UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEAH WALLACE, STEVEN SUPER, STEPHEN GYSCEK, ALEXYS WILLIAMSON, NICOLE DIGILIO, AND CHUNG SUK CRISPELL, individually and on behalf of all others similarly situated, Plaintiffs, v. HEALTH QUEST SYSTEMS, INC. Defendant.	**Civil Action No. 7:20-cv-00545-VB** **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Plaintiffs Leah Wallace, Steven Super, Stephen Gyscek, Alexys Williamson, Nicole Digilio, and Chung Suk Crispell ("Plaintiffs"), individually and on behalf of all others similarly situated, through the undersigned counsel, hereby allege the following against defendant Health Quest Systems, Inc. ("Health Quest" or "Defendant"). Based upon personal knowledge, information, belief, and investigation of counsel, Plaintiffs specifically allege as follows:

I. NATURE OF THE ACTION

1. Plaintiffs bring this class action against Defendant for its failure to exercise reasonable care in securing and safeguarding their patients' sensitive personal data—including patients' names, dates of birth, Social Security numbers, driver's license numbers, financial account information, PINs and security codes, payment card information, provider names, dates of treatment, treatment and diagnosis information and health insurance claims information ("Private Information").

2. In July of 2018, Defendant first learned of a "phishing" incident whereby an unauthorized party may have gained access to the emails and attachments of several of Defendant's employee email accounts that may have contained patients' Private Information (the "Security Breach"). As a result, the Private Information of 28,910 patients was potentially compromised. The initial investigation reaching this conclusion was not completed until April 2, 2019.

3. Despite the investigation concluding in early April 2019, Defendant inexplicably did not begin to notify any potentially affected patients or the public of the breach until late May or early June 2019.

4. On or about January 16, 2020, Defendant announced that, following a second investigation into the 2018 Security Breach, it was discovered that more Patient Data had been compromised during the breach than previously thought, with additional patients having been affected. Defendant stated that it intended to provide direct notice of the Security Breach to patients by February 15, 2020.

5. In a notice mailed to Plaintiffs on January 3, 2020, Defendant stated that the second investigation was completed on November 8, 2019, nearly two months before notice was provided to Plaintiffs. The notice also recommended that Plaintiffs "regularly review the statements that you receive from your healthcare insurers and providers. If you identify services that you did not receive, please contact the insurer or provider immediately."

6. Defendant's security failures enabled the hackers to steal the Private Information of Plaintiffs and members of the Class (defined below). These failures put Plaintiffs' and Class members' Private Information and interests at serious, immediate, and ongoing risk and, additionally, caused costs and expenses to Plaintiffs and Class members associated with time spent and the loss of productivity from taking time to address and attempt to ameliorate, mitigate and

deal with the actual and future consequences of the Security Breach, including, as appropriate, reviewing records for fraudulent charges and healthcare services billed for but not received, cancelling and reissuing payment cards, purchasing credit monitoring and identity theft protection services, imposition of withdrawal and purchase limits on compromised accounts, initiating and monitoring credit freezes, and the stress, nuisance and annoyance of dealing with all issues resulting from the Security Breach.

7. The Security Breach was caused and enabled by Defendant's violation of its obligations to abide by best practices and industry standards concerning the security of patients records and payment information. Defendant failed to comply with security standards and allowed their customers' Private Information to be compromised by cutting corners on security measures that could have prevented or mitigated the Security Breach that occurred.

8. Accordingly, Plaintiffs assert claims for violations of negligence, breach of implied contract, unjust enrichment/quasi-contract, breach of contract, breach of confidence and violation of N.Y. Gen. Bus. Law § 349, and seek injunctive relief, monetary damages, statutory damages, and all other relief as authorized in equity or by law.

II. JURISDICTION AND VENUE

9. The Court has jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1332(d)(2) ("CAFA"), because (a) there are 100 or more Class members, (b) at least one Class member is a citizen of a state that is diverse from Defendant's citizenship, and (c) the matter in controversy exceeds $5,000,000, exclusive of interest and costs.

10. The Court has personal jurisdiction over Defendant because its principal place of business is located, and they conduct substantial business, in this District.

11. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because Defendant maintains its principal place of business in this District and therefore reside in this District pursuant to 28 U.S.C. § 1391(c)(2). A substantial part of the events or omissions giving rise to the Class's claims also occurred in this District.

III. PARTIES

Plaintiff Leah Wallace

12. Plaintiff Leah Wallace is a resident of Duchess County, New York. Wallace and her family have routinely received medical care from providers in Defendant's network, leading to her Private Information being exposed as a result of Defendant's inadequate security. On January 3, 2020, Wallace received a notification letter from Defendant stating that Defendant had determined that information contained in the stolen emails "may have included your name, health insurance information, and clinical information related to treatment you received at [Health Quest] or one of our affiliates." The Notice Letter advised Wallace to "regularly review the statements that you receive from your healthcare insurers and providers. If you identify services that you did not receive, please contact the insurer or provider immediately." In response to this Notice, Wallace purchased credit monitoring services.

13. Wallace would not have obtained medical services from providers in Defendant's network had Defendant told her that they failed to maintain adequate computer systems and data security practices to safeguard her Private Information from theft.

14. To mitigate against the increased likelihood of identity theft and fraud, Wallace spent approximately an hour online purchasing credit monitoring services for approximately $30 per month in January 2020. Wallace has begun the process of reviewing her and her family's records in order to determine whether the breach of their Private Information has led to any

fraudulent actions. Wallace spent several hours in January 2020 calling each of her doctors to attempt to ascertain whether her Private Information had been compromised. In addition, Wallace spent several hours freezing her credit and unfreezing it each time she wants to access her credit score. Wallace was also denied access to her debit card several times following her receipt of the Notice Letter because the card had been flagged for fraud. Wallace will need to be particularly vigilant in the years to come in order to try to identify and counter any fraudulent activity that may occur.

15. Wallace has a continuing interest in ensuring that her Private Information is protected and safeguarded from future breaches.

Plaintiff Steven Super

16. Plaintiff Steven Super is a resident of Duchess County, New York. Super and his family have routinely received medical care from providers in Defendant's network, leading to their Private Information being exposed as a result of Defendant's inadequate security. On January 3, 2020, Super and his daughter both received a notification letter from Defendant stating that Defendant had determined that information contained in the stolen emails "may have included your name, health insurance information, and clinical information related to treatment you received at [Health Quest] or one of our affiliates." The Notice Letter advised Super to "regularly review the statements that you receive from your healthcare insurers and providers. If you identify services that you did not receive, please contact the insurer or provider immediately." In response to this Notice, Super spent several hours attempting to contact Defendant regarding the Security Breach, making numerous calls and being put on hold, with only a message provided at the end of the calls. Super also purchased credit monitoring services.

17. Alarmingly, after receiving notice of the Security Breach, Super was contacted by a medical provider he had never used, "Sommers Orthopedics," attempting to confirm an appointment he had never made. This made clear that someone was attempting to misuse Plaintiff Super's medical information. Super has also spent several hours following Defendant's direction to "regularly review the statements that you receive from your healthcare insurers and providers" and perform other monitoring tasks in light of the Security Breach.

Plaintiff Stephen Gyscek

18. Plaintiff Stephen Gyscek is an individual residing in Staatsburg, New York, who has been a patient at the Heart Center of Poughkeepsie, New York for about 10 years and a patient at Vassar Brothers Hospital for about 40 years. Both are owned and operated by Defendant. Plaintiff's Personal Information was compromised in the Breach described herein.

