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14 **IN THE UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 ANASTASIA WEATHERFORD, on
17 behalf of herself and all others similarly
18 situated,

19 Plaintiff,

20 v.

22 HOT TOPIC, INC. d/b/a HOT TOPIC
23 and BOXLUNCH, TORRID, LLC,

24 Defendants.

Case No.: _____

CLASS ACTION COMPLAINT

DEMAND FOR A JURY TRIAL

1 Plaintiff Anastasia Weatherford (“Plaintiff”) brings this Class Action
2 Complaint (“Complaint”) against Defendants Hot Topic, Inc. d/b/a Hot Topic and
3 BoxLunch (“Hot Topic”) and Torrid, LLC (“Torrid”) (collectively “Defendants”) as
4 an individual and on behalf of all others similarly situated, and alleges, upon
5 personal knowledge as to her own actions and her counsels’ investigation, and upon
6 information and belief as to all other matters, as follows:

7 **SUMMARY OF ACTION**

8 1. Plaintiff brings this class action against Defendants for their failure to
9 properly secure and safeguard sensitive information of their customers and loyalty
10 account members.

11 2. Defendant Hot Topic operates a chain of retail stores under multiple
12 brand names, including Hot Topic and BoxLunch.

13 3. Defendant Torrid operates a chain of retail clothing stores.

14 4. Plaintiff’s and Class Members’ sensitive personal information—which
15 they entrusted to Defendants on the mutual understanding that Defendants would
16 protect it against disclosure—was targeted, compromised and unlawfully accessed
17 due to the Data Breach.

18 5. Defendants collected and maintained certain personally identifiable
19 information of the putative Class Members (defined below), who are (or were)
20 customers and/or loyalty account members at Hot Topic and/or Torrid.

21 6. Upon information and belief, the PII compromised in the Data Breach
22 included Plaintiff’s and Class Members’ full names, email addresses, addresses,
23 phone numbers, and dates of birth (“personally identifiable information” or “PII”).

24 7. The PII compromised in the Data Breach was exfiltrated by cyber-
25 criminals and remains in the hands of those cyber-criminals who target PII for its
26 value to identity thieves.

27 8. As a result of the Data Breach, Plaintiff and Class Members suffered
28 concrete injuries in fact including, but not limited to: (i) invasion of privacy; (ii) theft

1 of their PII; (iii) lost or diminished value of PII; (iv) lost time and opportunity costs
2 associated with attempting to mitigate the actual consequences of the Data Breach;
3 (v) loss of benefit of the bargain; (vi) lost opportunity costs associated with
4 attempting to mitigate the actual consequences of the Data Breach; (vii) actual
5 misuse of the compromised data consisting of an increase in spam calls, texts, and/or
6 emails; (viii) nominal damages; and (ix) the continued and certainly increased risk
7 to their PII, which: (a) remains unencrypted and available for unauthorized third
8 parties to access and abuse; and (b) remains backed up in Defendants' possession
9 and is subject to further unauthorized disclosures so long as Defendants fail to
10 undertake appropriate and adequate measures to protect the PII.

11 9. The Data Breach was a direct result of Defendants' failure to implement
12 adequate and reasonable cyber-security procedures and protocols necessary to
13 protect consumers' PII from a foreseeable and preventable cyber-attack.

14 10. Moreover, upon information and belief, Defendants were targeted for a
15 cyber-attack due to their status as retail companies that collects and maintains highly
16 valuable PII on its systems.

17 11. Defendants maintained, used, and shared the PII in a reckless manner.
18 In particular, the PII was used and transmitted by Defendants in a condition
19 vulnerable to cyberattacks. Upon information and belief, the mechanism of the
20 cyberattack and potential for improper disclosure of Plaintiff's and Class Members'
21 PII was a known risk to Defendants, and thus, Defendants were on notice that failing
22 to take steps necessary to secure the PII from those risks left that property in a
23 dangerous condition.

24 12. Defendants disregarded the rights of Plaintiff and Class Members by,
25 *inter alia*, intentionally, willfully, recklessly, or negligently failing to take adequate
26 and reasonable measures to ensure its data systems were protected against
27 unauthorized intrusions; failing to take standard and reasonably available steps to
28 prevent the Data Breach; and failing to provide Plaintiff and Class Members prompt

1 and accurate notice of the Data Breach.

2 13. Plaintiff's and Class Members' identities are now at risk because of
3 Defendants' negligent conduct because the PII that Defendants collected and
4 maintained has been accessed and acquired by data thieves.

