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12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 DENNIS R. WERLEY, individually and on  
16 behalf of all similarly situated individuals,

17 Plaintiff,

18 v.

19 ORRICK, HERRINGTON & SUTCLIFFE  
20 INTERNATIONAL, LLP,

21 Defendant.  
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Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Dennis R. Werley, (“Plaintiff”) individually and on behalf of all others similarly  
2 situated, bring this action against Defendant Orrick, Herrington & Sutcliffe International, LLP,  
3 (“Orrick”) based on personal knowledge and the investigation of counsel, and allege as follows:

4 **I. INTRODUCTION**

5 1. With this action, Plaintiff seeks to hold Defendant responsible for the harms is  
6 caused Plaintiff and approximately 152,818 similarly situated persons<sup>1</sup> (“Class” or “Class  
7 Members” or “Breach Victims”) in a massive and preventable data breach of Defendant’s  
8 inadequately protected computer network.

9 2. On March 13, 2023, hackers infiltrated and accessed the inadequately protected  
10 computer systems of Defendant and stole the sensitive personal information (“Personal  
11 Information” or “PII”) of over 152,818 of those individuals. Following an investigation,  
12 Defendant determined that cybercriminals gained unauthorized access to its systems on March  
13 7, 2023 (the “Data Breach” or “Breach”).

14 3. The PII taken by the hackers includes: names, addresses, dates of birth, and  
15 Social Security numbers.

16 4. In short, thanks to Defendant’s failure to protect the Breach Victims’ Personal  
17 Information, cyber criminals were able to steal everything they could possibly need to commit  
18 nearly every conceivable form of identity theft and wreak havoc on the financial and personal  
19 lives of potentially millions of individuals.

20 5. Orrick is a global law firm servicing the technology and innovation, energy and  
21 infrastructure, and finance sectors. Orrick has been involved in the defense of data breach  
22 litigation in the past.

23 6. Defendant’s conduct—failing to implement adequate and reasonable measures to  
24 ensure their computer systems were protected, failing to take adequate steps to prevent and stop  
25 the breach, failing to timely detect the breach, failing to disclose the material facts that they did  
26 not have adequate computer systems and security practices to safeguard the Personal  
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28 \_\_\_\_\_  
<sup>1</sup> <https://apps.web.maine.gov/online/aeviewer/ME/40/6e5ffd3e-4185-48e7-a098-a7405ec0ec63.shtml>

1 Information, failing to honor their repeated promises and representations to protect the Breach  
2 Victims' Personal Information, and failing to provide timely and adequate notice of the Data  
3 Breach—caused substantial harm and injuries to Plaintiff and the Class.

4 7. As a result of the Data Breach, Plaintiff and the Class have suffered damages.  
5 For example, Plaintiff has experienced a flood of spam telephone calls from unknown persons  
6 since the Data Breach. Now that their Personal Information has been released into the criminal  
7 cyber domains, Plaintiff and the Class are at imminent risk of identity theft. And this will  
8 continue, as they must spend their time being extra vigilant, due to Defendant's failures, to try to  
9 prevent being victimized for the rest of their lives.

10 8. Plaintiff brings this class action lawsuit on behalf of a nationwide class and state  
11 subclasses to hold Defendant responsible for its negligent and reckless failure to use reasonable,  
12 current cybersecurity measures to protect class members' Personal Information.

13 9. Because Defendant presented such a soft target to cybercriminals, Plaintiff and  
14 class members have already been subjected to violations of their privacy, fraud, and identity  
15 theft, or have been exposed to a heightened and imminent risk of fraud and identity theft.  
16 Plaintiff and class members must now and in the future, spend time to more closely monitor  
17 their credit reports, financial accounts, phone lines, and online accounts to guard against identity  
18 theft.

19 10. Plaintiff and class members may also incur out-of-pocket costs for, among other  
20 things, purchasing credit monitoring services, credit freezes, credit reports, or other protective  
21 measures to deter and detect identity theft.

22 11. On behalf of himself and the Class, Plaintiff seeks actual damages, statutory  
23 damages, and punitive damages, with attorney fees, costs, and expenses under negligence,  
24 negligence per se, breach of fiduciary duties, breach of confidence, breach of implied contract,  
25 and invasion of privacy. Plaintiff also seeks injunctive relief, including significant  
26 improvements to Defendant's data security systems, future annual audits, and long-term credit  
27 monitoring services funded by Defendant, and other remedies as the Court sees fit.

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1 **II. THE PARTIES**

2 12. Plaintiff Dennis R. Werley is a citizen of Stockdale, Texas.

3 13. Defendant Orrick, Herrington & Sutcliffe International, LLP is a Delaware  
4 limited liability partnership with its headquarters in San Francisco, California.

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

10 15. All of Plaintiff's claims stated herein are asserted against Defendant and any of  
11 its owners, predecessors, successors, subsidiaries, agents and/or assigns.

12 **III. JURISDICTION AND VENUE**

13 16. Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
14 though fully set forth herein.

15 17. This Court has diversity jurisdiction over this action under the Class Action  
16 Fairness Act, 28 U.S.C. § 1332(d), because this is a class action involving more than 100 class  
17 members, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and  
18 many members of the class, including Plaintiff, are citizens of states different from Defendant.

19 18. This Court has personal jurisdiction over Defendant because its principal place of  
20 business is in this District, it regularly transacts business in this District, and many Class  
21 members reside in this District.

22 19. Venue as to Defendant is proper in this judicial district under 28 U.S.C §  
23 1391(b)(1) because Defendant's principal place of business is in this District and many of  
24 Defendant's acts complained of herein occurred within this District.

25 **IV. FACTUAL ALLEGATIONS**

26 20. Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
27 though fully set forth herein.

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1           **A.     The Data Breach**

2           21.     On June 30, 2023, Orrick sent letters to Plaintiff and the Class Members  
3 informing them that, on March 13, 2023, it detected that an unauthorized party had gained  
4 remote access to its network, and, following an investigation, it determined that the  
5 unauthorized third party obtained files containing personal information on March 7, 2023  
6 (“Notice of Breach” or “Notice”).<sup>2</sup>

7           22.     Despite detecting the breach back in March, and knowing many Plaintiff and the  
8 Class Members were in danger, Defendant did nothing to warn Breach Victims until four  
9 months later. During this time, the cyber criminals had free reign to surveil and defraud their  
10 unsuspecting victims.

11          23.     In spite of the severity of the Data Breach, Defendant has done very little to  
12 protect Breach Victims. Defendant is only offering two years of identity monitoring services.

13          24.     Defendant failed to adequately safeguard class members’ Personal Information,  
14 allowing the cyber criminals to access this wealth of priceless information months before Orrick  
15 warned the Breach Victims to be on the lookout.

16          25.     Defendant had obligations created by reasonable industry standards, common  
17 law, and its representations to Class Members, to keep their Personal Information confidential  
18 and to protect the information from unauthorized access.

19          26.     Plaintiff and Class Members provided their Personal Information to Defendant  
20 with the reasonable expectation and mutual understanding that Orrick would comply with its  
21 obligations to keep such information confidential and secure from unauthorized access.

22           **B.     Plaintiff’s Experience**

23          27.     Plaintiff entrusted his Personal Information to Defendant or one of Defendant’s  
24 clients, which entrusted the information to Defendant.

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<sup>2</sup> Exhibit 1.

1           28. Plaintiff received a letter from Orrick, dated June 30, 2023, informing him that  
2 his “name, address, date of birth, and Social Security number” was disclosed to an unknown  
3 actor as a result of the Data Breach.<sup>3</sup>

4           29. Plaintiff has spent hours responding to the Data Breach so far, including  
5 reviewing his financial accounts and credit reports.

6           30. In recent months, Plaintiff has received a noticeable increase in spam phone calls  
7 from persons attempting to sell him things. But this is not the ordinary spam modern Americans  
8 live with. These people know sensitive personal information about Plaintiff and use it to attempt  
9 to defraud Plaintiff.

10          31. Because the Data Breach was an intentional hack by cyber criminals seeking  
11 information of value that they could exploit, Plaintiff is at imminent risk of severe identity theft  
12 and exploitation.

13          32. Plaintiff is very careful about not sharing his sensitive Personal Information. He  
14 has never knowingly transmitted unencrypted sensitive PII over the internet or any other  
15 unsecured source.

16          33. Plaintiff stores any document containing his Personal Information in safe and  
17 secure locations or destroys such documents. He diligently chooses unique usernames and  
18 passwords for his various online accounts.

19          34. Plaintiff has suffered imminent and impending injury arising from the  
20 substantially increased risk of fraud, identity theft, and misuse resulting from his PII, especially  
21 his Social Security number, being placed in the hands of unauthorized third parties and possibly  
22 criminals.

23          35. Plaintiff has a continuing interest in ensuring that his PII, which, upon  
24 information and belief, remains backed up in Defendant’s possession, is protected and  
25 safeguarded from future breaches.

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<sup>3</sup> Exhibit 1.

1           **C. Defendant had an Obligation to Protect Personal Information under**  
2           **Federal and State Law and the Applicable Standard of Care**

3           36. Orrick collects, maintains, and stores the Personal Information of Plaintiff and  
4 the Class in the usual course of business. Orrick frequently engages in the defense of data  
5 breach litigation. In such business, Orrick collects the Personal Information of its clients and the  
6 plaintiffs and class members of other suits.

7           37. In collecting, maintaining, and storing such Personal Information, Orrick  
8 promises to such information confidential and protect it from third parties.

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

15           39. Defendant is also required by various state laws and regulations to protect  
16 Plaintiff’s and Class Members’ Personal Information.

17           40. In addition to its obligations under federal and state laws, Defendant owed a duty  
18 to Breach Victims whose Personal Information was entrusted to Defendant to exercise  
19 reasonable care in obtaining, retaining, securing, safeguarding, deleting, and protecting the  
20 Personal Information in its possession from being compromised, lost, stolen, accessed, and  
21 misused by unauthorized persons. Defendant owed a duty to Plaintiff and the Class Members to  
22 provide reasonable security, including consistency with industry standards and requirements,  
23 and to ensure that its computer systems and networks, and the personnel responsible for them,  
24 adequately protected the Personal Information of the Plaintiff and the Class Members.