19. In a letter dated January 3, 2020 and addressed to Gyscek, Defendant informed Gyscek that, as a result of a phishing scheme in which Health Quest's employees disclosed email account credentials to an unauthorized third party, his Personal Information may have been disclosed to the third party. This Personal Information includes name, health insurance information, and clinical information related to treatment received. The letter added that Gyscek should "regularly review the statements that you receive from your healthcare insurers and providers. If you identify services that you did not receive, please contact the insurer or provider immediately."

20. In late February 2020, Gyscek attempted to call a phone number listed in the letter if he had any questions because he wanted to understand the nature of the breach and see if Defendant would provide credit monitoring of his accounts. Gyscek called three separate times but was placed on hold for long stretches of time, totaling about an hour. On the fourth try, after a

brief hold, Gyscek finally reached a representative who informed him that it was Health Quest's belief that his payment information had not been exposed but only his name, health insurance information, including his Medicare and Medicare supplement account information. The representative also said that he was not eligible for any account monitoring service provided by Defendant.

21. On May 17, 2020, Gyscek received a text message alerting him a security code was needed to complete a credit application that was initiated in his name. Gyscek did not initiate this credit application, and he believes someone is attempting to obtain a loan or credit card in his name with Personal Information that was compromised in the Breach.

22. After receiving the text message, Gyscek made phone calls with each of the three major credit card reporting agencies (TransUnion, Experian, and Equifax) to place a credit freeze on his accounts. In the years to come, Gyscek will need to be especially vigilant and invest additional time and resources to identify and counter any fraudulent activity that may occur.

23. Gyscek has a continuing interest in ensuring that his Private Information is protected and safeguarded from future breaches.

Plaintiff Alexys Williamson

24. Plaintiff Alexys Williamson is an individual residing in the County of Ulster, New York. At all relevant times, Williamson was a patient of Defendant's health care provider network and received from Defendant a letter dated January 3, 2020 notifying of the Security Breach. In response to the Security Breach, Williamson purchased and enrolled in identify protection and credit monitoring services. As a result of the Security Breach, Williamson is at a heightened and substantial risk of incurring loss from fraud and identity theft, and has a continuing interest in ensuring that her Private Information is protected and safeguarded from future breaches.

Plaintiff Nicole Digilio

25. Plaintiff Nicole Digilio is an individual residing in the County of Ulster, New York. At all relevant times, Crispell was a patient of Defendant's health care provider network and received from Defendant a letter dated January 3, 2020 notifying of the Security Breach. As a result of the Security Breach, Digilio is at a heightened and substantial risk of incurring loss from fraud and identity theft, and has a continuing interest in ensuring that her Private Information is protected and safeguarded from future breaches.

Plaintiff Chung Suk Crispell

26. Plaintiff Chung Suk Crispell is an individual residing in the County of Ulster, New York. At all relevant times, Crispell was a patient of Defendant's health care provider network and received from Defendant a letter dated January 3, 2020 notifying of the Security Breach. In response to the Security Breach, Crispell purchased and enrolled in identify protection and credit monitoring services. As a result of the Security Breach, Crispell is at a heightened and substantial risk of incurring loss from fraud and identity theft, and has a continuing interest in ensuring that her Private Information is protected and safeguarded from future breaches.

27. Plaintiffs and the other Class members have suffered actual injury and at risk of further imminent and impending injury arising from the substantially increased risk of future fraud, identity theft, and misuse posed by their Private Information being stolen in the Security Breach.

28. The injuries suffered by Plaintiffs and Class members as a direct result of the Security Breach include one or more of the following:

a. unauthorized use of their Private Information;

b. theft of their Private Information;

c. costs associated with the detection and prevention of identity theft and unauthorized use of their financial accounts;

d. damages arising from the inability to use their Private Information;

e. costs associated with time spent and the loss of productivity or the enjoyment of one's life from taking time to address an attempt to ameliorate, mitigate and deal with the actual and future consequences of the Security Breach, including reviewing records for fraudulent charges and healthcare services billed for but not received, cancelling and reissuing payment cards, purchasing credit monitoring and identity theft protection services, imposition of withdrawal and purchase limits on compromised accounts, initiating and monitoring credit freezes, and the stress, nuisance and annoyance of dealing with all issues resulting from the Security Breach;

f. damages to and diminution in value of their Private Information entrusted to Defendant for the sole purpose of purchasing products and services from Defendant; and

g. and the loss of Plaintiffs' and Class members' privacy.

Defendant

29. Defendant Health Quest Systems, Inc. is a New York not-for-profit corporation which operates a group of nonprofit hospitals and healthcare providers in the Mid-Hudson Valley in New York and in northwestern Connecticut. Health Quest Systems, Inc's headquarters are located at 1351 Route 55, LaGrangeville, New York 12540.

30. At all relevant times, defendant Health Quest operated the following hospitals: Vassar Brothers Hospital d/b/a "Vassar Brothers Medical Center" in Poughkeepsie, New York;

Northern Duchess Hospital in Rhinebeck, New York; Putnam Hospital Center in Carmel, New York; and Sharon Hospital in Sharon, Connecticut.

31. At all relevant times, defendant Health Quest's affiliate healthcare providers included: Health Quest Medical Practice, P.C., Health Quest Urgent Medical Care Practice, P.C., Hudson Valley Cardiovascular Practice, P.C. d/b/a "The Heart Center," Hudson Valley Emergency Medicine, PLLC, Health Quest Home Care Inc. (Certified), Health Quest Home Care Inc. (Licensed), Hudson Valley Newborn Physician Services, PLLC, Mid-Hudson Radiation Therapists. Inc., Northern Duchess Residential Health Care Facility, Inc. a/k/a "Thompson House," Physicians Network, P.C., Riverside Physical and Occupational Therapy and Speech Pathology PLLC d/b/a "Therapy Works" and Ulster Radiation Oncology Center.

IV. FACTUAL BACKGROUND

32. Defendant provides healthcare services to thousands of patients per year in New York and Connecticut. As part of its business, Defendant stores a vast amount of its patients' Private Information. In doing so, Defendant was entrusted with, and obligated to safeguard and protect, the Private Information of Plaintiffs and the Class in accordance with all applicable laws.

33. In July of 2018, Defendant first learned of a "phishing" incident whereby an unauthorized party may have gained access to the emails and attachments of several of Defendant's employee email accounts that may have contained patients' Private Information including names, dates of birth, Social Security numbers, driver's license numbers, financial account information, PINs and security codes, payment card information, provider names, dates of treatment, treatment and diagnosis information and health insurance claims information.

34. Upon learning of the Security Breach in July 2018, Defendant hired an outside cybersecurity firm to assist with an investigation of the Security Breach. The initial investigation

did not conclude until April 2, 2019, almost a year after the Security Breach was uncovered by Defendant. As a result of the Security Breach, Defendant initially estimated that the Private Information of 28,910 patients was potentially compromised stemming from services received between January 2018 and June 2018. Moreover, despite the investigation concluding in early April 2019, Defendant inexplicably did not begin to notify any potentially affected patients or the public of the breach until almost two months later, in late May or early June 2019.