5 14. Armed with the PII accessed in the Data Breach, data thieves have
6 already engaged in identity theft and fraud and can in the future commit a variety of
7 crimes including, *e.g.*, opening new financial accounts in Class Members' names,
8 taking out loans in Class Members' names, using Class Members' information to
9 obtain government benefits, filing fraudulent tax returns using Class Members'
10 information, obtaining driver's licenses in Class Members' names but with another
11 person's photograph, and giving false information to police during an arrest.

12 15. As a result of the Data Breach, Plaintiff and Class Members have been
13 exposed to a heightened and imminent risk of fraud and identity theft. Plaintiff and
14 Class Members must now and in the future closely monitor their financial accounts
15 to guard against identity theft.

16 16. Plaintiff and Class Members may also incur out of pocket costs, *e.g.*,
17 for purchasing credit monitoring services, credit freezes, credit reports, or other
18 protective measures to deter and detect identity theft.

19 17. Plaintiff brings this class action lawsuit on behalf of all those similarly
20 situated to address Defendants' inadequate safeguarding of Class Members' PII that
21 it collected and maintained, and for failing to provide timely and adequate notice to
22 Plaintiff and other Class Members that their information had been subject to the
23 unauthorized access by an unknown third party and precisely what specific type of
24 information was accessed.

25 18. Through this Complaint, Plaintiff seeks to remedy these harms on
26 behalf of herself and all similarly situated individuals whose PII was accessed during
27 the Data Breach.

28 19. Plaintiff and Class Members have a continuing interest in ensuring that

1 their information is and remains safe, and they should be entitled to injunctive and
2 other equitable relief.

3 **JURISDICTION AND VENUE**

4 20. This Court has subject matter jurisdiction over this action under the
5 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). There are at least 100 putative
6 Class Members, the aggregated claims of the individual Class Members exceed the
7 sum or value of \$5,000,000 exclusive of interest and costs, and members of the
8 proposed Class, including Plaintiff, are citizens of states different from Defendants.

9 21. This Court has jurisdiction over Defendants through their business
10 operations in this District, the specific nature of which occurs in this District.
11 Defendants' principal place of businesses are in this District. Defendants
12 intentionally avails themselves of the markets within this District to render the
13 exercise of jurisdiction by this Court just and proper.

14 22. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(1)
15 because Defendants' principal place of businesses are located in this District and a
16 substantial part of the events and omissions giving rise to this action occurred in this
17 District.

18 **PARTIES**

19 23. Plaintiff Anastasia Weatherford is a resident and citizen of Thornton,
20 Colorado.

21 24. Defendant Hot Topic is a corporation with its principal place of
22 business located in City of Industry, California.

23 25. Defendant Torrid is a limited liability company with its principal place
24 of business located in City of Industry, California.

25 **FACTUAL ALLEGATIONS**

26 ***Defendants' Businesses***

27 26. Defendant Hot Topic operates a chain of retail stores under multiple
28 brand names, including Hot Topic and BoxLunch.

1 27. Defendant Torrid operates a chain of retail clothing stores.

2 28. Class Members are current and former customers and/or loyalty
3 account members at Hot Topic and/or Torrid.

4 29. In the course of their relationship, customers and loyalty account
5 members, including Plaintiff and Class Members, provided Defendants with their
6 names, email addresses, phone numbers, dates of birth, payment card information,
7 and other sensitive information.

8 30. Upon information and belief, in the course of collecting PII from
9 customers and loyalty account members, including Plaintiff, Defendants promised
10 to provide confidentiality and adequate security for the data that Defendants
11 collected from them through their applicable privacy policy and through other
12 disclosures in compliance with statutory privacy requirements.

13 31. Indeed, Hot Topic provides on its website that:

14 Any Personal Information we collect will be stored on servers in the United
15 States and subject to the laws of the United States, where the data protection
16 and other laws may differ from those of other countries.¹

17 32. Similarly, Torrid provides on its website that: “[w]e follow generally
18 accepted industry standards to protect the personal information submitted to us and
19 have implemented reasonable technical, organization, administrative and physical
20 measures to protect personal information.”²

21 33. Plaintiff and the Class Members, as customers and/or loyalty account
22 members at Hot Topic and/or Torrid, relied on these promises and on these
23 sophisticated business entities to keep their sensitive PII confidential and securely
24 maintained, to use this information for business purposes only, and to make only

25 _____
26 ¹ <https://www.hottopic.com/customer-service/hot-topic-policies/privacy-policy/?viewType=desktop>

27 ² <https://www.torrid.com/torrid/customer-service/about-torrid/td-customerservice-abouttorrid-privacyresponsibility.html>
28

1 authorized disclosures of this information. Consumers, in general, demand security
2 to safeguard their PII.