25           41. Defendant owed a duty to Plaintiff and the Class Members whose Personal  
26 Information was entrusted to Defendant to design, maintain, and test its computer systems and  
27 email system to ensure that the Personal Information in Defendant’s possession was adequately  
28 secured and protected.

1           42. Defendant owed a duty to Plaintiff and the Class Members whose Personal  
2 Information was entrusted to Defendant to create and implement reasonable data security  
3 practices and procedures to protect the Personal Information in their possession, including  
4 adequately training its employees and others who accessed Personal Information within its  
5 computer systems on how to adequately protect Personal Information.

6           43. Defendant owed a duty to Plaintiff and the Class Members whose Personal  
7 Information was entrusted to Defendant to implement processes that would detect a breach on  
8 its data security systems in a timely manner.

9           44. Defendant owed a duty to Plaintiff and the Class Members whose Personal  
10 Information was entrusted to Defendant to act upon data security warnings and alerts in a timely  
11 fashion.

12           45. Defendant owed a duty to Plaintiff and the Class Members whose Personal  
13 Information was entrusted to Defendant to disclose if its computer systems and data security  
14 practices were inadequate to safeguard individuals' Personal Information from theft because  
15 such an inadequacy would be a material fact in the decision to entrust Personal Information with  
16 Defendant.

17           46. Defendant owed a duty to Plaintiff and the Class Members whose Personal  
18 Information was entrusted to Defendant to disclose in a timely and accurate manner when data  
19 breaches occurred.

20           47. Defendant owed a duty of care to Plaintiff and the Class Members because they  
21 were foreseeable and probable victims of any inadequate data security practices.

22           **D. Defendant Was on Notice of Cyber Attack Threats and the Inadequacy of**  
23           **Its Data Security**

24           48. In the years immediately preceding the Data Breach, Defendant knew or should  
25 have known that Defendant's computer systems were a target for cybersecurity attacks because  
26 warnings were readily available and accessible via the internet.

27           49. In October 2019, the Federal Bureau of Investigation published online an article  
28 titled "High-Impact Ransomware Attacks Threaten U.S. Businesses and Organizations" that,



1 among other things, warned that “[a]lthough state and local governments have been particularly  
2 visible targets for ransomware attacks, ransomware actors have also targeted health care  
3 organizations, industrial companies, and the transportation sector.”<sup>4</sup>

4 50. In April 2020, ZDNet reported, in an article titled “Ransomware mentioned in  
5 1,000+ SEC filings over the past year,” that “[r]ansomware gangs are now ferociously  
6 aggressive in their pursuit of big companies. They breach networks, use specialized tools to  
7 maximize damage, leak corporate information on dark web portals, and even tip journalists to  
8 generate negative news for companies as revenge against those who refuse to pay.”<sup>5</sup>

9 51. In September 2020, the United States Cybersecurity and Infrastructure Security  
10 Agency published online a “Ransomware Guide” advising that “[m]alicious actors have  
11 adjusted their ransomware tactics over time to include pressuring victims for payment by  
12 threatening to release stolen data if they refuse to pay and publicly naming and shaming victims  
13 as secondary forms of extortion.”<sup>6</sup>

14 52. This readily available and accessible information confirms that, prior to the Data  
15 Breach, Defendant knew or should have known that: (i) cybercriminals were targeting  
16 companies such as Defendant and Defendant’s clients, (ii) cybercriminals were ferociously  
17 aggressive in their pursuit of companies in possession of significant sensitive information such  
18 as Defendant and Defendant’s clients, (iii) cybercriminals were leaking corporate information  
19 on dark web portals, and (iv) cybercriminals’ tactics included threatening to release stolen data.

20 53. Considering the information readily available and accessible on the internet  
21 before the Data Breach and Defendant’s involvement in data breach litigation, Defendant,  
22 having elected to store the unencrypted PII of Plaintiff and Class Members in an Internet-  
23

24  
25 <sup>4</sup> FBI, High-Impact Ransomware Attacks Threaten U.S. Businesses and Organizations (Oct. 2,  
26 2019) (emphasis added), available at <https://www.ic3.gov/Media/Y2019/PSA191002> (last  
visited Jan. 25, 2022).

27 <sup>5</sup> ZDNet, Ransomware mentioned in 1,000+ SEC filings over the past year (Apr. 30, 2020)  
(emphasis added), available at [https://www.zdnet.com/article/ransomware-mentioned-in-1000-  
28 sec-filings-over-the-past-year/](https://www.zdnet.com/article/ransomware-mentioned-in-1000-sec-filings-over-the-past-year/) (last visited Jan. 25, 2022).

<sup>6</sup> U.S. CISA, Ransomware Guide – September 2020, available at  
[https://www.cisa.gov/sites/default/files/publications/CISA\\_MS-  
ISAC\\_Ransomware%20Guide\\_S508C.pdf](https://www.cisa.gov/sites/default/files/publications/CISA_MS-ISAC_Ransomware%20Guide_S508C.pdf) (last visited Jan. 25, 2022).

1 accessible environment, had reason to be on guard for the exfiltration of the PII, and  
2 Defendant’s type of business had cause to be particularly on guard against such an attack.

3 **E. Defendant Could Have and Should Have Prevented this Data Breach**

4 54. As explained by the Federal Bureau of Investigation, “[p]revention is the most  
5 effective defense against ransomware and it is critical to take precautions for protection.”<sup>7</sup>

6 55. To prevent and detect ransomware attacks, including the ransomware attack that  
7 resulted in the Data Breach, Defendant could and should have implemented, as recommended  
8 by the United States Government, the following measures:

- 9
- 10 • Implement an awareness and training program. Because end users are targets,  
11 employees and individuals should be aware of the threat of ransomware and  
12 how it is delivered.
  - 13 • Enable strong spam filters to prevent phishing emails from reaching the end  
14 users and authenticate inbound email using technologies like Sender Policy  
15 Framework (SPF), Domain Message Authentication Reporting and  
16 Conformance (DMARC), and DomainKeys Identified Mail (DKIM) to prevent  
17 email spoofing.
  - 18 • Scan all incoming and outgoing emails to detect threats and filter executable  
19 files from reaching end users.
  - 20 • Configure firewalls to block access to known malicious IP addresses.
  - 21 • Patch operating systems, software, and firmware on devices. Consider using a  
22 centralized patch management system.
  - 23 • Set anti-virus and anti-malware programs to conduct regular scans  
24 automatically.
  - 25 • Manage the use of privileged accounts based on the principle of least privilege:  
26 no users should be assigned administrative access unless absolutely needed;  
27 and those with a need for administrator accounts should only use them when  
28 necessary.
  - Configure access controls—including file, directory, and network share  
permissions—with least privilege in mind. If a user only needs to read specific  
files, the user should not have write access to those files, directories, or shares.

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<sup>7</sup> See How to Protect Your Networks from RANSOMWARE, at 3, available at <https://www.fbi.gov/file-repository/ransomware-prevention-and-response-for-cisos.pdf/view> (last visited July 17, 2023).

- 1 • Disable macro scripts from office files transmitted via email. Consider using  
2 Office Viewer software to open Microsoft Office files transmitted via email  
3 instead of full office suite applications.
- 4 • Implement Software Restriction Policies (SRP) or other controls to prevent  
5 programs from executing from common ransomware locations, such as  
6 temporary folders supporting popular Internet browsers or  
7 compression/decompression programs, including the AppData/LocalAppData  
8 folder.
- 9 • Consider disabling Remote Desktop protocol (RDP) if it is not being used.
- 10 • Use application whitelisting, which only allows systems to execute programs  
11 known and permitted by security policy.
- 12 • Execute operating system environments or specific programs in a virtualized  
13 environment.
- 14 • Categorize data based on organizational value and implement physical and  
15 logical separation of networks and data for different organizational units.<sup>8</sup>

16 56. To prevent and detect ransomware attacks, including the ransomware attack that  
17 resulted in the Data Breach, Defendant could and should have implemented, as recommended  
18 by the United States Cybersecurity & Infrastructure Security Agency, the following measures:

- 19 • **Update and patch your computer.** Ensure your applications and operating  
20 systems (OSs) have been updated with the latest patches. Vulnerable  
21 applications and OSs are the target of most ransomware attacks. . . .
- 22 • **Use caution with links and when entering website addresses.** Be careful  
23 when clicking directly on links in emails, even if the sender appears to be  
24 someone you know. Attempt to independently verify website addresses (e.g.,  
25 contact your organization's helpdesk, search the internet for the sender  
26 organization's website or the topic mentioned in the email). Pay attention to  
27 the website addresses you click on, as well as those you enter yourself.  
28 Malicious website addresses often appear almost identical to legitimate sites,  
often using a slight variation in spelling or a different domain (e.g., .com  
instead of .net). . . .
- **Open email attachments with caution.** Be wary of opening email  
attachments, even from senders you think you know, particularly when  
attachments are compressed files or ZIP files.
- **Keep your personal information safe.** Check a website's security to ensure  
the information you submit is encrypted before you provide it. . . .

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<sup>8</sup> *Id.* at 3-4.