35. On May 31, 2019, in a message posted to Defendant's website (the "2019 Notice"), Defendant announced that nearly eleven months earlier, in July 2018, it first learned of a phishing incident that allowed one or more cybercriminals to gain access to the emails and attachments in several employee email accounts. The 2019 Notice disclosed that on January 25, 2019, nearly five months after the initial discovery of the attack, Defendant "identified [breached] email attachments that contained certain health information," and on April 2, 2019, determined that the breached emails and/or attachments contained patient information, including "names, provider names, dates of treatment, treatment and diagnosis information, and health insurance claims information, related to services some patients received at Health Quest Affiliates between January 2018 and June 2018." On or around the date of the 2019 Notice, Defendant mailed notification letters to patients impacted or potentially impacted by the Breach.

36. Defendant offered no explanation for the delay between the initial discovery of the Breach and the subsequent notification to affected patients.

37. Defendant did, however, release a subsequent notice in January 2020 (the "2020 Notice"), revealing that the Breach had impacted more patients and/or revealed more Personal Information than previously acknowledged in the 2019 Notice. On or about January 16, 2020, Defendant announced that, following a second investigation into the July 2018 Security Breach,

they had discovered that more Private Information has been compromised during the breach than previously thought, with additional patients having been affected. Defendant posted the following notice on its website:[1]

> Health Quest is committed to protecting the confidentiality and security of our patients' and employees' information. Regrettably, this notice concerns an incident involving some of that information.
>
> On October 25, 2019, through our investigation of a phishing incident, we determined some patient information may have been contained in an email account, accessed by an unauthorized party. We first learned of a potential incident in July 2018, when numerous Health Quest employees were deceived by a phishing scheme. This resulted in certain Health Quest employees being tricked into inadvertently disclosing their email account credentials to an unauthorized party. The employee email accounts in question were secured and a leading cybersecurity firm was engaged to assist us in our investigation. As part of the investigation, we performed a comprehensive review of the voluminous contents of the email accounts in question to determine if they contained any sensitive information. HQ mailed some notification letters in May, 2019. Upon further investigation, HQ determined additional notices were required.
>
> We determined emails and attachments in some employees' email accounts contained information pertaining to current and former patients and employees. The information involved varied by individual, but may include names in combination with, dates of birth, Social Security numbers, Medicare Health Insurance Claim Numbers (HICNs), driver's license numbers, provider name(s), dates of treatment, treatment and diagnosis information, health insurance plan member and group numbers, health insurance claims information, financial account information with PIN/security code, and payment card information.
>
> We have no indication any patient information was viewed by the unauthorized person or has been misused. However, out of an abundance of caution, we began mailing letters to affected patients on January 10, 2020, and have established a dedicated call center to answer questions patients may have. If you have any questions regarding this incident, please call 1-844-967-1236, Monday through Friday, between 9 a.m. and 6:30 p.m. EST.
>
> We deeply regret any inconvenience or concern this incident may cause you. We continually evaluate and modify our practices to enhance the security and privacy of our patients' and employees' information. To help prevent something like this from happening in the future, we have implemented multi-factor authentication for email and additional

[1] Health Quest, *Health Quest ("HQ") announced today it is mailing letters to patients whose information may have been impacted by an email phishing incident* (Jan. 10, 2020), https://www.prnewswire.com/news-releases/health-quest-hq-announced-today-it-is-mailing-letters-to-patients-whose-information-may-have-been-impacted-by-an-email-phishing-incident-300985051.html (last visited May 21, 2020).

> procedures to further expand and strengthen security processes. We are also providing additional training to HQ employees regarding phishing emails and other cybersecurity issues.

Defendant did not provide any reason for why a second investigation of the same breach was necessary or detail the number of additional patients who may have been affected by the Security Breach.

38. In a notice mailed to Plaintiffs by Defendant on January 3, 2020, Defendant stated in pertinent part:

> At Health Quest Systems, Inc. ("HQ"), we are committed to protecting the confidentiality and security of our patients' information. Therefore, we regret to inform you about our ongoing investigation of an incident that may have involved some of your information. This notice explains the incident, measures we have taken, and some steps you can take in response.
>
> On October 25, 2019, through our investigation of a phishing email incident, HQ determined that some of your information may have been contained in employee email accounts accessed by an unauthorized party. HQ first learned of a potential incident in July 2018, when numerous HQ employees were deceived by a phishing scheme, which resulted in certain HQ employees being tricked into inadvertently disclosing their email account credentials to an unauthorized party. Upon learning of the incident, the employee email accounts in question were secured and a leading cyber security firm was engaged to assist us to investigate this matter.
>
> As part of the investigation, HQ performed a comprehensive review of the voluminous contents of the email accounts in question to determine if they contained any sensitive information. Through this time-consuming review, which was completed on November 8, 2019, HQ determined that the information contained in the accounts may have included your name, health insurance information, and clinical information related to treatment you received at HQ or one of our affiliates.
>
> Although, to date, we have no evidence that any of your information has been misused or was in fact viewed or accessed, out of an abundance of caution, we wanted to let you know this happened and assure you we take it very seriously. We recommend that you regularly review the statements that you receive from your healthcare insurers and providers. If you identify services that you did not receive, please contact the insurer or provider immediately.
>
> We regret any inconvenience or concern this may cause you. We are taking steps to help prevent a similar incident from occurring in the future, including the implementation of multi-factor authentication for email, as well as additional procedures to further strengthen

> and expand our security processes. We are also providing additional training to our employees regarding phishing emails and other cybersecurity issues.

39. Defendant has yet to affirmatively notify impacted patients individually regarding which specific data of theirs were stolen.

40. The Breach occurred because Defendant failed to take reasonable measures to protect the Personal Identifiable Information it collected and stored. Among other things, Defendant failed to implement data security measures designed to prevent this attack, despite repeated warnings to the healthcare industry about the risk of cyberattacks and the highly publicized occurrence of many similar attacks in the recent past on other healthcare providers. For example, Defendant failed to maintain basic security measures (such as multi-factor authentication to prevent unauthorized persons from accessing customer data), complex data encryption (which prevents data that were accessed or stolen from being readable or otherwise useful), or adequately train its employees in cybersecurity matters (such as how to spot a phishing attack). Defendant failed to disclose to Plaintiffs and Class members the material fact that it did not have adequate data security practices to safeguard customers' personal data, and in fact falsely represented that their security measures were sufficient to protect the Personal Information in its possession.

41. Defendant's failure to provide timely and accurate notice of the Breach to Plaintiffs and Class members exacerbated the injuries resulting from the Breach. Defendant inexplicably waited eleven months before first notifying Plaintiffs and the Class of the Breach, and another seven months to acknowledge the true scope of the Breach. By failing to provide adequate and timely notice, Defendant prevented Plaintiffs and Class members from quickly protecting themselves from the dangers posed by the Breach.

Defendant Failed to Maintain Reasonable and Adequate Security Measures to Safeguard Patients' Private Information

42. Defendant failed to properly safeguard Class members' Private Information, allowing hackers to access their Private Information for months. Defendant also failed to properly monitor its systems. Had it properly monitored its systems, it would have discovered the intrusion much sooner than seven months after the breach began.

43. Defendant failed to ensure that proper data security safeguards were being implemented throughout the breach period.

44. Defendant had obligations created by HIPAA, industry standards, common law, and representations made to Class members, to keep Class members' Private Information confidential and to protect it from unauthorized access and disclosure.

