

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Barbara A. Dittman and Gary R. Douglas,

Individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

UPMC and UPMC McKeesport,

Defendants.

CIVIL DIVISION

CASE NO. \_\_\_\_\_

CLASS ACTION COMPLAINT

**JURY TRIAL DEMANDED**

Counsel of Record for These Parties:

Elizabeth Pollock-Avery, Esq.

PA ID: 314841

elizabeth@lawkm.com

Michael L. Kraemer, Esq.

PA ID: 314204

m@lawkm.com

David M. Manes, Esq.

david@lawkm.com

Pa. ID No. 314661

Kraemer, Manes & Associates LLC

US Steel Tower

600 Grant St, Suite 660

Pittsburgh, PA 15219

Office: (412) 626-5626

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Barbara A. Dittman and Gary R. Douglas

CIVIL DIVISION

Individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

CASE NO. \_\_\_\_\_

UPMC and UPMC McKeesport

Defendants.

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following papers, you must take action within TWENTY (20) days after the Complaint and Notice are served by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. IF YOU CANNOT AFFORD TO HIRE A LAWYER, this office may be able to provide you with information about agencies that may offer legal service to eligible persons at a reduced fee or no fee.**

LAWYER REFERRAL SERVICE  
The Allegheny County Bar Association  
11th Floor Koppers Bldg.  
436 Seventh Avenue, Pittsburgh, PA 15219  
TELEPHONE: 412-261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Barbara A. Dittman and Gary R. Douglas

CIVIL DIVISION

Individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

CASE NO. \_\_\_\_\_

UPMC and UPMC McKeesport

Defendants.

**NATURE OF THE ACTION**

1. Plaintiffs Dittman, Douglas, and the proposed Plaintiffs are all former and current employees of UPMC and UPMC McKeesport. As a condition of their employment, Plaintiffs were required to supply UPMC with their personal and financial information including their full names, addresses, Social Security numbers, and dates of birth.

2. At an unknown point, Plaintiffs' personal and financial information, as well as their W2 forms, while under the control of UPMC, was accessed without the authorization of Plaintiffs. At this point, the information for some Plaintiffs has been used to fraudulently file tax returns, resulting in at least a six month delay in the processing of Plaintiffs income tax returns, and to open bank accounts in Plaintiffs' names.

3. Defendants had a duty to protect the private, sensitive, personal and financial information and the tax documents of Plaintiffs. Because of UPMC's negligent conduct and breach of

implied contracts, Plaintiffs have experienced intrusions into their privacy, identity theft, lost wages, emotional distress and anxiety.

### **PARTIES**

4. Plaintiff Barbara Dittman is a current employee of UPMC McKeesport and resides in Allegheny County, Pennsylvania.

5. Plaintiff Gary Douglas is a current employee of UPMC McKeesport and resides in Allegheny County, Pennsylvania.

6. Defendant UPMC is a corporation doing business and incorporated in Pennsylvania.

7. Defendant UPMC McKeesport is a corporation doing business and incorporated in Pennsylvania.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction pursuant to 42 Pa.C.S. §931 in that the matters complained of occurred within the County of Allegheny and this Court has original jurisdiction over all cases not exclusively assigned to another court.

### **CLASS ACTION ALLEGATIONS**

9. Named Plaintiffs bring this action on behalf of all former and current employees of Defendants whose personal information has been compromised while in the Defendants' care.

10. Pursuant to Pa.R.Civ.P. 1702, 1708, and 1709, Plaintiffs meet the standards to assert this class action:

- a. There are currently more than fifty employees who are aware that their information has been fraudulently used to open bank accounts and/or file income tax returns. Furthermore, it is expected that more current and former

employees and independent contractors will discover that their information has been used fraudulently. This large number of current and future employees makes joinder of all members impracticable.

b. There are questions of law and fact affecting the rights of all class members, including the following:

- i. Whether Defendants failed to implement and maintain commercially reasonable procedures to ensure the safety of Plaintiffs' personal and financial information;
- ii. Whether Defendants failed to adequately secure Plaintiffs' personal and financial information in its processing system;
- iii. Whether Defendants acted negligently in failing to implement and maintain commercially reasonable procedures to ensure the safety of Plaintiffs' personal and financial information;
- iv. Whether Defendants' conduct constitutes negligence;
- v. Whether the access and misuse of Plaintiffs' personal and financial information constituted an invasion of privacy; and
- vi. Whether Defendants breach implied contracts with Plaintiffs' that required Defendants to protect the personal and financial information of Plaintiffs.

c. Named Plaintiffs are a member of the class they seek to represent and their claims are typical of the claims of the proposed class.

d. Named Plaintiffs have no interest antagonistic to, or in conflict with, the class.