- 1 • **Verify email senders.** If you are unsure whether or not an email is legitimate,  
2 try to verify the email’s legitimacy by contacting the sender directly. Do not  
3 click on any links in the email. If possible, use a previous (legitimate) email to  
4 ensure the contact information you have for the sender is authentic before you  
5 contact them.
- 6 • **Inform yourself.** Keep yourself informed about recent cybersecurity threats  
7 and up to date on ransomware techniques. You can find information about  
8 known phishing attacks on the Anti-Phishing Working Group website. You  
9 may also want to sign up for CISA product notifications, which will alert you  
10 when a new Alert, Analysis Report, Bulletin, Current Activity, or Tip has been  
11 published.
- 12 • **Use and maintain preventative software programs.** Install antivirus  
13 software, firewalls, and email filters—and keep them updated—to reduce  
14 malicious network traffic. . . .<sup>9</sup>

15 57. To prevent and detect ransomware attacks, including the ransomware attack that  
16 resulted in the Data Breach, Defendant could and should have implemented, as recommended  
17 by the Microsoft Threat Protection Intelligence Team, the following measures:

18 **Secure internet-facing assets**

- 19 - Apply latest security updates
- 20 - Use threat and vulnerability management
- 21 - Perform regular audit; Remove privilege credentials

22 **Thoroughly investigate and remediate alerts**

- 23 - Prioritize and treat commodity malware infections as potential full compromise

24 **Include IT Pros in security discussions**

- 25 - Ensure collaboration among [security operations], [security admins], and  
26 [information technology] admins to configure servers and other endpoints  
27 securely

28 **Build credential hygiene**

- Use [multifactor authentication] or [network level authentication] and use  
strong, randomized, just-in-time local admin passwords
- Apply principle of least-privilege

**Monitor for adversarial activities**

- Hunt for brute force attempts
- Monitor for cleanup of Event logs
- Analyze logon events

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<sup>9</sup> See Security Tip (ST19-001) Protecting Against Ransomware (original release date Apr. 11, 2019), available at <https://www.cisa.gov/news-events/news/protecting-against-ransomware> (last visited July 17, 2023).

1           **Harden infrastructure**

- 2           - Use Windows Defender Firewall  
3           - Enable tamper protection  
4           - Enable cloud-delivered protection  
5           - Turn on attack surface reduction rules and [Antimalware Scan Interface] for  
6           Office [Visual Basic for Applications].<sup>10</sup>

7           58.     Given that Defendant was storing the PII of other individuals, Defendant could  
8           and should have implemented all of the above measures to prevent and detect ransomware  
9           attacks.

10           **F.     Plaintiff and the Class Continue to Suffer Harm**

11           59.     Each year, identity theft causes tens of billions of dollars of losses to victims in  
12           the United States.<sup>11</sup> Cyber criminals can leverage Plaintiff’s and class members’ Personal  
13           Information that was stolen in the Data Breach to commit thousands-indeed, millions-of  
14           additional crimes, including opening new financial accounts in Breach Victims’ names, taking  
15           out loans in Breach Victims’ names, using Breach Victims’ names to obtain government  
16           benefits, using Breach Victims’ Personal Information to file fraudulent tax returns, using Breach  
17           Victims’ information to obtain government benefits, filing fraudulent tax returns using Breach  
18           Victims’ information, obtaining driver's licenses in Breach Victims’ names but with another  
19           person’s photograph, and giving false information to police during an arrest. Even worse,  
20           Breach Victims could be arrested for crimes identity thieves have committed.

21           60.     Personal Information is such a valuable commodity to identity thieves that once  
22           the information has been compromised, criminals often trade the information on the cyber  
23           black-market for years.

24           61.     The PII of individuals remains of high value to criminals, as evidenced by the  
25           prices they will pay through the dark web. Numerous sources cite dark web pricing for stolen

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26           <sup>10</sup> See Human-operated ransomware attacks: A preventable disaster (Mar 5, 2020),  
27           available at <https://www.microsoft.com/security/blog/2020/03/05/human-operated-ransomware-attacks-a-preventable-disaster/> (last visited July 17, 2023).

28           <sup>11</sup> “Facts + Statistics: Identity Theft and Cybercrime,” Insurance Info. Inst.,  
<https://www.iii.org/fact-statistic/facts-statistics-identity-theft-and-cybercrime> (discussing  
Javelin Strategy & Research’s report “2018 Identity Fraud: Fraud Enters a New Era of  
Complexity”).

1 identity credentials. For example, personal information can be sold at a price ranging from \$40  
2 to \$200, and bank details have a price range of \$50 to \$200.<sup>12</sup> Experian reports that a stolen  
3 credit or debit card number can sell for \$5 to \$110 on the dark web.<sup>13</sup> Criminals can also  
4 purchase access to entire company data breaches from \$900 to \$4,500.<sup>14</sup>

5 62. Based on the foregoing, the information compromised in the Data Breach is  
6 significantly more valuable than the loss of, for example, credit card information in a retailer  
7 data breach because, there, victims can cancel or close credit and debit card accounts. The  
8 information compromised in this Data Breach is impossible to “close” and difficult, if not  
9 impossible, to change.

10 63. This data demands a much higher price on the black market. Martin Walter,  
11 senior director at cybersecurity firm RedSeal, explained, “Compared to credit card information,  
12 personally identifiable information and Social Security numbers are worth more than 10x on the  
13 black market.”<sup>15</sup>

14 64. Among other forms of fraud, identity thieves may obtain driver’s licenses,  
15 government benefits, medical services, and housing or even give false information to police.

16 65. This was a financially motivated data breach, as the only reason the cyber  
17 criminals stole Plaintiff’s and the Class Members’ Personal Information from Orrick was to  
18 engage in the kinds of criminal activity described in paragraph 85, which will result, and has  
19 already begun to, in devastating financial and personal losses to Breach Victims.

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23 <sup>12</sup> *Your personal data is for sale on the dark web. Here’s how much it costs*, Digital  
Trends, Oct. 16, 2019, available at: [https://www.digitaltrends.com/computing/personal-data-](https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/)  
24 [sold-on-the-dark-web-how-much-it-costs/](https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/) (last accessed July 17, 2023).

25 <sup>13</sup> *Here’s How Much Your Personal Information Is Selling for on the Dark Web*,  
Experian, Dec. 6, 2017, available at: [https://www.experian.com/blogs/ask-experian/heres-how-](https://www.experian.com/blogs/ask-experian/heres-how-much-your-personal-information-is-selling-for-on-the-dark-web/)  
26 [much-your-personal-information-is-selling-for-on-the-dark-web/](https://www.experian.com/blogs/ask-experian/heres-how-much-your-personal-information-is-selling-for-on-the-dark-web/) (last accessed July 17, 2023).

27 <sup>14</sup> *In the Dark*, VPNOverview, 2019, available at:  
<https://vpnoverview.com/privacy/anonymous-browsing/in-the-dark/> (last accessed July 17,  
28 2023).

<sup>15</sup> Time Greene, *Anthem Hack: Personal Data Stolen Sells for 10x Price of Stolen Credit  
Card Numbers*, IT World, (Feb. 6, 2015), available at:  
[https://www.networkworld.com/article/2880366/anthem-hack-personal-data-stolen-sells-for-](https://www.networkworld.com/article/2880366/anthem-hack-personal-data-stolen-sells-for-10x-price-of-stolen-credit-card-numbers.html)  
10x-price-of-stolen-credit-card-numbers.html (last accessed July 17, 2023).

1 66. This is not just speculative. As the FTC has reported, if hackers get access to  
2 Personal Information, they *will* use it.<sup>16</sup>

3 67. Hackers may not use the information right away. According to the U.S.  
4 Government Accountability Office, which conducted a study regarding data breaches:

5 [I]n some cases, stolen data may be held for up to a year or more before being used  
6 to commit identity theft. Further, once stolen data have been sold or posted on the  
7 Web, fraudulent use of that information **may continue for years**. As a result,  
8 studies that attempt to measure the harm resulting from data breaches cannot  
9 necessarily rule out all future harm.<sup>17</sup>

10 68. For instance, with a stolen social security number, which is part of the Personal  
11 Information compromised in the Data Breach, someone can open financial, get medical care,  
12 file fraudulent tax returns, commit crimes, and steal benefits.<sup>18</sup>

13 69. One such example of criminals using PII for profit is the development of “Fullz”  
14 packages.

15 70. Cyber-criminals can cross-reference two sources of PII to marry unregulated data  
16 available elsewhere to criminally stolen data with an astonishingly complete scope and degree  
17 of accuracy in order to assemble complete dossiers on individuals. These dossiers are known as  
18 “Fullz” packages.

19 71. The development of “Fullz” packages means that stolen PII from the Data  
20 Breach can easily be used to link and identify it to Plaintiff’s and the Class’ phone numbers,  
21 email addresses, and other unregulated sources and identifiers. In other words, even if certain  
22 information such as emails, phone numbers, or credit card numbers may not be included in the  
23 PII stolen by the cyber-criminals in the Data Breach, criminals can easily create a Fullz package

24 \_\_\_\_\_  
25 <sup>16</sup> Ari Lazarus, “How fast will identity thieves use stolen info?,” May 24, 2017,  
<https://www.consumer.ftc.gov/blog/2017/05/how-fast-will-identity-thieves-use-stolen-info>.

26 <sup>17</sup> *Data Breaches Are Frequent, but Evidence of Resulting Identity Theft Is Limited; However,*  
27 *the Full Extent Is Unknown*, GAO, July 5, 2007, <https://www.gao.gov/assets/270/262904.html>  
(emphasis added).