3 ***The Data Breach***

4 34. In or about October 2024, a “a hacker began selling access to a database
5 full of customer information looted from Hot Topic and two affiliated brands,
6 BoxLunch and Torrid.”³

7 35. “On October 21st, a prominent threat actor using the username
8 “Satanic” posts a thread in which they seek to sell various databases relating to three
9 major retail companies: Hot Topic, Torrid, and Box Lunch (all of which are founded
10 by Hot Topic).”⁴

11 36. “The hacker, who goes by the name ‘Satanic,’ claims the database
12 contains details on 350 million users, including names, email addresses, physical
13 addresses, and dates of birth— all information that Hot Topic was asking users to
14 fill out for its loyalty program.”⁵

15 37. The hacker claims to have acquired 350 million customers’ PII as well
16 as billions of payment details.⁶

17 38. Subsequently, the hacker offered the database for sale and also
18 demanded Hot Topic to pay a ransom in exchange for the hacker not selling the
19
20

21 _____
22 ³ [https://www.pcmag.com/news/hacker-may-have-breached-hot-topic-stolen-data-](https://www.pcmag.com/news/hacker-may-have-breached-hot-topic-stolen-data-on-millions)
23 [on-millions](https://www.pcmag.com/news/hacker-may-have-breached-hot-topic-stolen-data-on-millions)

24 ⁴ [https://www.infostealers.com/article/largest-retail-breach-in-history-350-million-](https://www.infostealers.com/article/largest-retail-breach-in-history-350-million-hot-topic-customers-personal-and-payment-data-exposed-as-a-result-of-infostealer-infection/)
25 [hot-topic-customers-personal-and-payment-data-exposed-as-a-result-of-](https://www.infostealers.com/article/largest-retail-breach-in-history-350-million-hot-topic-customers-personal-and-payment-data-exposed-as-a-result-of-infostealer-infection/)
26 [infostealer-infection/](https://www.infostealers.com/article/largest-retail-breach-in-history-350-million-hot-topic-customers-personal-and-payment-data-exposed-as-a-result-of-infostealer-infection/)

27 ⁵ *Id.*

28 ⁶ [https://www.infostealers.com/article/largest-retail-breach-in-history-350-million-](https://www.infostealers.com/article/largest-retail-breach-in-history-350-million-hot-topic-customers-personal-and-payment-data-exposed-as-a-result-of-infostealer-infection/)
[hot-topic-customers-personal-and-payment-data-exposed-as-a-result-of-](https://www.infostealers.com/article/largest-retail-breach-in-history-350-million-hot-topic-customers-personal-and-payment-data-exposed-as-a-result-of-infostealer-infection/)
[infostealer-infection/](https://www.infostealers.com/article/largest-retail-breach-in-history-350-million-hot-topic-customers-personal-and-payment-data-exposed-as-a-result-of-infostealer-infection/)

1 database.⁷

2 39. According to the Hudson Rock, an Israeli cybersecurity firm Hudson
3 Rock, the “the breach is credible after discovering evidence that an employee’s
4 computer at third-party retail analytics firm Robling was infected with malware.”⁸
5 Hudson Rock’s investigation found that an “employee was trying to analyze Hot
6 Topic’s data through cloud platforms such as Snowflake[,]”⁹ which was also
7 compromised in a separate Data Breach in or about May 2024. “However, the data
8 was exposed after a hacker installed password-stealing malware on the employee’s
9 computer.”¹⁰

10 40. Defendants had obligations created by the FTC Act, contract, common
11 law, and industry standards to keep Plaintiff’s and Class Members’ PII confidential
12 and to protect it from unauthorized access and disclosure.

13 41. Defendants did not use reasonable security procedures and practices
14 appropriate to the nature of the sensitive information they were maintaining for
15 Plaintiff and Class Members, causing the exposure of PII, such as encrypting the
16 information or deleting it when it is no longer needed.

17 42. The attacker accessed and acquired files containing unencrypted PII of
18 Plaintiff and Class Members. Plaintiff’s and Class Members’ PII was accessed and
19 stolen in the Data Breach.

20 43. Plaintiff further believes that her PII and that of Class Members was
21 subsequently sold on the dark web following the Data Breach, as that is the *modus*
22 *operandi* of cybercriminals that commit cyber-attacks of this type.

23 _____
24 ⁷ <https://www.infostealers.com/article/largest-retail-breach-in-history-350-million-hot-topic-customers-personal-and-payment-data-exposed-as-a-result-of-infostealer-infection/>

25
26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 ***Data Breaches Are Preventable***

2 44. Defendants did not use reasonable security procedures and practices
3 appropriate to the nature of the sensitive information they were maintaining for
4 Plaintiff and Class Members, causing the exposure of PII, such as encrypting the
5 information or deleting it when it is no longer needed.