Named Plaintiffs will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent named Plaintiffs and the class.

e. A class action is superior to other available methods for the fair and effective adjudication of the controversy, the common questions will predominate, and there will be no unusual manageability issues.

### **FACTS**

#### **Individual Allegations**

11. Plaintiff Barbara Dittman has been an employee of UPMC for close to 34 years.

12. Ms. Dittman is paid \$14.91/hour.

13. On February 9, 2014, Ms. Dittman attempted to file her federal income tax return.

14. Ms. Dittman's income tax return was immediately rejected and she received a notice stating that she was using a duplicate Social Security number.

15. After a brief investigation, Ms. Dittman discovered that the notice about a duplicate Social Security number only appears when a tax return has already been filed using that Social Security number.

16. In order for someone to file a fraudulent tax return, the person must have had access to at least Ms. Dittman's full name, address, and Social Security Number.

17. Ms. Dittman called off work on February 10, 2014, to deal with the situation.

18. Because she was forced to call off work, Ms. Dittman did not work the eight hours she was scheduled to work.

19. Ms. Dittman was forced to use paid time off on February 10, 2014, to deal with the ramifications of her personal information being stolen.

20. Ms. Dittman spent five to six hours on the phone with various agencies and companies on February 10, 2014, and had to travel to the police station to file a report.

21. Also on February 10, 2014, Ms. Dittman received a welcome kit regarding opening on account with Ally Bank.

22. Ms. Dittman has not recently opened an account with Ally Bank.

23. After attempting to contact Ally Bank for three days, Ms. Dittman learned that an account had been opened in her name.

24. Ally Bank did not close the account until Ms. Dittman insisted they do so.

25. Ms. Dittman notified the UPMC Human Resources Department that her personal information has been stolen on February 10, 2014.

26. Ms. Dittman returned to work on February 11, 2014.

27. Once she returned to work, Ms. Dittman was informed by another employee that someone had also filed a fraudulent tax return in their name.

28. As the days progressed, Ms. Dittman was informed by other employees that fraudulent tax returns had been submitted in their names.

29. Since discovering that her personal information has been stolen, Ms. Dittman has suffered from extreme anxiety and emotional distress, to the point of feeling physically ill.

30. Plaintiff Gary Douglas is a current employee of UPMC.

31. Mr. Douglas does not own a home computer; nor he have any credit cards.

32. Mr. Douglas received a letter from Ally Bank during the week of February 17, 2014, regarding opening a bank account with Ally Bank.

33. Mr. Douglas did not recently open an account with Ally Bank.

34. Soon after receiving this letter from Ally Bank, Mr. Douglas received a letter from Ally Bank's fraud prevention department notifying him that they believe his account has been compromised.

### **Class Allegations**

35. Defendant UPMC employs more than 62,000 people.

36. Because of its employment relationship with Plaintiffs, UPMC keeps records that contain highly sensitive personal information, including full names, addresses, Social Security Numbers, and dates of birth.

37. UPMC also creates and keeps records of employees' W2 forms.

38. UPMC's failure to maintain reasonable and adequate security procedures to protect Plaintiffs' personal information directly resulted in this information being taken and used fraudulently.

### **LEGAL CLAIMS**

#### **Count I Negligence**

39. All paragraphs above are incorporated as if fully set forth herein.

40. Upon accepting and storing Plaintiffs' personal and financial information in its computer database systems, Defendants undertook and had a duty to exercise reasonable care to secure and safeguard that information and to utilize commercially reasonable methods to do so.



41. Through its acts and omissions described herein, including its failure to provide adequate security and its failure to protect Plaintiffs' personal and financial information from being foreseeably captured, accessed, disseminated, stolen, and misused by third parties under Defendants' control, Defendants unlawfully breached its duty to use reasonable care to protect and secure Plaintiffs' personal and financial information within its control

42. Upon information and belief, the personal and financial information was improperly and inadequately safeguarded in violation of, *inter alia*, federal and industry rules and regulations at the time of the unauthorized access.