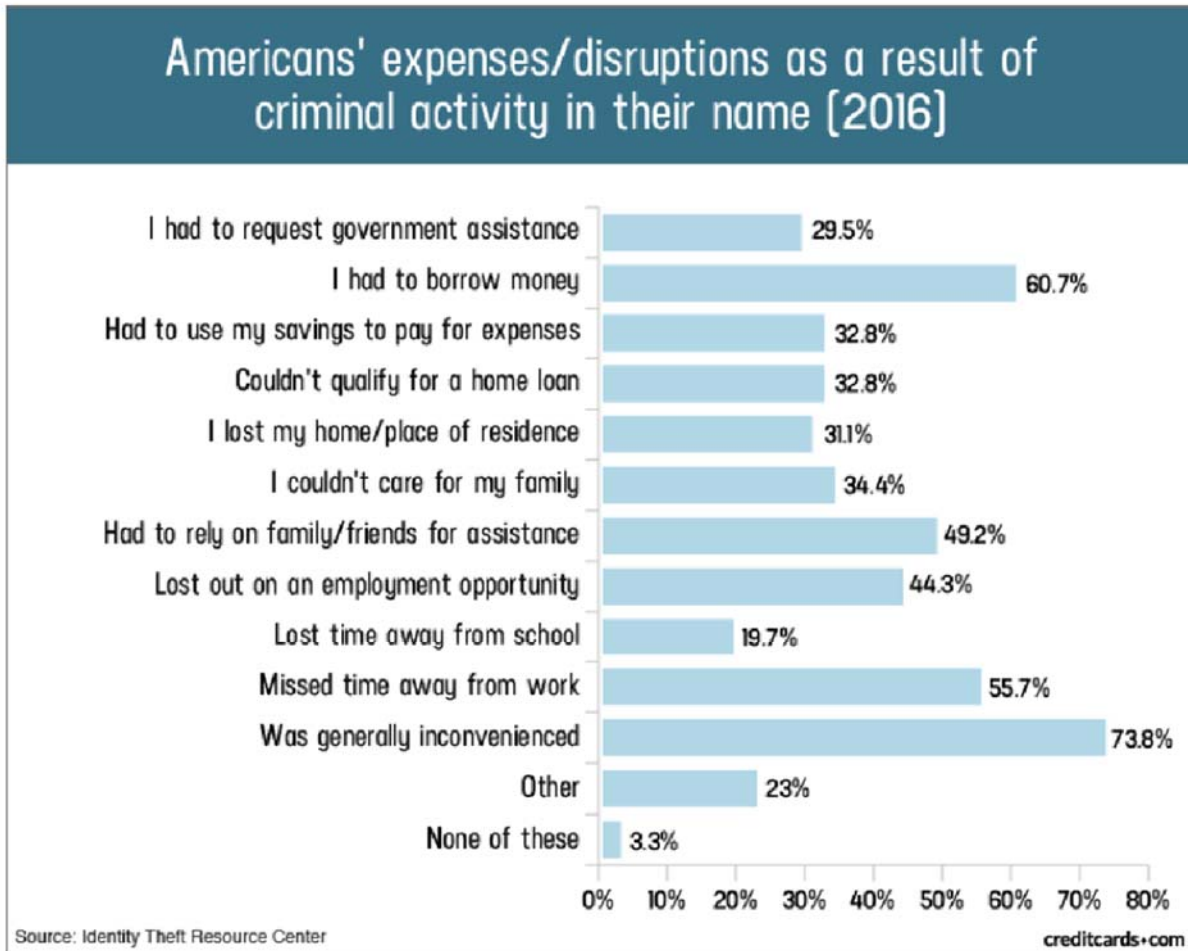
28 <sup>18</sup> *See, e.g.,* Christine DiGangi, *5 Ways an Identity Thief Can Use Your Social Security Number*,  
Nov. 2, 2017, <https://blog.credit.com/2017/11/5-things-an-identity-thief-can-do-with-your-social-security-number-108597/>.



1 and sell it at a higher price to unscrupulous operators and criminals (such as illegal and scam  
2 telemarketers) over and over.

3 72. If, moreover, the cyber criminals also manage to steal financial information,  
4 credit and debit cards, health insurance information, driver’s licenses and passports—as they did  
5 here—there is no limit to the amount of fraud that Defendant has exposed the Breach Victims  
6 to.

7 73. A study by the Identity Theft Resource Center shows the multitude of harms  
8 caused by fraudulent use of Personal Information such as that compromised in the Data  
9 Breach:<sup>19</sup>



19 Jason Steele, “Credit Card and ID Theft Statistics,” Oct. 24, 2017,  
28 <https://www.creditcards.com/credit-card-news/credit-card-security-id-theft-fraud-statistics-1276.php>.



1           74. Plaintiff and the Class have experienced one or more of these harms as a result of  
2 the Data Breach.

3           75. As described above, identity theft victims must spend countless hours and large  
4 amounts of money repairing the impact to their credit.<sup>20</sup>

5           76. Defendant’s offer of two year of identity monitoring to Plaintiff and the Class is  
6 woefully inadequate. While some harm has begun already, the worst may be yet to come. There  
7 may be a time lag between when harm occurs versus when it is discovered, and also between  
8 when Personal Information is stolen and when it is used. Furthermore, identity monitoring only  
9 alerts someone to the fact that they have already been the victim of identity theft (*i.e.* fraudulent  
10 acquisition and use of another person’s Personal Information)—it does not prevent identity  
11 theft.<sup>21</sup>

12           77. As a direct and proximate result of the Data Breach, Plaintiff and the Class have  
13 been placed at an imminent, immediate, and continuing increased risk of harm from fraud and  
14 identity theft. Plaintiff and the Class now have to take the time and effort to mitigate the actual  
15 and potential impact of the Data Breach on their everyday lives, including placing “freezes” and  
16 “alerts” with credit reporting agencies, contacting their financial institutions, closing or  
17 modifying financial accounts, and closely reviewing and monitoring bank accounts and credit  
18 reports for unauthorized activity for years to come.

19           78. Plaintiff and the Class have suffered, and continue to suffer, actual harms for  
20 which they are entitled to compensation, including:

- 21           a. Trespass, damage to and theft of their personal property including Personal
- 22                     Information;
- 23           b. Improper disclosure of their Personal Information;
- 24
- 25

26 \_\_\_\_\_  
27 <sup>20</sup> “Guide for Assisting Identity Theft Victims,” Federal Trade Commission, 4 (Sept. 2013),  
<http://www.consumer.ftc.gov/articles/pdf-0119-guide-assisting-id-theft-victims.pdf>.

28 <sup>21</sup> *See, e.g.,* Kayleigh Kulp, *Credit Monitoring Services May Not Be Worth the Cost* by Nov. 30,  
2017, [https://www.cnn.com/2017/11/29/credit-monitoring-services-may-not-be-worth-the-  
cost.html](https://www.cnn.com/2017/11/29/credit-monitoring-services-may-not-be-worth-the-cost.html).

- c. The imminent and certainly impending injury flowing from potential fraud and identity theft posed by their Personal Information being placed in the hands of criminals and having been already misused;
- d. Damages flowing from Defendant untimely and inadequate notification of the data breach;
- e. Loss of privacy suffered as a result of the data breach;
- f. Ascertainable losses in the form of out-of-pocket expenses and the value of their time reasonably expended to remedy or mitigate the effects of the data breach;
- g. Ascertainable losses in the form of deprivation of the value of customers' personal information for which there is a well-established and quantifiable national and international market;
- h. The loss of use of and access to their credit, accounts, and/or funds;
- i. Damage to their credit due to fraudulent use of their Personal Information; and
- j. Increased cost of borrowing, insurance, deposits and other items which are adversely affected by a reduced credit score.

79. Moreover, Plaintiff and Class have an interest in ensuring that their information, which remains in the possession of Defendant, is protected from further breaches by the implementation of security measures and safeguards.

80. Defendant itself acknowledged the harm caused by the data breach because it offered Plaintiff and Class Members two years of identity theft repair and monitoring services. Two years of identity theft and repair and monitoring is woefully inadequate to protect Plaintiff and Class Members from a lifetime of identity theft risk and does nothing to reimburse Plaintiff and Class Members for the injuries they have already suffered.

**V. CLASS ALLEGATIONS**

81. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein.

1 82. Plaintiff brings all claims as class claims under Federal Rule of Civil Procedure  
2 23. The requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(3), Plaintiff asserts all  
3 claims on behalf of a Nationwide Class, defined as follows:

4 **All persons whose Personal Information was compromised by**  
5 **the Data Breach discovered on or about March 13, 2023,**  
6 **including all who were sent a notice of the Data Breach.**

7 83. Excluded from the Class are Defendant, any entity in which Defendant has a  
8 controlling interest, and Defendant's officers, directors, legal representatives, successors,  
9 subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer  
10 presiding over this matter and the members of their immediate families and judicial staff.

11 84. Alternatively, Plaintiff proposes the following subclasses by state or groups of  
12 states, defined as follows:

13 **Statewide [name of State] Class: All residents of [name of State]**  
14 **whose Personal Information was compromised by the Data**  
15 **Breach.**

16 **A. CLASS CERTIFICATION IS APPROPRIATE**

17 85. The proposed Nationwide Class or, alternatively, the separate Statewide Classes  
18 (collectively, the "Class" as used in this sub-section) meet the requirements of Fed. R. Civ. P.  
19 23(a), (b)(1), (b)(2), (b)(3), and (c)(4).

20 86. **Numerosity:** The proposed Class is so numerous that joinder of all members is  
21 impracticable. Defendant reported to the Office of the Maine Attorney General that  
22 approximately 152,818 individuals were affected by the Data Breach.<sup>22</sup>

23 87. **Commonality and Predominance:** There are many questions of law and fact  
24 common to the claims of Plaintiff and the other members of the Class, and those questions  
25 predominate over any questions that may affect individual members of the Class. Common  
26 questions for the Class include:

- 27 a. Whether Defendant failed to adequately safeguard Plaintiff's and the  
28 Class' Personal Information;

<sup>22</sup> <https://apps.web.maine.gov/online/aewiewer/ME/40/6e5ffd3e-4185-48e7-a098-a7405ec0ec63.shtml>

- 1           b.     Whether Defendant failed to protect Plaintiff's and the Class' Personal  
2           Information;
- 3           c.     Whether Defendant's email and computer systems and data security  
4           practices used to protect Plaintiff's and the Class' Personal Information  
5           violated the FTCA, state laws, and/or Defendant's other duties;
- 6           d.     Whether Defendant violated the data security statutes and data breach  
7           notification statutes applicable to Plaintiff and the Class;
- 8           e.     Whether Defendant failed to notify Plaintiff and members of the Class  
9           about the Data Breach expeditiously and without unreasonable delay after  
10          the Data Breach was discovered;
- 11          f.     Whether Defendant engaged in unfair, unlawful, or deceptive practices by  
12          failing to safeguard Breach Victims' Personal Information properly and  
13          as promised;
- 14          g.     Whether Defendant acted negligently in failing to safeguard Plaintiff's  
15          and the Class' Personal Information;
- 16          h.     Whether Defendant entered into implied contracts with Plaintiff and the  
17          members of the Class that included contract terms requiring Defendant to  
18          protect the confidentiality of Personal Information and have reasonable  
19          security measures;
- 20          i.     Whether Defendant violated the consumer protection statutes, data breach  
21          notification statutes, and state privacy statutes applicable to Plaintiff and  
22          the Class;
- 23          j.     Whether Defendant failed to notify Plaintiff and Breach Victims about  
24          the Data Breach as soon as practical and without delay after the Data  
25          Breach was discovered;
- 26          k.     Whether Defendant's conduct described herein constitutes a breach of  
27          their implied contracts with Plaintiff and the Class;
- 28

- 1           l.       Whether Plaintiff and the members of the Class are entitled to damages as  
2                   a result of Defendant’s wrongful conduct;
- 3           m.       What equitable relief is appropriate to redress Defendant’s wrongful  
4                   conduct; and
- 5           n.       What injunctive relief is appropriate to redress the imminent and  
6                   currently ongoing harm faced by members of the Class.