45. Plaintiffs and Class members provided their Private Information to Defendant with the reasonable expectation and mutual understanding that Defendant and any of its affiliates would comply with their obligations to keep such information confidential and secure from unauthorized access.

46. Prior to and during the Security Breach, Defendant promised patients that their Private Information would be kept confidential. For example, Health Quest Medical Practice, P.C.'s Notice of Privacy Practices, with an effective date of July 3, 2014, states in its "**PLEDGE REGARDING MEDICAL INFORMATION**" that "[w]e understand that medical information about you and your health is personal. We are committed to protecting medical information about you."[2] The Notice further stated that "[w]e will notify you in writing if we discover a breach of your unsecured health information, unless we determine, based on a risk assessment, that notification is not required by applicable law. You will be notified without unreasonable delay

[2] https://www.healthquest.org/Uploads/Public/Documents/Compliance/English/NOPP-Health-Quest-Medical-Practice.pdf.

and no later than 60 days after discovery of the breach. Such notification will include information about what happened and what has been done or can be done to mitigate any harm to you as a result of such breach." *Id.*

47. Defendant's failure to provide adequate security measures to safeguard patients' Private Information is especially egregious because Defendant operate in a field which has recently been a frequent target of scammers attempting to fraudulently gain access to patients' highly confidential Private Information.

48. In fact, Defendant has been on notice for years that the medical industry is a prime target for scammers because of the amount of confidential patient information maintained. In 2019 alone, numerous entities in the healthcare sector suffered high-profile data breaches including Quest Diagnostics and LabCorp.

49. According to a Privacy Rights Clearinghouse study entitled "Just in Time Research: data breaches in Higher Education,"[3] the medical industry accounted for 27% of all reported data breaches in the last decade, more than any other industry.

Defendant's Data Security Failures and HIPAA Violations

50. Defendant's data security lapses demonstrate that failed to honor their duties and promised by not:

a. Maintaining an adequate data security system to reduce the risk of data breaches and cyber-attacks;

b. Adequately protecting patients' Private Information;

c. Properly monitoring their own data security systems for existing intrusions;

d. Ensuring that they employed reasonable data security procedures;

[3] *Available at* https://library.educause.edu/~/media/files/library/2014/5/ecp1402-pdf.pdf.

e. Ensuring the confidentiality and integrity of electronic protected health information ("PHI") they created, received, maintained, and/or transmitted, in violation of 45 C.F.R. § 164.306(a)(1);

f. Implementing technical policies and procedures for electronic information systems that maintain electronic PHI to allow access only to those persons or software programs that have been granted access rights in violation of 45 C.F.R. § 164.312(a)(1);

g. Implementing policies and procedures to prevent, detect, contain, and correct security violations in violation of 45 C.F.R. § 164.308(a)(1)(i);

h. Implementing procedures to review records of information system activity regularly, such as audit logs, access reports, and security incident tracking reports in violation of 45 C.F.R. § 164.308(a)(1)(ii)(D);

i. Protecting against reasonably anticipated threats or hazards to the security or integrity of electronic PHI in violation of 45 C.F.R. § 164.306(a)(2);

j. Protecting against reasonably anticipated uses or disclosures of electronic PHI that are not permitted under the privacy rules regarding individually identifiable health information in violation of 45 C.F.R. § 164.306(a)(3);

k. Ensuring compliance with HIPAA security standard rules by their workforces in violation of 45 C.F.R. § 164.306(a)(4); and/or

l. Training all members of their workforces effectively on the policies and procedures regarding PHI as necessary and appropriate for the members of their workforces to carry out their functions and to maintain security of PHI, in violation of 45 C.F.R. § 164.530(b).

Damages to Plaintiffs and the Class

51. Plaintiffs and the Class have been damaged by the compromise of their Private Information in the Security Breach.

52. Plaintiffs and the Class face a substantial risk of out of pocket fraud losses such as, *e.g.*, loans opened in their names, medical services billed in their name, tax return fraud, utility bills opened in their name, credit card fraud, and similar identity theft.

53. Class members may also incur out of pocket costs for protective measures such as credit monitoring fees, credit report fees, credit freeze fees, and similar costs directly or indirectly related to the Security Breach. Plaintiffs here have purchased credit monitoring out of pocket in response to being notified of the Security Breach.

54. Plaintiffs and Class members suffered a "loss of value" of their Private Information when it was acquired by cyber thieves in the Security Breach. Numerous courts have recognized the propriety of "loss of value" damages in data breach cases.

55. Class members who paid Defendant for their services were also damaged via "benefit of the bargain" damages. Such members of the Class overpaid for a service that was intended to be accompanied by adequate data security, but was not. Part of the price Class members paid to Defendant was intended to be used by Defendant to fund adequate data security. Defendant did not properly comply with their data security obligations. Thus, the Class members did not get what they paid for.

56. Members of the Class have spent and will continue to spend significant amounts of time to monitor their financial and medical accounts for misuse.

57. According to the U.S. Department of Justice Bureau of Justice Statistics, an estimated 17.6 million people were victims of one or more incidents of identity theft in 2014.

Among identity theft victims, existing bank or credit accounts were the most common types of misused information.[4]

58. Similarly, the FTC cautions that identity theft wreaks havoc on consumers' finances, credit history, and reputation and can take time, money, and patience to resolve. Identity thieves use stolen personal information for a variety of crimes, including credit card fraud, phone or utilities fraud, and bank/finance fraud.[5]

59. The theft of Social Security Numbers, which were purloined as part of the Security Breach, is particularly detrimental to victims. The U.S. Social Security Administration (SSA) warns that "[i]dentity theft is one of the fastest growing crimes in America."[6] The SSA has stated that "[i]dentity thieves can use your number and your good credit to apply for more credit in your name. Then, they use the credit cards and don't pay the bills, it damages your credit. You may not find out that someone is using your number until you're turned down for credit, or you begin to get calls from unknown creditors demanding payment for items you never bought." *Id.* In short, "[s]omeone illegally using your Social Security number and assuming your identity can cause a lot of problems." *Id.*

60. In fact, a new Social Security number is substantially less effective where "other personal information, such as [the victim's] name and address, remains the same" and for some

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[4] *See* DOJ, *Victims of Identity Theft, 2014* at 1 (Nov. 13, 2017), available at https://www.bjs.gov/content/pub/pdf/vit14.pdf.

[5] The FTC defines identity theft as "a fraud committed or attempted using the identifying information of another person without authority." 16 C.F.R. § 603.2. The FTC describes "identifying information" as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific person," including, among other things, "[n]ame, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number[.]" *Id.*

[6] Identity Theft And Your Social Security Number, Social Security Administration (Dec. 2013), http://www.ssa.gov/pubs/EN-05-10064.pdf.

victims, "a new number actually creates new problems. If the old credit information is not associated with your new number, the absence of any credit history under your new number may make it more difficult for you to get credit." *Id.*

61. Identity thieves can use the victim's Private Information to commit any number of frauds, such as obtaining a job, procuring housing, or even giving false information to police during an arrest. In the medical context, Private Information can be used to submit false insurance claims, obtain prescription drugs or medical devices for black-market resale, or get medical treatment in the victim's name. As a result, Plaintiffs and Class members now face a real and continuing immediate risk of identity theft and other problems associated with the disclosure of their Social Security numbers, and will need to monitor their credit and tax filings for an indefinite duration.

