel,

We are writing to tell you about a data security incident that may have exposed some of your personal information as well as any dependents' personal information associated with ABB's Benefits.

What happened?

ABB, Inc. ("ABB"), received notice on or about August 25, 2017, that a few employee email accounts had suspicious login activity as the result of a phishing scheme. ABB conducted a full assessment to determine the scope of the data exposed and identify any potentially affected individuals.

What information was involved?

The compromised accounts may have stored your personal information, including your name, address, plan member id, birth date, social security number used in ABB Employee Benefits and in some instances, FMLA, and direct deposits information for a few number of hourly staff located in a select location. If your dependent's information was potentially affected they will receive a separate notification letter.

How ABB is responding

To date, we have not seen specific evidence suggesting that your data has been accessed in the email account or used in any way. ABB will continue to monitor the situation carefully and is in the process of evaluating the policy regarding how employees handle personal information.

To demonstrate our commitment to you as an ABB employee, ABB would like to offer you one (1) year of identity monitoring services, paid for by ABB, to give you the opportunity to discuss any concerns you may have about the potential exposure of your data and steps you may take to protect yourself, in addition to the steps ABB has outlined in this letter.

ABB secured the services of Kroll to provide identity monitoring services. Kroll is a global leader in risk mitigation and response, and their team has extensive experience helping people who have sustained an unintentional exposure of confidential data. Your identity monitoring services include Credit Monitoring, Web Watcher, Identity Consultation, and Identity Restoration.

Visit my.idmonitoringservice.com to activate and take advantage of your identity monitoring services.

You have until December 14, 2017 to activate your identity monitoring services.

Membership Number: **A24115117**

To receive credit services by mail instead of online, please call 1-888-202-2968. Additional information describing your services is included with this letter.

What you can do

Please review the enclosed "Additional Resources" section included with this letter. This section describes additional steps you can take to help protect yourself, including recommendations by the Federal Trade Commission regarding identity theft protection and details on how to place a fraud alert or a security freeze on your credit file.

You also have the right to place a security freeze on your credit report by contacting the credit agencies listed in the Additional Resources on page 2, later in this notification. A security freeze prohibits a credit reporting agency from releasing any information from a consumer's credit report without the consumer's express authorization. However, please be aware that placing a security freeze on your credit report may delay, interfere with, or prevent the timely approval of any requests you make for new loans, credit mortgages, employment, housing or other services.

On behalf of ABB, we want to assure you that ABB is working diligently to maintain appropriate protections for your data and the data of all ABB employees.

For more information

If you have questions, please call 1-888-202-2968, Monday through Friday from 8:00 a.m. to 5:00 p.m. Central Time. Please have your membership number ready.

Protecting your information is important to us and we regret that you have been impacted. We believe that the identity monitoring services we are offering will help protect you. We hope this underscores our continued commitment to your security.

Sincerely,



Dorothea Klein, Head of Human Resources
ABB Inc.

ADDITIONAL RESOURCES

Contact information for the three nationwide credit reporting agencies is:

Equifax, PO Box 740241, Atlanta, GA 30374, www.equifax.com, 1-800-685-1111

Experian, PO Box 2104, Allen, TX 75013, www.experian.com, 1-888-397-3742

TransUnion, PO Box 2000, Chester, PA 19022, www.transunion.com, 1-800-888-4213

Free Credit Report. It is recommended that you remain vigilant for incidents of fraud and identity theft by reviewing account statements and monitoring your credit report for unauthorized activity. You may obtain a copy of your credit report, free of charge, once every 12 months from each of the three nationwide credit reporting agencies.

To order your annual free credit report please visit www.annualcreditreport.com or call toll free at 1-877-322-8228.

You can also order your annual free credit report by mailing a completed Annual Credit Report Request Form

(available from the U.S. Federal Trade Commission's ("FTC") website at www.consumer.ftc.gov) to:

Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.

For Colorado, Georgia, Maine, Maryland, Massachusetts, New Jersey, Puerto Rico, and Vermont residents:

You may obtain one or more (depending on the state) additional copies of your credit report, free of charge. You must contact each of the credit reporting agencies directly to obtain such additional report(s).

Fraud Alert. You may place a fraud alert in your file by calling one of the three nationwide credit reporting agencies above. A fraud alert tells creditors to follow certain procedures, including contacting you before they open any new accounts or change your existing accounts. For that reason, placing a fraud alert can protect you, but also may delay you when you seek to obtain credit.

Security Freeze. You have the ability to place a security freeze on your credit report.

A security freeze is intended to prevent credit, loans and services from being approved in your name without your consent. To place a security freeze on your credit report, you may be able to use an online process, an automated telephone line, or a written request to any of the three credit reporting agencies listed above. The following information must be included when requesting a security freeze (note that if you are requesting a credit report for your spouse, this information must be provided for him/her as well): (1) full name, with middle initial and any suffixes; (2) Social Security number; (3) date of birth; (4) current address and any previous addresses for the past five years; and (5) any applicable incident report or complaint with a law enforcement agency or the Registry of Motor Vehicles. The request must also include a copy of a government-issued identification card and a copy of a recent utility bill or bank or insurance statement. It is essential that each copy be legible, display your name and current mailing address, and the date of issue. The credit reporting agencies may charge a fee to place a freeze, temporarily lift it or permanently remove it. The fee is waived if you are a victim of identity theft and have submitted a valid investigative or law enforcement report or complaint relating to the identity theft incident to the credit reporting agencies. (You must review your state's requirement(s) and/or credit bureau requirement(s) for the specific document(s) to be submitted.)