7           88.     **Typicality:** Plaintiff’s claims are typical of the claims of the members of the  
8           Class. Plaintiff and the members of the Class sustained damages as a result of Defendant’s  
9           uniform wrongful conduct.

10          89.     **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests  
11          of the Class. Plaintiff has retained counsel competent and experienced in complex litigation and  
12          class actions. Plaintiff has no interests antagonistic to those of the Class, and there are no  
13          defenses unique to Plaintiff. Plaintiff and his counsel are committed to prosecuting this action  
14          vigorously on behalf of the members of the Class, and have the financial resources to do so.  
15          Neither Plaintiff nor their counsel have any interest adverse to those of the other members of the  
16          Class.

17          90.     **Risks of Prosecuting Separate Actions:** This case is appropriate for  
18          certification because prosecution of separate actions would risk either inconsistent adjudications  
19          which would establish incompatible standards of conduct for the Defendant or would be  
20          dispositive of the interests of members of the proposed Class. Furthermore, Defendant are still  
21          in possession of Personal Information of Plaintiff and the Class, and Defendant’s systems are  
22          still vulnerable to attack—one standard of conduct is needed to ensure the future safety of  
23          Personal Information in Defendant’s possession.

24          91.     **Policies Generally Applicable to the Class:** This case is appropriate for  
25          certification because Defendant has acted or refused to act on grounds generally applicable to  
26          Plaintiff and the Class as a whole, thereby requiring the Court’s imposition of uniform relief to  
27          ensure compatible standards of conduct towards members of the Class, and making final  
28          injunctive relief appropriate with respect to the proposed Class as a whole. Defendant’s

1 practices challenged herein apply to and affect the members of the Class uniformly, and  
2 Plaintiff's challenge to those practices hinges on Defendant's conduct with respect to the  
3 proposed Class as a whole, not on individual facts or law applicable only to Plaintiff.

4 92. **Superiority:** This case is also appropriate for certification because class  
5 proceedings are superior to all other available means of fair and efficient adjudication of the  
6 claims of Plaintiff and the members of the Class. The injuries suffered by each individual  
7 member of the Class are relatively small in comparison to the burden and expense of individual  
8 prosecution of the litigation necessitated by Defendant's conduct. Absent a class action, it would  
9 be virtually impossible for individual members of the Class to obtain effective relief from  
10 Defendant. Even if members of the Class could sustain individual litigation, it would not be  
11 preferable to a class action because individual litigation would increase the delay and expense to  
12 all parties, including the Court, and would require duplicative consideration of the common  
13 legal and factual issues presented here. By contrast, a class action presents far fewer  
14 management difficulties and provides the benefits of single adjudication, economies of scale,  
15 and comprehensive supervision by a single Court.

## 16 **VI. CAUSES OF ACTION**

### 17 **A. COUNT I – NEGLIGENCE**

18 93. Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
19 though fully set forth herein.

20 94. Defendant solicited, gathered, and stored the Personal Information of Plaintiff  
21 and the Class.

22 95. Defendant knew, or should have known, of the risks inherent in collecting and  
23 storing the Personal Information of Plaintiff and the Class and the importance of adequate  
24 security.

25 96. Defendant were well aware of the fact that hackers routinely attempted to access  
26 Personal Information without authorization. Defendant also knew about numerous, well-  
27 publicized data breaches wherein hackers stole the Personal Information from companies who  
28 held or stored such information.

1 97. Defendant owed duties of care to Plaintiff and the Class whose Personal  
2 Information was entrusted to it. Defendant's duties included the following:

- 3 a. To exercise reasonable care in obtaining, retaining, securing, safeguarding,  
4 deleting and protecting the Personal Information in its possession;
- 5 b. To protect the Personal Information in its possession using reasonable and  
6 adequate security procedures and systems;
- 7 c. To adequately and properly train its employees to avoid phishing emails;
- 8 d. To use adequate email security systems, including DMARC enforcement and  
9 Sender Policy Framework enforcement, to protect against phishing emails;
- 10 e. To adequately and properly train its employees regarding how to properly and  
11 securely transmit and store Personal Information;
- 12 f. To train its employees not to store Personal Information in their email inboxes  
13 longer than absolutely necessary for the specific purpose that it was sent or  
14 received;
- 15 g. To implement processes to quickly detect a data breach, security incident, or  
16 intrusion; and
- 17 h. To promptly notify Plaintiff and Class members of any data breach, security  
18 incident, or intrusion that affected or may have affected their Personal  
19 Information.

20 98. Because Defendant knew that a security incident, breach or intrusion upon its  
21 systems would potentially damage thousands of its current and/or former patients and  
22 employees, including Plaintiff and Class members, it had a duty to adequately protect their  
23 Personal Information.

24 99. Defendant owed a duty of care not to subject Plaintiff and the Class to an  
25 unreasonable risk of harm because they were foreseeable and probable victims of any  
26 inadequate security practices.

27 100. Defendant knew, or should have known, that its security practices and computer  
28 systems did not adequately safeguard the Personal Information of Plaintiff and the Class.

1           101. Defendant breached its duties of care by failing to provide fair, reasonable, or  
2 adequate computer systems and security practices to safeguard the Personal Information of  
3 Plaintiff and the Class.

4           102. Defendant breached their duties of care by failing to provide prompt notice of the  
5 Data Breach to the persons whose personal information was compromised.

6           103. Defendant acted with reckless disregard for the security of the Personal  
7 Information of Plaintiff and the Class because Defendant knew or should have known that their  
8 computer systems and data security practices were not adequate to safeguard the Personal  
9 Information that it collected and stored, which hackers were attempting to access.

10           104. Defendant acted with reckless disregard for the rights of Plaintiff and the Class  
11 by failing to provide prompt and adequate notice of the data breach so that they could take  
12 measures to protect themselves from damages caused by the fraudulent use of Personal  
13 Information compromised in the Data Breach.

14           105. Defendant had a special relationship with Plaintiff and the Class. Plaintiff's and  
15 the Class' willingness to entrust Defendant with their personal information was predicated on  
16 the understanding that Defendant would take adequate security precautions. Moreover, only  
17 Defendant had the ability to protect its systems (and the Personal Information stored on them)  
18 and to implement security practices to protect the Personal Information that it collected and  
19 stored from attack.

20           106. Defendant own conduct also created a foreseeable risk of harm to Plaintiff and  
21 Class members and their Personal Information. Defendant's misconduct included failing to:

- 22           a. Secure its employees' email accounts;
- 23           b. Secure access to its servers;
- 24           c. Comply with current industry standard security practices;
- 25           d. Encrypt Personal Information during transit and while stored on Defendant's  
26           systems;
- 27           e. Properly and adequately train their employees on proper data security practices;
- 28           f. Implement adequate system and event monitoring;



- 1 g. Implement the systems, policies, and procedures necessary to prevent hackers
- 2 from accessing and utilizing Personal Information transmitted and/or stored by
- 3 Defendant;
- 4 h. Undertake periodic audits of record-keeping processes to evaluate the
- 5 safeguarding of Personal Information;
- 6 i. Develop a written records retention policy that identifies what information must
- 7 be kept and for how long;
- 8 j. Destroy all discarded employee information, including information on
- 9 prospective employees, temporary workers, subcontractor, and former
- 10 employees;
- 11 k. Secure Personal Information and limit access to it to those with a legitimate
- 12 business need;
- 13 l. Employ or contract with trained professionals to ensure security of network
- 14 servers and evaluate the systems used to manage e-mail, Internet use, and so
- 15 forth;
- 16 m. Avoid using Social Security numbers as a form of identification; and
- 17 n. Have a plan ready and in position to act quickly should a theft or data breach
- 18 occur.

19 107. Defendant also had independent duties under federal and state law requiring them  
20 to reasonably safeguard Plaintiff's and the Class' Personal Information and promptly notify  
21 them about the Data Breach.

22 108. Defendant breached the duties they owed to Plaintiff and Class members in  
23 numerous ways, including:

- 24 a. By creating a foreseeable risk of harm through the misconduct previously
- 25 described;
- 26 b. By failing to implement adequate security systems, protocols and practices
- 27 sufficient to protect their Personal Information both before and after learning
- 28 of the Data Breach;

- 1 c. By failing to comply with the minimum industry data security standards  
2 before, during, and after the period of the Data Breach; and  
3 d. By failing to timely and accurately disclose that the Personal Information of  
4 Plaintiff and the Class had been improperly acquired or accessed in the Data  
5 Breach.

6 109. But for Defendant wrongful and negligent breach of the duties it owed Plaintiff  
7 and the Class members, their Personal Information either would not have been compromised or  
8 they would have been able to prevent some or all of their damages.

9 110. As a direct and proximate result of Defendant's negligent conduct, Plaintiff and  
10 the Class have suffered damages and are at imminent risk of further harm.

11 111. The injury and harm that Plaintiff and Class members suffered (as alleged above)  
12 was reasonably foreseeable.

13 112. The injury and harm that Plaintiff and Class members suffered (as alleged above)  
14 was the direct and proximate result of Defendant's negligent conduct.

15 113. Plaintiff and the Class have suffered injury and are entitled to damages in an  
16 amount to be proven at trial.

17 **B. COUNT II – NEGLIGENCE PER SE**

18 114. Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
19 though fully set forth herein.

20 115. Pursuant to the Federal Trade Commission Act ("FTCA"), 15 U.S.C. § 45,  
21 Defendant had a duty to provide fair and adequate computer systems and data security to  
22 safeguard the Personal Information of Plaintiff and the Class.