62. Medical information is especially valuable to identity thieves. Because of its value, the medical industry has experienced disproportionally higher numbers of data theft events than other industries. Defendant knew or should have known this and strengthened its data systems accordingly. Defendant was put on notice of the substantial and foreseeable risk of harm from a data breach, yet they failed to properly prepare for that risk.

The Monetary Value of Privacy Protections and Private Information

63. The fact that Plaintiffs' and Class members' Private Information was stolen—and might presently be offered for sale to cyber criminals—demonstrates the monetary value of the Private Information.

64. At an FTC public workshop in 2001, then-Commissioner Orson Swindle described the value of a consumer's personal information:

> The use of third party information from public records, information aggregators and even competitors for marketing has become a major facilitator of our retail economy. Even [Federal Reserve] Chairman

> [Alan] Greenspan suggested here some time ago that it's something on the order of the life blood, the free flow of information.[7]

65. Commissioner Swindle's 2001 remarks are even more relevant today, as consumers' personal data functions as a "new form of currency" that supports a $26 billion per year online advertising industry in the United States.[8]

66. The FTC has also recognized that consumer data is a new (and valuable) form of currency. In an FTC roundtable presentation, another former Commissioner, Pamela Jones Harbour, underscored this point:

> Most consumers cannot begin to comprehend the types and amount of information collected by businesses, or why their information may be commercially valuable. Data is currency. The larger the data set, the greater potential for analysis—and profit.[9]

67. Recognizing the high value that consumers place on their Private Information, many companies now offer consumers an opportunity to sell this information.[10] The idea is to give consumers more power and control over the type of information that they share and who ultimately receives that information. And, by making the transaction transparent, consumers will make a profit from their Private Information. This business has created a new market for the sale and purchase of this valuable data.

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[7] Tr. at 8:2-8, Federal Trade Commission, *Public Workshop: The Information Marketplace: Merging and Exchanging Consumer Data* (Mar. 13, 2001) available at https://www.ftc.gov/sites/default/files/documents/public_events/information-marketplace-merging-and-exchanging-consumer-data/transcript.pdf.

[8] *See* Julia Angwin & Emily Steel, *Web's Hot New Commodity: Privacy*, The Wall Street Journal (Feb. 28, 2011), http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html.

[9] *Statement of FTC Commissioner Pamela Jones Harbour—Remarks Before FTC Exploring Privacy Roundtable*, (Dec. 7, 2009), https://www.ftc.gov/sites/default/files/documents/public_statements/remarks-ftc-exploring-privacy-roundtable/091207privacyroundtable.pdf.

[10] *Web's Hot New Commodity: Privacy*, *supra* note 7.

68. Consumers place a high value not only on their Private Information, but also on the privacy of that data. Researchers have begun to shed light on how much consumers value their data privacy, and the amount is considerable. Indeed, studies confirm that the average direct financial loss for victims of identity theft in 2014 was $1,349.[11]

69. The value of Plaintiffs' and Class members' Private Information on the black market is substantial, ranging, for example, from $1.50 to $90 per payment card number.[12]

70. At all relevant times, Defendant was well-aware, or reasonably should have been aware, that the Private Information it maintains is highly sensitive and could be used for wrongful purposes by third parties, such as identity theft and fraud. Defendant should have particularly been aware of these risks given the significant number of data breaches affecting the medical industry.

71. Had Defendant remedied the deficiencies in its security systems, followed industry guidelines, and adopted security measures recommended by experts in the field, Defendant would have prevented intrusion into their systems and, ultimately, the theft of their patients' Private Information.

72. Given these facts, any company that transacts business with patients and then compromises the privacy of patients' Private Information has thus deprived patients of the full monetary value of their transaction with the company.

73. Acknowledging the damage to Plaintiffs and Class members, Defendant instructed patients like Plaintiffs to "regularly review the statements that you receive from your healthcare insurers and providers. If you identify services that you did not receive, please contact the insurer

[11] *See* DOJ, *Victims of Identity Theft, 2014*, *supra* note 3, at 6.

[12] Leapfrog, *The Cyber Black Market: What's Your Bank Login Worth* (Mar. 1, 2011), available at https://leapfrogservices.com/the-cyber-black-market-whats-your-bank-login-worth/.

or provider immediately." Plaintiffs and the other Class members now face a greater risk of identity theft.

V. CLASS ACTION ALLEGATIONS

74. Plaintiffs bring all counts, as set forth below, individually and as a class action, pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure, on behalf of a Nationwide Class defined as:

> All persons who submitted their Private Information to Defendant or Defendant's affiliates and whose Private Information was compromised as a result of the data breach discovered in or about July 2018 (the "Nationwide Class").

75. In addition to and/or in the alternative to claims asserted on behalf of the Nationwide Class, Plaintiffs asserts claims on behalf of the following subclass:

> All residents of New York who submitted their Private Information to Defendant or Defendant's affiliates and whose Private Information was compromised as a result of the data breach discovered in or about July 2018 (the "New York Subclass," collectively with the Nationwide Class, the "Class").

76. Excluded from both the Nationwide Class and the New York Subclass are Defendant and Defendant's affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded is any judicial officer presiding over this matter and the members of their immediate families and judicial staff.

77. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

78. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that joinder of all Class members would be impracticable. On information and belief, the Nationwide Class and New York Subclass both number in the tens of thousands.

79. **Commonality and Predominance—Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual members of the Class. Such common questions of law or fact include, *inter alia*:

a. Whether Defendant's data security systems prior to and during the Security Breach complied with applicable data security laws and regulations including, *e.g.,* HIPAA;

b. Whether Defendant's data security systems prior to and during the Security Breach were consistent with industry standards;

c. Whether Defendant properly implemented their purported security measures to protect Plaintiffs' and the Class's Private Information from unauthorized capture, dissemination, and misuse;

d. Whether Defendant took reasonable measures to determine the extent of the Security Breach after they first learned of same;

e. Whether Defendant disclosed Plaintiffs' and the Class's Private Information in violation of the understanding that the Private Information was being disclosed in confidence and should be maintained;

f. Whether Defendant's conduct constitutes breach of an implied contract;

g. Whether Defendant willfully, recklessly, or negligently failed to maintain and execute reasonable procedures designed to prevent unauthorized access to Plaintiffs' and the Class's Private Information;

h. Whether Defendant were negligent in failing to properly secure and protect Plaintiffs' and the Class's Private Information;

i. Whether Defendant was unjustly enriched by its actions; and

j. Whether Plaintiffs and the other members of the Class are entitled to damages, injunctive relief, or other equitable relief, and the measure of such damages and relief.

80. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs, on behalf of herself and other members of the Class. Similar or identical common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that predominate in this action.

81. **Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of the other members of the Class because, among other things, all Class members were similarly injured through Defendant's uniform misconduct described above and were thus all subject to the Security Breach alleged herein. Further, there are no defenses available to Defendant that are unique to Plaintiffs.

82. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate representatives of the Nationwide Class and the New York Subclass because their interests do not conflict with the interests of the Classes they seek to represent, they have retained counsel competent and experienced in complex class action litigation, and Plaintiffs will prosecute this action vigorously. The Class's interests will be fairly and adequately protected by Plaintiffs and their counsel.