43. Defendants knew or should have known that its computer databases and network for processing Plaintiffs' personal and financial information had security vulnerabilities. Defendants were negligent in light of those vulnerabilities and the sensitivity of the data.

44. Defendants' failure to take proper security measures to protect Plaintiffs' sensitive personal and financial information as described in this Complaint, created conditions conducive to a foreseeable intervening criminal act, namely the unauthorized access by third parties to Plaintiffs' personal and financial information stored on Defendants' computer systems.

45. Defendants' conduct was grossly negligent and departed from all reasonable standards of care, including, but not limited to, encryption of Plaintiffs' personal and financial information stored on its computers, limiting access and disclosure of Plaintiffs' personal and financial information, employing industry standard file permissions to secure Plaintiffs' personal and financial information, and negligently supervising employees having access to Plaintiffs' personal and financial information.

46. Neither named Plaintiff nor other Plaintiffs' contributed to the unauthorized access of their sensitive personal and financial information.

47. As a direct and proximate cause of Defendants' conduct, Plaintiffs suffered damages including but not limited to lost wages; identity theft; loss of privacy; anxiety; emotional distress; delay in processing of their tax returns; and other damages.

### **Count II Invasion of Privacy**

48. All paragraphs above are incorporated as if fully set forth herein.

49. Plaintiffs' had a legitimate expectation of privacy in their personal and financial information and were entitled to protection of this information from unauthorized access and exploitation.

50. The unauthorized access and misuse of Plaintiffs' personal and financial information is one that is highly offensive and/or objectionable to a reasonable person.

51. Plaintiffs have suffered damage and will continue to be at risk of the usage of the personal and financial information due to Defendants' conduct and failures.

### **Count III Breach of Implied Contract**

52. All paragraphs above are incorporated as if fully set forth herein.

53. Defendants came into possession of Plaintiffs' personal and financial information and had implied contracts with Plaintiffs' to protect such information, by way of Plaintiffs providing Defendants with the requisite employment information.

54. The implied contracts arose from the course of conduct between Plaintiffs and Defendants.

55. The implied contracts required Defendants to not disclose Plaintiffs' personal and financial information to unauthorized third part entities, and to safeguard and protect the information from being compromised and/or stolen.

56. Defendants did not safeguard and protect Plaintiffs' personal and financial information from being compromised and/or stolen.

57. Because Defendants allowed unauthorized access to Plaintiffs' personal and financial information and failed to safeguard and protect Plaintiffs' personal and financial information from being compromised and/or stolen, Defendants breached its contracts with Plaintiffs.

58. Plaintiffs suffered actual damages, including but not limited to identity theft; delay in the processing of their tax returns; intrusion into their privacy; emotional distress; anxiety; and other damages.

#### **PRAYER FOR RELIEF**

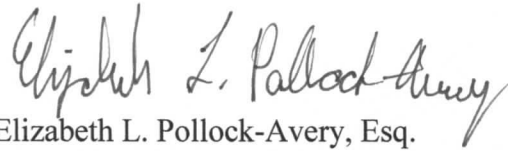
WHEREFORE, Plaintiffs respectfully request this Court:

- a. Certify this matter as a class action pursuant to Pa. R. Civ. P. 1701 to 1710;
- b. Order Defendants to cover the costs of Plaintiffs' obtaining credit monitoring services for ten years;
- c. Enter a judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest;
- d. Award Plaintiffs reasonable attorneys fees' and costs, punitive damages, and the costs of the lawsuit; and
- e. Grant such other and further legal and equitable relief as the court deems just and necessary.

**JURY TRIAL DEMANDED.**

Dated: February 27, 2014

Respectfully submitted,

A handwritten signature in cursive script, reading "Elizabeth L. Pollock-Avery".

Elizabeth L. Pollock-Avery, Esq.

PA ID: 314841

elizabeth@lawkm.com

Michael L. Kraemer, Esq.

PA ID: 314204

m@lawkm.com

David M. Manes, Esq.

david@lawkm.com

Pa. ID No. 314661

Kraemer, Manes & Associates LLC

US Steel Tower

600 Grant St, Suite 660

Pittsburgh, PA 15219

Office: (412) 626-5626

### Verification

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

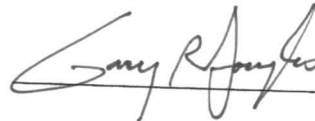
Date: 2-27-14

Barbara Pittman

### Verification

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 2-27-14

\_\_\_\_\_