23 116. The FTCA prohibits "unfair . . . practices in or affecting commerce," including,  
24 as interpreted and enforced by the FTC, the unfair act or practice by businesses, such as  
25 Defendant, of failing to use reasonable measures to protect Personal Information. The FTC  
26 publications and orders described above also formed part of the basis of Defendant's duty in this  
27 regard.

28

1 117. Defendant solicited, gathered, and stored the Personal Information of Plaintiff  
2 and the Class as part of its business of manufacturing, selling, and installing gutter protection  
3 systems, which affects commerce.

4 118. Defendant violated the FTCA by failing to use reasonable measures to protect the  
5 Personal Information of Plaintiff and the Class and not complying with applicable industry  
6 standards, as described herein.

7 119. Defendant breached its duties to Plaintiff and the Class under the FTCA and  
8 other state data security and privacy statutes by failing to provide fair, reasonable, or adequate  
9 computer systems and data security practices to safeguard Breach Victim's Personal  
10 Information.

11 120. Defendant's failure to comply with applicable laws and regulations constitutes  
12 negligence *per se*.

13 121. Plaintiff and the Class are within the class of persons that the FTCA was  
14 intended to protect.

15 122. The harm that occurred as a result of the Data Breach is the type of harm the  
16 FTCA, the state data breach privacy statutes were intended to guard against.

17 123. Defendant breached its duties to Plaintiff and the Class under these laws by  
18 failing to provide fair, reasonable, or adequate computer systems and data security practices to  
19 safeguard Plaintiff's and the Class' Personal Information.

20 124. Defendant breached their duties to Plaintiff and the Class by negligently and  
21 unreasonably delaying and failing to provide notice expeditiously and/or as soon as practicable  
22 to Plaintiff and the Class of the Data Breach.

23 125. Defendant's violation of the FTCA, state data security statutes, and/or the state  
24 data breach notification statutes constitute negligence *per se*.

25 126. As a direct and proximate result of Defendant's negligence *per se*, Plaintiff and  
26 the Class have suffered, and continue to suffer, damages arising from the Data Breach by, *inter*  
27 *alia*, having to spend time reviewing their accounts and credit reports for unauthorized activity;  
28 spend time and incur costs to place and re-new a "freeze" on their credit; be inconvenienced by

1 the credit freeze, which requires them to spend extra time unfreezing their account with each  
2 credit bureau any time they want to make use of their own credit; and becoming a victim of  
3 identity theft, which may cause damage to their credit and ability to obtain insurance, medical  
4 care, and jobs.

5 127. The injury and harm that Plaintiff and Class members suffered (as alleged above)  
6 was the direct and proximate result of Defendant's negligence *per se*.

7 **C. COUNT III – BREACH OF FIDUCIARY DUTIES**

8 128. Plaintiff incorporates by reference all preceding factual allegations as though  
9 fully alleged herein.

10 129. A relationship existed between Plaintiff and Class Members and Defendant in  
11 which Plaintiff and the Class put their trust in Defendant to protect their PII. Defendant accepted  
12 this duty and obligation when it received Plaintiff and the Class Members' PII.

13 130. Plaintiff and the Class Members entrusted their PII to Defendant on the premise  
14 and with the understanding that Defendant would safeguard their information, use their PII for  
15 business purposes only, and refrain from disclosing their PII to unauthorized third parties.

16 131. Defendant knew or should have known that the failure to exercise due care in the  
17 collecting, storing, and using of individual's PII involved an unreasonable risk of harm to  
18 Plaintiff and the Class, including harm that foreseeably could occur through the criminal acts of  
19 a third party.

20 132. Defendant's fiduciary duty required it to exercise reasonable care in  
21 safeguarding, securing, and protecting such information from being compromised, lost, stolen,  
22 misused, and/or disclosed to unauthorized parties. This duty includes, among other things,  
23 designing, maintaining, and testing Defendant's security protocols to ensure that Plaintiff and  
24 the Class's information in Defendant's possession was adequately secured and protected.

25 133. Defendants also had a fiduciary duty to have procedures in place to detect and  
26 prevent improper access and misuse of Plaintiff's and the Class's PII. Defendant's duty to use  
27 reasonable security measures arose as a result of the special relationship that existed between  
28

1 Defendant and Plaintiff and the Class. That special relationship arose because Defendant was  
2 entrusted with Plaintiff and the Class's PII

3 134. Defendant breached its fiduciary duty that it owed Plaintiff and the Class by  
4 failing to case in good faith, fairness, and honesty; by failing to act with the highest and finest  
5 loyalty; and by failing to protect the PII of Plaintiff and the Class Members.

6 135. Defendant's breach of fiduciary duties was a legal cause of damages to Plaintiff  
7 and the Class.

8 136. But for Defendant's breach of fiduciary duty, the damage to Plaintiff and the  
9 Class would not have occurred, and the Data Breach contributed substantially to producing the  
10 damage to Plaintiff and the Class.

11 137. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiff  
12 and the Class are entitled to actual, consequential, and nominal damages and injunctive relief,  
13 with amounts to be determined at trial.

14 **D. COUNT IV – BREACH OF CONFIDENCE**

15 138. Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
16 though fully set forth herein.

17 139. Defendant was fully aware of the confidential nature of the PII of Plaintiff and  
18 Class Members that it was provided.

19 140. As alleged herein and above, Defendant's relationship with Plaintiff and the  
20 Class was governed by promises and expectations that Plaintiff and Class Members' PII would  
21 be collected, stored, and protected in confidence, and would not be accessed by, acquired by,  
22 appropriated by, disclosed to, encumbered by, exfiltrated by, released to, stolen by, used by,  
23 and/or viewed by unauthorized third parties.

24 141. Plaintiff and Class members provided their respective PII to Jersey College, and  
25 by proxy to Defendant, with the explicit and implicit understandings that Defendant would  
26 protect and not permit the PII to be accessed by, acquired by, appropriated by, disclosed to,  
27 encumbered by, exfiltrated by, released to, stolen by, used by, and/or viewed by unauthorized  
28 third parties.

1           142. Plaintiff and Class Members provided their respective PII to Jersey College, and  
2 by proxy to Defendant, with the explicit and implicit understandings that Defendant would take  
3 precautions to protect their PII from unauthorized access, acquisition, appropriation, disclosure,  
4 encumbrance, exfiltration, release, theft, use, and/or viewing, such as following basic principles  
5 of protecting their networks and data systems.

6           143. Defendant voluntarily received, in confidence, Plaintiff and Class members' PII  
7 with the understanding that the PII would not be accessed by, acquired by, appropriated by,  
8 disclosed to, encumbered by, exfiltrated by, released to, stolen by, used by, and/or viewed by the  
9 public or any unauthorized third parties.

10           144. Due to Defendant's failure to prevent, detect, and avoid the Data Breach from  
11 occurring by, inter alia, not following best information security practices to secure Plaintiff and  
12 Class Members' PII, Plaintiff and Class Members' PII was accessed by, acquired by,  
13 appropriated by, disclosed to, encumbered by, exfiltrated by, released to, stolen by, used by,  
14 and/or viewed by unauthorized third parties beyond Plaintiff and Class Members' confidence,  
15 and without their express permission.

16           145. As a direct and proximate cause of Defendant's actions and/or omissions,  
17 Plaintiff and Class members have suffered damages as alleged herein.

18           146. But for Defendant's failure to maintain and protect Plaintiff and Class Members'  
19 PII in violation of the parties' understanding of confidence, their PII would not have been  
20 accessed by, acquired by, appropriated by, disclosed to, encumbered by, exfiltrated by, released  
21 to, stolen by, used by, and/or viewed by unauthorized third parties. Defendant's Data Breach  
22 was the direct and legal cause of the misuse of Plaintiff and Class members' PII, as well as the  
23 resulting damages.

24           147. The injury and harm Plaintiff and Class Members suffered and will continue to  
25 suffer was the reasonably foreseeable result of Defendant's unauthorized misuse of Plaintiff and  
26 Class members' PII. Defendant knew its data systems and protocols for accepting and securing  
27 Plaintiff and Class Members' PII had security and other vulnerabilities that placed Plaintiff and  
28 Class members' PII in jeopardy.

1           148. As a direct and proximate result of Defendant's breaches of confidence, Plaintiff  
2 and Class members have suffered and will suffer injury, as alleged herein, including but not  
3 limited to (a) actual identity theft; (b) the compromise, publication, and/or theft of their PII; (c)  
4 out-of-pocket expenses associated with the prevention, detection, and recovery from identity  
5 theft and/or unauthorized use of their PII; (d) lost opportunity costs associated with effort  
6 expended and the loss of productivity addressing and attempting to mitigate the actual and  
7 future consequences of the Data Breach, including but not limited to efforts spent researching  
8 how to prevent, detect, contest, and recover from identity theft; (e) the continued risk to their  
9 PII, which remains in Defendant's possession and is subject to further unauthorized disclosures  
10 so long as Defendant fail to undertake appropriate and adequate measures to protect Class  
11 Members' PII in their continued possession; (f) future costs in terms of time, effort, and money  
12 that will be expended as result of the Data Breach for the remainder of the lives of Plaintiff and  
13 Class Members; and (g) the diminished value of Plaintiff and Class Members' PII.

14           **E. COUNT V – BREACH OF IMPLIED CONTRACT**

15           149. Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
16 though fully set forth herein.

17           150. By requiring Plaintiff and the Class Members PII to engage in or settle a  
18 litigation suit, Defendant entered into an implied contract in which Defendant agreed to comply  
19 with its statutory and common law duties to protect Plaintiff and Class Members' PII. In return,  
20 Orrick engaged in and/or settled Plaintiff and Class Members' suits.

21           151. Based on this implicit understanding, Plaintiff and the Class accepted  
22 Defendant's offers and provided Defendant with their PII.

23           152. Plaintiff and Class members would not have provided their PII to Defendant had  
24 they known that Defendant would not safeguard their PII, as promised.

25           153. Plaintiff and Class members fully performed their obligations under the implied  
26 contracts with Defendant.

27           154. Defendant breached the implied contracts by failing to safeguard Plaintiff and  
28 Class Members' PII.