83. **Injunctive Relief-Federal Rule of Civil Procedure 23(b)(2).** Defendant has acted and/or refused to act on grounds that apply generally to the Class, making injunctive and/or declaratory relief appropriate with respect to the Class under Fed. Civ. P. 23 (b)(2).

84. **Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other members of the Class are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Class to individually seek redress for Defendant's wrongful conduct. Even if members of the Class could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court.

VI. CAUSES OF ACTION

COUNT I
Negligence
(On Behalf of Plaintiffs and the Nationwide Class, or, Alternatively, Plaintiffs and the New York Subclass)

85. Plaintiffs fully incorporate by reference all of the above paragraphs, as though fully set forth herein.

86. Upon Defendant's accepting and storing the Private Information of Plaintiffs and the Class in their computer systems and on their networks, Defendant undertook and owed a duty to Plaintiffs and the Class to exercise reasonable care to secure and safeguard that information and to use commercially reasonable methods to do so. Defendant knew that the Private Information was private and confidential and should be protected as private and confidential.

87. Defendant owed a duty of care not to subject Plaintiffs' and the Class's Private Information to an unreasonable risk of exposure and theft because Plaintiffs and the Class were foreseeable and probable victims of any inadequate security practices.

88. Defendant owed numerous duties to Plaintiffs and the Class, including the following:

a. to exercise reasonable care in obtaining, retaining, securing, safeguarding, deleting and protecting Private Information in their possession;
b. to protect Private Information using reasonable and adequate security procedures and systems that are compliant with industry-standard practices; and
c. to implement processes to quickly detect a data breach and to timely act on warnings about data breaches.

89. Defendant also breached their duty to Plaintiffs and Class members to adequately protect and safeguard Private Information by disregarding standard information security principles, despite obvious risks, and by allowing unmonitored and unrestricted access to unsecured Private Information. Furthering their dilatory practices, Defendant failed to provide adequate supervision and oversight of the Private Information with which they were and are entrusted, in spite of the known risk and foreseeable likelihood of breach and misuse, which permitted a malicious third party to gather Plaintiffs' and Class members' Private Information and potentially misuse the Private Information and intentionally disclose it to others without consent.

90. Defendant knew, or should have known, of the risks inherent in collecting and storing Private Information and the importance of adequate security. Defendant knew or should have known about numerous well-publicized data breaches within the medical industry.

91. Defendant knew, or should have known, that their data systems and networks did not adequately safeguard Plaintiffs' and Class members' Private Information.

92. Defendant breached their duties to Plaintiffs and Class members by failing to provide fair, reasonable, or adequate computer systems and data security practices to safeguard Plaintiffs' and Class members' Private Information.

93. Because Defendant knew that a breach of their systems would damage thousands of their customers, including Plaintiffs and Class members, Defendant had a duty to adequately protect their data systems and the Private Information contained thereon.

94. Defendant's duty of care to use reasonable security measures arose as a result of the special relationship that existed between Defendant and its patients, which is recognized by laws and regulations including but not limited to HIPAA, as well as common law. Defendant was in a position to ensure that its systems were sufficient to protect against the foreseeable risk of harm to Class members from a data breach.

95. Defendant's duty to use reasonable security measures under HIPAA required Defendant to "reasonably protect" confidential data from "any intentional or unintentional use or disclosure" and to "have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information." 45 C.F.R. § 164.530(c)(1). Some or all of the medical information at issue in this case constitutes "protected health information" within the meaning of HIPAA.

96. In addition, Defendant had a duty to employ reasonable security measures under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, which prohibits "unfair . . . practices in or affecting commerce," including, as interpreted and enforced by the FTC, the unfair practice of failing to use reasonable measures to protect confidential data.

97. Defendant's duty to use reasonable care in protecting confidential data arose not only as a result of the statutes and regulations described above, but also because Defendant are bound by industry standards to protect confidential Private Information.

98. Defendant's own conduct also created a foreseeable risk of harm to Plaintiffs and Class members and their Private Information. Defendant's misconduct included failing to: (1) secure Plaintiffs' and Class members' Private Information; (2) comply with industry standard security practices; (3) implement adequate system and event monitoring; and (4) implement the systems, policies, and procedures necessary to prevent this type of data breach.

99. Defendant breached its duties, and thus was negligent, by failing to use reasonable measures to protect Class members' Private Information, and by failing to provide timely notice of the Security Breach. The specific negligent acts and omissions committed by Defendant include, but are not limited to, the following:

a. Failing to adopt, implement, and maintain adequate security measures to safeguard Class members' Private Information;

b. Failing to adequately monitor the security of Defendant's networks and systems;

c. Allowing unauthorized access to Class members' Private Information;

d. Failing to detect in a timely manner that Class members' Private Information had been compromised; and

e. Failing to timely notify Class members about the Security Breach so that they could take appropriate steps to mitigate the potential for identity theft and other damages

100. Through Defendant's acts and omissions described in this Complaint, including their failure to provide adequate security and their failure to protect Plaintiffs' and Class members' Private Information from being foreseeably captured, accessed, disseminated, stolen and misused,

Defendant unlawfully breached their duty to use reasonable care to adequately protect and secure Plaintiffs' and Class members' Private Information during the time it was within Defendant's possession or control.

101. Defendant's conduct was grossly negligent and departed from all reasonable standards of care, including, but not limited to: failing to adequately protect the Private Information and failing to provide Plaintiffs and Class members with timely notice that their sensitive Private Information had been compromised.

102. Neither Plaintiffs nor the other Class members contributed to the Security Breach and subsequent misuse of their Private Information as described in this Complaint.

103. As a direct and proximate cause of Defendant's conduct, Plaintiffs and Class members suffered damages as alleged above.

104. Plaintiffs and Class members are also entitled to injunctive relief requiring Defendant to, *e.g.*, (i) strengthen their data security systems and monitoring procedures; (ii) submit to future annual audits of those systems and monitoring procedures; and (iii) immediately provide free credit monitoring to all Class members.

COUNT II
Breach of Implied Contract
(On Behalf of Plaintiffs and the Nationwide Class, or, Alternatively, Plaintiffs and the New York Subclass)

105. Plaintiffs fully incorporate by reference all of the above paragraphs, as though fully set forth herein.

106. Defendant solicited and invited Class members to provide their Private Information as part of Defendant's regular business practices. When Plaintiffs and Class members made and paid for purchases of Defendant's services and products, they provided their Private Information to Defendant.

107. In so doing, Plaintiffs and Class members entered into implied contracts with Defendant pursuant to which Defendant agreed to safeguard and protect such information and to timely detect any breaches of their Private Information. In entering into such implied contracts, Plaintiffs and Class members reasonably believed and expected that Defendant's data security practices complied with relevant laws and regulations, including HIPAA, and were consistent with industry standards.

108. Class members who paid money to Defendant reasonably believed and expected that Defendant would use part of those funds to obtain adequate data security. Defendant failed to do so.

109. Plaintiffs and Class members would not have provided and entrusted their Private Information with Defendant in the absence of the implied contract between them and Defendant.

110. Plaintiffs and Class members fully performed their obligations under the implied contracts with Defendant.

111. Defendant breached the implied contracts they made with Plaintiffs and Class members by failing to safeguard and protect their Private Information and by failing to timely detect the data breach within a reasonable time.

112. As a direct and proximate result of Defendant's breaches of the implied contracts between Defendant, Plaintiffs and Class members, Plaintiffs and Class members sustained actual losses and damages as described in detail above.