For Massachusetts residents: The fee for each placement of a freeze, temporary lift of a freeze, or removal of a freeze is \$5.

Federal Trade Commission and State Attorneys General Offices. If you believe you are the victim of identity theft or have reason to believe your personal information has been misused, you should immediately contact the Federal Trade Commission and/or the Attorney General's office in your home state. You may also contact these agencies for information on how to prevent or avoid identity theft.

You may contact the **Federal Trade Commission**, Consumer Response Center, 600 Pennsylvania Avenue, NW, Washington, DC 20580, www.ftc.gov/bcp/edu/microsites/idtheft/, 1-877-IDTHEFT (438-4338).

For Maryland residents: You may contact the Maryland Office of the Attorney General, Consumer Protection Division, 200 St. Paul Place, Baltimore, MD 21202, www.oag.state.md.us, 1-888-743-0023.

For North Carolina residents: You may contact the North Carolina Office of the Attorney General, Consumer Protection Division, 9001 Mail Service Center, Raleigh, NC 27699-9001, www.ncdoj.gov, 1-877-566-7226.

Reporting of identity theft and obtaining a police report.

For Iowa residents: You are advised to report any suspected identity theft to law enforcement or to the Iowa Attorney General.

For Massachusetts residents: You have the right to obtain a police report if you are a victim of identity theft.

For Oregon residents: You are advised to report any suspected identity theft to law enforcement, the Federal Trade Commission, and the Oregon Attorney General.



TAKE ADVANTAGE OF YOUR IDENTITY MONITORING SERVICES

You've been provided with access to the following services¹ from Kroll:

Single Bureau Credit Monitoring

You will receive alerts when there are changes to your credit data—for instance, when a new line of credit is applied for in your name. If you do not recognize the activity, you'll have the option to call a Kroll fraud specialist, who can help you determine if it's an indicator of identity theft.

Web Watcher

Web Watcher monitors internet sites where criminals may buy, sell, and trade personal identity information. An alert will be generated if evidence of your personal identity information is found.

Fraud Consultation

You have unlimited access to consultation with a Kroll fraud specialist. Support includes showing you the most effective ways to protect your identity, explaining your rights and protections under the law, assistance with fraud alerts, and interpreting how personal information is accessed and used, including investigating suspicious activity that could be tied to an identity theft event.

Identity Theft Restoration

If you become a victim of identity theft, an experienced Kroll licensed investigator will work on your behalf to resolve related issues. You will have access to a dedicated investigator who understands your issues and can do most of the work for you. Your investigator can dig deep to uncover the scope of the identity theft, and then work to resolve it.

¹ Kroll's activation website is only compatible with the current version or one version earlier of Internet Explorer, Chrome, Firefox, and Safari. To receive credit services, you must be over the age of 18 and have established credit in the U.S., have a Social Security number in your name, and have a U.S. residential address associated with your credit file.

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

RICKEY KIMBRIEL and PAULA KIMBRIEL, on behalf of themselves and all others similarly situated,

Plaintiff(s)

v.

ABB INC., and BALDOR ELECTRIC COMPANY N/K/A ABB MOTORS AND MECHANICAL INC.,

Defendant(s)

Civil Action No. 5:19-cv-00215

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ABB Inc. c/o C T Corporation System 160 Mine Lake Court Suite 200 Raleigh, North Carolina

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Narendra Ghosh Patterson Harkavy, LLP 100 Europa Dr. Suite 420 Chapel Hill, NC 27517

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:19-cv-00215

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

RICKEY KIMBRIEL and PAULA KIMBRIEL, on behalf of themselves and all others similarly situated,

Plaintiff(s)

v.

ABB INC., and BALDOR ELECTRIC COMPANY N/K/A ABB MOTORS AND MECHANICAL INC.,

Defendant(s)

Civil Action No. 5:19-cv-00215

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Baldor Electric Company c/o CT Corporation System 120 South Central Avenue Clayton, MO 63105

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Narendra Ghosh Patterson Harkavy, LLP 100 Europa Dr. Suite 420 Chapel Hill, NC 27517

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 5:19-cv-00215

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Rickey Kimbriel and Paula Kimbriel

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

(c) Attorneys (*Firm Name, Address, and Telephone Number*)
 Narendra Ghosh, Patterson Harkavy LLP, 100 Europa Dr., Ste 420,
 Chapel Hill, NC 27517; Joe Leniski, Jr., Branstetter Stranch; James A.
 Streett, Streett Law Firm; Lynn A. Toops, Cohen & Malad, LLP.

DEFENDANTS
 ABB, Inc. and Baldor Electric Company N/K/A ABB Motors and
 Mechanical, Inc.

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

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

Attorneys (*If Known*)

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question
(U.S. Government Not a Party)

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*)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input 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*) Click here for: [Nature of Suit Code Descriptions.](#)

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 & Enforcement of Judgment <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 checked="" 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 type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<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 and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <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		
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	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	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	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	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	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
	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	IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions				

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

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (*specify*)

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*):
28 U.S.C. § 1332(d)(2)

Brief description of cause:
Unfair and deceptive trade practices, negligence, breach of contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (*See instructions*):

JUDGE _____ DOCKET NUMBER _____

DATE: 05/22/2019

SIGNATURE OF ATTORNEY OF RECORD: /s/ Narendra K. Ghosh

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating 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 Rule 8(a), F.R.Cv.P., 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.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 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.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 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 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN 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 Rule 23, F.R.Cv.P.
 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 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [ABB Facing Class Action Over 2017 Data Breach of Health Benefits Program](#)