1 155. Defendant also breached the implied contracts when it engaged in acts and/or  
2 omissions that are declared unfair trade practices by the FTC. These acts and omissions included  
3 (i) representing, either expressly or impliedly, that it would maintain adequate data privacy and  
4 security practices and procedures to safeguard the PII from unauthorized disclosures, releases,  
5 data breaches, and theft; (ii) omitting, suppressing, and concealing the material fact of the  
6 inadequacy of the privacy and security protections for the Class's PII; and (iii) failing to  
7 disclose to the nursing programs and the Class at the time they provided their PII that  
8 Defendant's data security system and protocols failed to meet applicable legal and industry  
9 standards.

10 156. The losses and damages Plaintiff and Class members sustained were the direct  
11 and proximate result of Defendant's breach of the implied contract with Plaintiff and Class  
12 Members.

13 **F. COUNT VI – INVASION OF PRIVACY**

14 157. Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
15 though fully set forth herein.

16 158. Plaintiff and Class Members had a legitimate expectation of privacy regarding  
17 their PII and were accordingly entitled to the protection of this information against disclosure to  
18 unauthorized third parties.

19 159. Defendant owed a duty to Plaintiff and Class Member to keep their PII  
20 confidential.

21 160. Defendant affirmatively and recklessly disclosed Plaintiff and Class Members'  
22 PII to unauthorized third parties.

23 161. The unauthorized disclosure and/or acquisition (i.e., theft) by a third party of  
24 Plaintiff and Class Members' PII is highly offensive to a reasonable person.

25 162. Defendant's reckless and negligent failure to protect Plaintiff and Class  
26 Members' PII constitutes an intentional interference with Plaintiff and the Class Members'  
27 interest in solitude or seclusion, either as to their person or as to their private affairs or concerns,  
28 of a kind that would be highly offensive to a reasonable person.



1           163. In failing to protect Plaintiff and Class Members' PII, Defendant acted with a  
2 knowing state of mind when it permitted the Data Breach because it knew its information  
3 security practices were inadequate.

4           164. Because Defendant failed to properly safeguard Plaintiff and Class Members'  
5 PII, Defendant had notice and knew that its inadequate cybersecurity practices would cause  
6 injury to Plaintiff and the Class.

7           165. Defendant knowingly did not notify Plaintiff and Class Members in a timely  
8 fashion about the Data Breach.

9           166. As a proximate result of Defendant's acts and omissions, Plaintiff and the Class  
10 Members' private and sensitive PII was stolen by a third party and is now available for  
11 disclosure and redisclosure without authorization, causing Plaintiff and the Class to suffer  
12 damages.

13           167. Defendant's wrongful conduct will continue to cause great and irreparable injury  
14 to Plaintiff and the Class since their PII are still maintained by Defendant with their inadequate  
15 cybersecurity system and policies.

16           168. Plaintiff and Class Members have no adequate remedy at law for the injuries  
17 relating to Defendant's continued possession of their sensitive and confidential records. A  
18 judgment for monetary damages will not end Defendant's inability to safeguard Plaintiff and the  
19 Class's PII.

20           169. Plaintiff, on behalf of herself and Class Members, seeks injunctive relief to  
21 enjoin Defendant from further intruding into the privacy and confidentiality of Plaintiff and  
22 Class Members' PII.

23           170. Plaintiff, on behalf of herself and Class Members, seeks compensatory damages  
24 for Defendant's invasion of privacy, which includes the value of the privacy interest invaded by  
25 Defendant, the costs of future monitoring of their credit history for identity theft and fraud, plus  
26 prejudgment interest, and costs.

1           **G.     COUNT VII – INJUNCTIVE / DECLARATORY RELIEF**

2           171. Plaintiff incorporate by reference all allegations of the preceding paragraphs as  
3 though fully set forth herein.

4           172. Plaintiff and members of the Class entered into an implied contract that required  
5 Defendant to provide adequate security for the Personal Information it collected from Plaintiff  
6 and the Class.

7           173. Defendant owe a duty of care to Plaintiff and the members of the Class that  
8 requires them to adequately secure Personal Information.

9           174. Defendant still possess Personal Information regarding Plaintiff and members of  
10 the Class.

11           175. Since the Data Breach, Defendant has announced few if any changes to their data  
12 security infrastructure, processes or procedures to fix the vulnerabilities in their computer  
13 systems and/or security practices which permitted the Data Breach to occur and go undetected  
14 for months and, thereby, prevent further attacks.

15           176. Defendant has not satisfied its contractual obligations and legal duties to Plaintiff  
16 and the Class. In fact, now that Defendant's insufficient information security is known to  
17 hackers, the Personal Information in Defendant possession is even more vulnerable to  
18 cyberattack.

19           177. Actual harm has arisen in the wake of the Data Breach regarding Defendant's  
20 contractual obligations and duties of care to provide security measures to Plaintiff and the  
21 members of the Class. Further, Plaintiff and the members of the Class are at risk of additional or  
22 further harm due to the exposure of their Personal Information and Defendant's failure to  
23 address the security failings that lead to such exposure.

24           178. There is no reason to believe that Defendant's security measures are any more  
25 adequate now than they were before the breach to meet Defendant's contractual obligations and  
26 legal duties.

27           179. Plaintiff, therefore, seeks a declaration (1) that Defendant's existing security  
28 measures do not comply with their contractual obligations and duties of care to provide

1 adequate security, and (2) that to comply with their contractual obligations and duties of care,  
2 Defendant must implement and maintain reasonable security measures, including, but not  
3 limited to:

- 4 a. Ordering that Defendant engage third-party security auditors/penetration  
5 testers as well as internal security personnel to conduct testing, including  
6 simulated attacks, penetration tests, and audits on Defendant's systems on a  
7 periodic basis, and ordering Defendant to promptly correct any problems or  
8 issues detected by such third-party security auditors;
- 9 b. Ordering that Defendant engage third-party security auditors and internal  
10 personnel to run automated security monitoring;
- 11 c. Ordering that Defendant audit, test, and train their security personnel  
12 regarding any new or modified procedures;
- 13 d. Ordering that Defendant's segment customer data by, among other things,  
14 creating firewalls and access controls so that if one area of Defendant's  
15 systems is compromised, hackers cannot gain access to other portions of  
16 Defendant's systems;
- 17 e. Ordering that Defendant cease transmitting Personal Information via  
18 unencrypted email;
- 19 f. Ordering that Defendant cease storing Personal Information in email  
20 accounts;
- 21 g. Ordering that Defendant purge, delete, and destroy in a reasonably secure  
22 manner customer data not necessary for its provisions of services;
- 23 h. Ordering that Defendant conduct regular database scanning and securing  
24 checks;
- 25 i. Ordering that Defendant routinely and continually conduct internal training  
26 and education to inform internal security personnel how to identify and  
27 contain a breach when it occurs and what to do in response to a breach; and  
28

- j. Ordering Defendant to meaningfully educate its current, former, and prospective employees and subcontractors about the threats they face as a result of the loss of their financial and personal information to third parties, as well as the steps they must take to protect themselves.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the Class pray for judgment against Defendant as follows:

- a. An order certifying this action as a class action under Fed. R. Civ. P. 23, defining the Class as requested herein, appointing the undersigned as Class counsel, and finding that Plaintiff are proper representatives of the Class requested herein;
- b. A judgment in favor of Plaintiff and the Class awarding them appropriate monetary relief, including actual and statutory damages, punitive damages, attorney fees, expenses, costs, and such other and further relief as is just and proper.
- c. An order providing injunctive and other equitable relief as necessary to protect the interests of the Class as requested herein;
- d. An order requiring Defendant to pay the costs involved in notifying the Class members about the judgment and administering the claims process;
- e. A judgment in favor of Plaintiff and the Class awarding them pre-judgment and post-judgment interest, reasonable attorneys' fees, costs and expenses as allowable by law; and
- f. An award of such other and further relief as this Court may deem just and proper.

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1 **VIII. DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a trial by jury on all appropriate issues raised in this  
3 Complaint.

4 DATED: August 11, 2023

**GREEN & NOBLIN, P.C.**

5 By: s/ Robert S. Green  
6 Robert S. Green

7 Emrah M. Sumer  
8 2200 Larkspur Landing Circle, Suite 101  
9 Larkspur, CA 94939  
10 Telephone: (415) 477-6700  
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13 *Applicant for Admission Pro Hac Vice:*  
14 William B. Federman  
15 **FEDERMAN & SHERWOOD**  
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17 Oklahoma City, OK 73120  
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19 [wbf@federmanlaw.com](mailto:wbf@federmanlaw.com)

20 *Attorneys for Plaintiff and Proposed*  
21 *Lead Counsel for the Classes*  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 1



June 30, 2023



254 1 60896 \*\*\*\*\*AUTO\*\*ALL FOR AADC 780

DENNIS WERLEY



Re: Notice of Data Breach

Dear Dennis,

Orrick, Herrington & Sutcliffe, LLP (“Orrick”) recently experienced a security event. Orrick served as legal counsel for a 2020 security event involving the manager of a vision benefits plan in which you were enrolled. During its representation, Orrick obtained information about you that was recently impacted in a security event on Orrick systems. Please read this notice carefully, as it provides up-to-date information on what happened and what we are doing in response.

**What happened?**

On March 13, 2023, we detected that an unauthorized third party gained remote access to a portion of our network, including a file share that we used to store certain client files. Upon detection, we took immediate steps to block the unauthorized access and an investigation of the incident was launched with the support of leading outside cybersecurity experts. We also notified law enforcement. We recently determined that the unauthorized third party obtained files containing personal information on March 7, 2023. Your vision benefits plan was informed about the incident and we have been working to identify individuals with affected data and their contact information, which was provided to your vision benefits plan in early June.

**What information was involved?**

We recently determined that the information affected included: name, address, date of birth, and Social Security number.

**What are we doing?**

Orrick is offering two years of complimentary identity monitoring services through Kroll. To take advantage of these free identity monitoring services, please follow the instructions in Attachment A. You must activate by September 27, 2023 to receive these services.