113. Plaintiffs and Class members are also entitled to injunctive relief requiring Defendant to, *e.g.*, (i) strengthen their data security systems and monitoring procedures; (ii) submit to future annual audits of those systems and monitoring procedures; and (iii) immediately provide free credit monitoring to all Class members.

COUNT III
Unjust Enrichment/Quasi-Contract
(On Behalf of Plaintiffs and the Nationwide Class, or, Alternatively, Plaintiffs and the New York Subclass)

114. Plaintiffs fully incorporate by reference all of the above paragraphs, as though fully set forth herein.

115. Plaintiffs and Class members conferred a monetary benefit on Defendant. Specifically, they purchased goods and services from Defendant and provided Defendant with their Private Information. In exchange, Plaintiffs and Class members should have received from Defendant the goods and services that were the subject of the transaction and should have been entitled to have Defendant protect their Private Information with adequate data security.

116. Defendant knew that Plaintiffs and Class members conferred a benefit on them and accepted and has accepted or retained that benefit. Defendant profited from Plaintiffs' purchases and used Plaintiffs' and Class members' Private Information for business purposes.

117. Defendant failed to secure Plaintiffs' and Class members' Private Information and, therefore, did not provide full compensation for the benefit the Plaintiffs' and Class members' Private Information provided.

118. Defendant acquired the Private Information through inequitable means as they failed to disclose the inadequate security practices previously alleged.

119. If Plaintiffs and Class members knew that Defendant would not secure their Private Information using adequate security, they would not have made purchases at Defendant's stores.

120. Plaintiffs and Class members have no adequate remedy at law.

121. Under the circumstances, it would be unjust for Defendant to be permitted to retain any of the benefits that Plaintiffs and Class members conferred on them.

122. Defendant should be compelled to disgorge into a common fund or constructive trust, for the benefit of Plaintiffs and Class members, proceeds that they unjustly received from them. In the alternative, Defendant should be compelled to refund the amounts that Plaintiffs and Class members overpaid.

COUNT IV
Breach of Contract
(On Behalf of Plaintiffs and the Nationwide Class, or, Alternatively, Plaintiffs and the New York Subclass)

123. Plaintiffs fully incorporate by reference all of the above paragraphs, as though fully set forth herein.

124. As detailed above, Defendant has a contractual obligation to maintain the security of its customers' personal, health, and financial information, which Defendant recognizes in its Notice of Privacy Practices where it addresses the consumers "protected health information."

125. In consideration of Plaintiffs' agreement to accept medical treatment and make payment for healthcare services rendered, Defendant expressly and/or implicitly agreed to reasonably protect Plaintiffs' sensitive personal data and confidential health information as detailed above.

126. Defendant also specifically promised it "do[es] not collect any personally identifiable information about you," other than that specifically disclosed in its policy, which did not include dissemination of Personal Information through unsecured email.

127. Defendant breached these contractual obligations by failing to safeguard and protect the Personal Information of Plaintiffs and members of the Class, including through the

dissemination of Personal Information through unsecured email and through the unauthorized disclosure of Personal Information, including personal, health, and financial information, to unauthorized third parties.

128. Defendant solicited Plaintiffs' sensitive personal data and confidential health information with the express and/or implied understanding that Defendant would safeguard said information from unauthorized third-party access.

129. Plaintiffs reasonably believed and expected, in entering into said agreements, that Defendant's data security policies, practices and controls would comply with industry standards and applicable laws and regulations, including HIPAA.

130. At all times relevant, Plaintiffs fully performed their respective obligations under the parties' agreements.

131. Defendant also breached its contractual obligations by failing to provide timely and accurate notice to them that their personal and financial information was compromised in and as a result of the Breach.

132. The acts and omissions of Defendant constitute a breach of said express and/or implied agreements, all to the damage and pecuniary detriment of plaintiffs without any breach on the part of Plaintiffs.

133. The losses and damages sustained by Plaintiffs and Class members as described herein were the direct and proximate result of the breaches of the contracts between Defendant and Plaintiffs and members of the Class.

134. As a direct and proximate result of the foregoing, Plaintiffs and the Class Members have been injured are entitled to damages in an amount to be determined at trial, including, but not limited to, monetary damages and expenses for identity theft protection services and credit

monitoring, periodic credit reports, anxiety, emotional distress, loss of privacy and other ordinary, incidental and consequential damages as would be anticipated to arise under the circumstances.

135. Plaintiffs further seek declaratory and injunctive relief: (1) compelling an audit of Defendant's electronic computer systems; (2) compelling Defendant to provide Plaintiffs with identity theft protection services and credit monitoring; and (3) compelling Defendant to implement adequate data security safeguards to protect plaintiffs and the class' Personal and Health Information and to undergo future data security audits.

COUNT V
Breach of Confidence
(On Behalf of Plaintiffs and the Nationwide Class, or, Alternatively, Plaintiffs and the New York Subclass)

136. Plaintiffs fully incorporate by reference all of the above paragraphs, as though fully set forth herein.

137. At all times during Plaintiffs' and Class members' interactions with Defendant, Defendant were fully aware of the confidential, novel, and sensitive nature of Plaintiffs' and Class members' Private Information that Plaintiffs and Class members provided to Defendant.

138. As alleged herein and above, Defendant's relationship with Plaintiffs and Class members was governed by expectations that Plaintiffs' and Class members' Private Information would be collected, stored, and protected in confidence, and would not be disclosed to unauthorized third parties.

139. Plaintiffs and Class members provided their respective Private Information to Defendant with the explicit and implicit understandings that Defendant would protect and not permit the Private Information to be disseminated to any unauthorized parties.

140. Plaintiffs and Class members also provided their respective Private Information to Defendant with the explicit and implicit understanding that Defendant would take precautions to

protect that Private Information from unauthorized disclosure, such as following basic principles of information security practices.

141. Defendant voluntarily received in confidence Plaintiffs' and Class members' Private Information with the understanding that the Private Information would not be disclosed or disseminated to the public or any unauthorized third parties.

142. Due to Defendant's failure to prevent, detect, and/or avoid the Security Breach from occurring by, *inter alia*, failing to follow best information security practices to secure Plaintiffs' and Class members' Private Information, Plaintiffs' and Class members' Private Information was disclosed and misappropriated to unauthorized third parties beyond Plaintiffs' and Class members' confidence, and without their express permission.

143. But for Defendant's disclosure of Plaintiffs' and Class members' Private Information in violation of the parties' understanding of confidence, their Private Information would not have been compromised, stolen, viewed, accessed, and used by unauthorized third parties. Defendant's Security Breach was the direct and legal cause of the theft of Plaintiffs' and Class members' Private Information, as well as the resulting damages.

144. The injury and harm Plaintiffs and Class members suffered was the reasonably foreseeable result of Defendant's unauthorized disclosure of Plaintiffs' and Class members' Private Information. Defendant knew or should have known their security systems were insufficient to protect the Private Information that is coveted by thieves worldwide. Defendant also failed to observe industry standard information security practices.

145. As a direct and proximate cause of Defendant's conduct, Plaintiffs and Class members suffered damages as alleged above.

COUNT VI
Bailment

146. Plaintiffs fully incorporate by reference all of the above paragraphs, as though fully set forth herein.

147. Plaintiffs and Class members delivered and entrusted their Personal Information to Defendant for the sole purpose of receiving services from Defendant.