In addition to these actions, Orrick deployed additional security measures and tools with the guidance of third-party experts to strengthen the ongoing security of its network.

**What can you do?**

Orrick is not aware of any misuse of your information. Your financial information, such as financial account information or credit card numbers, was not involved in this incident. It is always advisable to remain vigilant against attempts at identity theft or fraud, which includes carefully reviewing online and financial accounts, credit reports, and Explanations of Benefits (“EOBs”) from your health insurers for suspicious activity. This is a best practice for all individuals. If you identify suspicious activity, you should contact the company that maintains the account on your behalf.

Additional information about how to help protect your information is contained in Attachment B.

**For more information:**

Orrick has established a dedicated call center to answer questions. If you have any questions regarding this incident or the services available to you, please call (866) 347-7897, Monday through Friday from 9:00 am to 6:30 pm Eastern Time, excluding major U.S. holidays. Callers who are deaf, hard-of-hearing, or speech-disabled may utilize their TeleTYpewriter (TTY) or Telecommunication Device (TDD) to access an operator at (866) 347-7897, Monday through Friday, from 9:00 am to 6:30 pm Eastern Time, excluding major U.S. holidays.

Sincerely,

**Orrick Client Support**  
**Orrick, Herrington & Sutcliffe, LLP**





### Attachment A - Identity Monitoring Services

We have secured the services of Kroll to provide identity monitoring at no cost to you for two years. 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, Fraud Consultation, and Identity Theft Restoration.

#### How to Activate Your Identity Monitoring Services

Visit <https://enroll.krollmonitoring.com> to activate and take advantage of your identity monitoring services.

*You have until September 27, 2023 to activate your identity monitoring services.*

Membership Number: [REDACTED]

For more information about Kroll and your Identity Monitoring services, you can visit [info.krollmonitoring.com](http://info.krollmonitoring.com).

Additional information describing your services is included with this letter.



### TAKE ADVANTAGE OF YOUR IDENTITY MONITORING SERVICES

You have been provided with access to the following services 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 will be able to help you determine if it is an indicator of identity theft.

#### **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 will be able to dig deep to uncover the scope of the identity theft, and then work to resolve it.

Kroll's activation website is only compatible with the current version or one version earlier of Chrome, Firefox, Safari and Edge.

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.

### Attachment B – Information for U.S. Residents

Below are additional helpful tips you may want to consider to protect your personal information.

**Review Your Credit Reports and Account Statements; Notify Law Enforcement of Suspicious Activity** As a precautionary measure, we recommend that you remain vigilant by reviewing your credit reports and account statements closely. If you detect any suspicious activity on an account, you should promptly notify the financial institution or other company with which the account is maintained. You also should promptly report any fraudulent activity or any suspected incidents of identity theft to proper law enforcement authorities. 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 law enforcement, the Federal Trade Commission ("FTC") and/or the Attorney General's office in your home state. You can also contact these agencies for information on how to prevent or avoid identity theft, and you can contact the FTC at:

Federal Trade Commission  
Consumer Response Center  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
<http://www.identitytheft.gov/>  
1-877-IDTHEFT (438-4338)

### Copy of Credit Report

You may obtain a free copy of your credit report from each of the three major credit reporting agencies once every 12 months by visiting <https://www.annualcreditreport.com>, calling toll-free 877-322-8228, or by completing an Annual Credit Report Request Form and mailing it to the Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. You can print this form at <https://www.annualcreditreport.com/manualRequestForm.action>. Credit reporting agency contact details are provided below.

#### Equifax:

equifax.com  
equifax.com/personal/credit-report-services  
P.O. Box 740241  
Atlanta, GA 30374  
800-685-1111

#### Experian:

experian.com  
experian.com/help  
P.O. Box 2002  
Allen, TX 75013  
888-397-3742

#### TransUnion:

transunion.com  
transunion.com/credit-help  
P.O. Box 1000  
Chester, PA 19016  
888-909-8872

When you receive your credit reports, review them carefully. Look for accounts or credit inquiries that you did not initiate or do not recognize. Look for information, such as home address and Social Security number, that is inaccurate. If you see anything you do not understand, call the credit reporting agency at the telephone number on the report.

### Fraud Alert

You may want to consider placing a fraud alert on your credit file. An initial fraud alert is free and will stay on your credit file for at least 90 days. The alert informs creditors of possible fraudulent activity within your report and requests that the creditor contact you prior to establishing any accounts in your name. If you have already been a victim of identity theft, you may have an extended alert placed on your report if you provide the appropriate documentary proof. An extended fraud alert stays on your credit report for seven years. To place a fraud alert on your credit report, contact any of the three credit reporting agencies identified above.

### Security Freeze

You have the right to place a security freeze on your credit file free of charge. This will prevent new credit from being opened in your name without the use of a PIN number that is issued to you when you initiate the freeze. A security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. As a result, using a security freeze may delay your ability to obtain credit. In order to place a security freeze, you may be required to provide the consumer reporting agency with information that identifies you including your full name; social security number; date of birth; current and previous addresses; a copy of your state-issued identification card; and a recent utility bill, bank statement, or telephone bill.

### Federal Fair Credit Reporting Act Rights

The Fair Credit Reporting Act ("FCRA") is federal legislation that regulates how consumer reporting agencies use your information. It promotes the accuracy, fairness, and privacy of consumer information in the files of consumer reporting agencies. As a consumer, you have certain rights under the FCRA, which the FTC has summarized as follows: you must be told if information in your file has been used against you; you have the right to know what is in your file; you have the right to ask for a credit score; you have the right to dispute incomplete or inaccurate information; consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information; consumer reporting agencies may not report outdated negative information; access to your file is limited; you must give your consent for reports to be provided to employers; you may limit "prescreened" offers of credit and insurance you get based on information in your credit report; and you may seek damages from violators. Identity theft victims and active-duty military personnel have additional rights.

For more information about these rights, you may go to [www.ftc.gov/credit](http://www.ftc.gov/credit) or write to: Consumer Response Center, Room 13-A, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

### Additional Information

If you are the victim of fraud or identity theft, you also have the right to file a police report.

You may consider starting a file with copies of your credit reports, any police report, any correspondence, and copies of disputed bills. It is also useful to keep a log of your conversations with creditors, law enforcement officials, and other relevant parties.

**For Colorado and Illinois residents:** You may obtain information from the Federal Trade Commission and the credit reporting agencies about fraud alerts and security freezes.

**For District of Columbia residents:** You may contact the Office of the Attorney General for the District of Columbia, 441 4th Street NW, Suite 110 South, Washington D.C. 20001, <https://www.oag.dc.gov/>, 1-202-727-3400.

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



**For Maryland residents:** You may contact the Office of the Maryland Attorney General, 200 St. Paul Place, Baltimore, MD 21202, <http://www.marylandattorneygeneral.gov>, 1-888-743-0023. The Office of the Maryland Attorney General may be able to provide you with information about the steps you can take to avoid identity theft.

**For Massachusetts residents:** You have the right to obtain a police report regarding this incident. If you are the victim of identity theft, you also have the right to file a police report and obtain a copy of it.

**For New York residents:** For more information on identity theft, you can contact the following: New York Department of State Division of Consumer Protection at <http://www.dos.ny.gov/consumerprotection> or (800) 697-1220 or NYS Attorney General at <http://www.ag.ny.gov/home.html> or (800) 771-7755.

**For New Mexico Residents:** You have rights pursuant to the FCRA, such as the right to be told if information in your credit file has been used against you, the right to know what is in your credit file, the right to ask for your credit score, and the right to dispute incomplete or inaccurate information. Further, pursuant to the FCRA, the consumer reporting bureaus must correct or delete inaccurate, incomplete, or unverifiable information; consumer reporting agencies may not report outdated negative information; access to your file is limited; you must give your consent for credit reports to be provided to employers; you may limit "prescreened" offers of credit and insurance you get based on information in your credit report; and you may seek damages from violator. You may have additional rights under the FCRA not summarized here. Identity theft victims and active-duty military personnel have specific additional rights pursuant to the FCRA. We encourage you to review your rights pursuant to the FCRA by visiting [www.consumerfinance.gov/f/201504\\_cfpb\\_summary\\_your-rights-under-fcra.pdf](http://www.consumerfinance.gov/f/201504_cfpb_summary_your-rights-under-fcra.pdf); or by writing Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**For North Carolina residents:** You may contact the North Carolina Office of the Attorney General, 9001 Mail Service Center, Raleigh, NC 27699-9001, <http://www.ncdoj.gov>, 1-877-566-7226. You are also advised to report any suspected identity theft to law enforcement or to the North Carolina Attorney General.

**For Oregon residents:** You are advised to report any suspected identity theft to law enforcement, including the FTC and the Oregon Attorney General. For more information on security locks, you can visit the Oregon Department of Consumer and Commercial Services website at [www.dfcs.oregon.gov/id\\_theft.html](http://www.dfcs.oregon.gov/id_theft.html) and click "How to get a security freeze."

**For Rhode Island residents:** The Rhode Island Attorney General may be reached at: 150 South Main Street, Providence, RI 02903; [www.riag.ri.gov](http://www.riag.ri.gov); and 1-401-274-4400. Under Rhode Island law, you have the right to obtain any police report filed in regard to this event.

**For Arizona, California, Iowa, Montana, New York, North Carolina, Oregon, Washington, Washington, D.C., and West Virginia 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 bureaus directly to obtain such additional report(s).



CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

DENNIS R. WERLEY

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Green & Noblin, P.C., 2200 Larkspur Landing Circle, Suite 101 Larkspur, CA 94939, (415) 477-6700

DEFENDANTS

ORRICK, HERRINGTON & SUTCLIFFE INTERNATIONAL, LLP

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options like 'Citizen of This State', 'Citizen of Another State', 'Citizen or Subject of a Foreign Country', 'Incorporated or Principal Place of Business In This State', etc.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes specific codes like 110 Insurance, 310 Airplane, 625 Drug Related Seizure, etc.

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): Class Action Fairness Act, 28 U.S.C. § 1332(d)

Brief description of cause: Data Breach Claims

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

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

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

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 08/11/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Robert S. Green

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

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

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