148. In delivering their Personal Information to Defendant, Plaintiffs and Class members intended and understood that Defendant would adequately safeguard their personal and financial information.

149. Defendant accepted possession of Plaintiffs and Class members' Personal Information. By accepting possession, Defendant understood that Plaintiffs and Class members expected Defendant to safeguard their personal and financial information adequately. Accordingly, a bailment was established for the mutual benefit of the parties.

150. During the bailment, Defendant owed a duty to Plaintiffs and Class members to exercise reasonable care, diligence, and prudence in protecting their Personal Information.

151. Defendant breached its duty of care by failing to take appropriate measures to safeguard and protect Plaintiffs' and Class members' Personal Information, resulting in the unlawful and unauthorized access to and misuse of such information.

152. Defendant further breached its duty to safeguard Plaintiffs' and Class members' Personal Information by failing to notify them individually in a timely and accurate manner that their information had been breached and compromised.

153. As a direct and proximate result of Defendant's breach of duty, Plaintiffs and Class members suffered consequential damages that were reasonably foreseeable to Defendants, including but not limited to the damages set forth herein.

COUNT VII
Violations of New York Consumer Law for Deceptive Acts and Practices
N.Y. Gen. Bus. Law § 349
(On Behalf of all Plaintiffs and the Nationwide Class or, alternatively, by Plaintiffs on behalf of the New York Subclass)

154. Plaintiffs fully incorporate by reference all of the above paragraphs, as though fully set forth herein.

155. New York General Business Law ("NYGBL") § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in the state of New York.

156. By reason of the conduct alleged herein, Defendant engaged in unlawful practices within the meaning of the NYGBL § 349. The conduct alleged herein is a "business practice" within the meaning of the NYGBL § 349, and the deception occurred within New York State.

157. Defendant stored Plaintiffs' and the Class members' Private Information in Defendant's electronic databases. Defendant knew or should have known they did not employ reasonable, industry standard, and appropriate security measures that complied with all relevant regulations and would have kept Plaintiffs' and the Class members' Private Information secure and prevented the loss or misuse of Plaintiffs' and the Class members' Private Information. Defendant did not disclose to Plaintiffs and the Class members that their data systems were not secure.

158. Plaintiffs and the Class never would have provided their sensitive and personal Private Information if they had been told or knew that Defendant failed to maintain sufficient security to keep such Private Information from being hacked and taken by others, and that Defendant failed to maintain the information in encrypted form.

159. Defendant violated the NYGBL §349 by misrepresenting, both by affirmative conduct and by omission, the safety of Defendant's many systems and services, specifically the security thereof, and their ability to safely store Plaintiffs' and the Class members' Private Information.

160. Defendant also violated NYGBL §349 by failing to implement reasonable and appropriate security measures or follow industry standards for data security, and by failing to immediately notify Plaintiffs and the Class members of the Security Breach. If Defendant had complied with these legal requirements, Plaintiffs and the other Class members would not have suffered the damages related to the Security Breach.

161. Defendant's practices, acts, policies and course of conduct violate NYGBL § 349 in that, *inter alia*:

a. Defendant actively and knowingly misrepresented or omitted disclosure of material information to Plaintiffs and the Class at the time they provided such Private Information that Defendant did not have sufficient security or mechanisms to protect Private Information;

b. Defendant failed to give timely warnings and notices regarding the defects and problems with their system(s) of security systems that they maintained to protect Plaintiffs' and the Class' Private Information.

162. Plaintiffs and the Class were entitled to assume, and did assume, Defendant would take appropriate measures to keep their Private Information safe. Defendant did not disclose at any time that Plaintiffs' and the Class' Private Information was vulnerable to hackers because Defendant's data security measures were inadequate, and Defendant were the only one in possession of that material information, which they had a duty to disclose.

163. The aforementioned conduct is and was deceptive, false, and fraudulent and constitutes an unconscionable commercial practice in that Defendant have, by the use of false or deceptive statements and/or knowing intentional material omissions, misrepresented and/or concealed the defective security system they maintained and failed to reveal the Security Breach timely and adequately.

164. Members of the public were deceived by and relied upon Defendant's affirmative misrepresentations and failures to disclose.

165. Such acts by Defendant are and were deceptive acts or practices which are and/or were likely to mislead a reasonable consumer providing his or her Private Information to Defendant. Said deceptive acts and practices are material. The requests for and use of such Private Information in New York through deceptive means occurring in New York were consumer-oriented acts and thereby falls under the New York consumer fraud statute, NYGBL § 349.

166. Defendant's wrongful conduct caused Plaintiffs and the Class to suffer a consumer-related injury by causing them to incur substantial expense to protect from misuse of the Private Information materials by third parties and placing the Plaintiffs and the Class at serious risk for monetary damages.

167. As a direct and proximate cause of Defendant's conduct, Plaintiffs and Class members suffered damages as alleged above.

168. In addition to or in lieu of actual damages, because of the injury, Plaintiffs and the Class seek statutory damages for each injury and violation which has occurred.

COUNT VIII
Violations of New York Information Security Breach and Notification Act
N.Y. Gen. Bus. Law § 899-aa
(On Behalf of all Plaintiffs and the Nationwide Class or, alternatively, by Plaintiffs on behalf of the New York Subclass)

169. Plaintiffs fully incorporate by reference all of the above paragraphs, as though fully set forth herein.

170. The acts and practices alleged herein occurred in trade or commerce in the State of New York.

171. The Breach, which compromised the personal information, including the Social Security numbers, of New York citizens constitutes a "breach of security," as that term is defined by NY Gen. Stat.§ 899-aa.

172. In the manner described herein, Defendant unreasonably delayed the disclosure of the breach of security of personal information within the meaning of NY. Gen. Stat. § 899-aa.

173. Pursuant to NY. Gen. Stat. § 89-9aa the Defendant's failure to disclose the breach following the discovery to each New York resident whose personal information was, or was reasonably believed to have been, accessed by an unauthorized person through the breach constitutes an unfair trade practice pursuant to NY. Gen. Stat. § 899-aa.

DEMAND FOR JURY TRIAL

Plaintiffs demands a trial by jury of all claims so triable.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the other members of the Class proposed in this Complaint, respectfully request that the Court enter judgment in their favor and against Defendant, as follows:

A. Declaring that this action is a proper class action, certifying the Nationwide Class and New York Subclass as requested herein, designating Plaintiffs as Nationwide Class and New York Subclass Representative, and appointing Class Counsel as requested in Plaintiffs' expected motion for class certification;

B. Ordering Defendant to pay actual damages to Plaintiffs and the other members of the Class;

C. Ordering Defendant to pay punitive damages, as allowable by law, to Plaintiffs and the other members of the Class;

D. Ordering injunctive relief requiring Defendant to, *e.g.*: (i) strengthen their data security systems and monitoring procedures; (ii) submit to future annual audits of those systems and monitoring procedures; and (iii) immediately provide free credit monitoring to all Class members;

E. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiffs and their counsel;

F. Ordering Defendant to pay equitable relief, in the form of disgorgement and restitution, and injunctive relief as may be appropriate;

G. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

H. Ordering such other and further relief as may be just and proper.

Date: May 27, 2020

Respectfully submitted,

/s/ Jason P. Sultzer

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