6 45. Defendants could have prevented this Data Breach by, among other
7 things, properly encrypting or otherwise protecting their equipment and computer
8 files containing PII.

9 46. As explained by the Federal Bureau of Investigation, “[p]revention is
10 the most effective defense against ransomware and it is critical to take precautions
11 for protection.”¹¹

12 47. To prevent and detect cyber-attacks and/or ransomware attacks,
13 Defendants could and should have implemented, as recommended by the United
14 States Government, the following measures:

- 15 • Implement an awareness and training program. Because end users are
16 targets, employees and individuals should be aware of the threat of
ransomware and how it is delivered.
- 17 • Enable strong spam filters to prevent phishing emails from reaching the
18 end users and authenticate inbound email using technologies like Sender
19 Policy Framework (SPF), Domain Message Authentication Reporting and
Conformance (DMARC), and DomainKeys Identified Mail (DKIM) to
prevent email spoofing.
- 20 • Scan all incoming and outgoing emails to detect threats and filter
21 executable files from reaching end users.
- 22 • Configure firewalls to block access to known malicious IP addresses.
- 23 • Patch operating systems, software, and firmware on devices. Consider
24 using a centralized patch management system.
- 25 • Set anti-virus and anti-malware programs to conduct regular scans
automatically.

26
27 ¹¹ How to Protect Your Networks from RANSOMWARE, at 3, *available at:*
28 <https://www.fbi.gov/file-repository/ransomware-prevention-and-response-for-cisos.pdf/view>

- 1 • Manage the use of privileged accounts based on the principle of least
2 privilege: no users should be assigned administrative access unless
3 absolutely needed; and those with a need for administrator accounts should
4 only use them when necessary.
- 5 • Configure access controls—including file, directory, and network share
6 permissions—with least privilege in mind. If a user only needs to read
7 specific files, the user should not have write access to those files,
8 directories, or shares.
- 9 • Disable macro scripts from office files transmitted via email. Consider
10 using Office Viewer software to open Microsoft Office files transmitted
11 via email instead of full office suite applications.
- 12 • Implement Software Restriction Policies (SRP) or other controls to prevent
13 programs from executing from common ransomware locations, such as
14 temporary folders supporting popular Internet browsers or
15 compression/decompression programs, including the
16 AppData/LocalAppData folder.
- 17 • Consider disabling Remote Desktop protocol (RDP) if it is not being used.
- 18 • Use application whitelisting, which only allows systems to execute
19 programs known and permitted by security policy.
- 20 • Execute operating system environments or specific programs in a
21 virtualized environment.
- 22 • Categorize data based on organizational value and implement physical and
23 logical separation of networks and data for different organizational units.¹²

24 48. To prevent and detect cyber-attacks or ransomware attacks, Defendants
25 could and should have implemented, as recommended by the Microsoft Threat
26 Protection Intelligence Team, the following measures:

27 **Secure internet-facing assets**

- 28 - Apply latest security updates
- Use threat and vulnerability management
- Perform regular audit; remove privileged credentials;

Thoroughly investigate and remediate alerts

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

Include IT Pros in security discussions

- Ensure collaboration among [security operations], [security admins], and [information technology] admins to configure

¹² *Id.* at 3-4.

1 servers and other endpoints securely;

2 **Build credential hygiene**

- 3 - Use [multifactor authentication] or [network level
4 authentication] and use strong, randomized, just-in-time local
admin passwords;

5 **Apply principle of least-privilege**

- 6 - Monitor for adversarial activities
7 - Hunt for brute force attempts
8 - Monitor for cleanup of Event Logs
9 - Analyze logon events;

10 **Harden infrastructure**

- 11 - Use Windows Defender Firewall
12 - Enable tamper protection
13 - Enable cloud-delivered protection
14 - Turn on attack surface reduction rules and [Antimalware Scan
15 Interface] for Office [Visual Basic for Applications].¹³

16 49. Given that Defendants were storing the PII of their current and former
17 customers, Defendants could and should have implemented all of the above
18 measures to prevent and detect cyberattacks.

19 50. The occurrence of the Data Breach indicates that Defendants failed to
20 adequately implement one or more of the above measures to prevent cyberattacks,
21 resulting in the Data Breach and data thieves acquiring and accessing the PII of,
22 upon information and belief, millions of individuals, including that of Plaintiff and
23 Class Members.

24 ***Defendants Acquire, Collect, And Store Their Customers' PII***

25 51. Defendants acquire, collect, and store a massive amount of PII on their
26 current and former customers and loyalty account members.

27 52. As a condition of obtaining products or services at Defendants or
28 becoming a loyalty account member at Defendant, Defendants require that

¹³ See Human-operated ransomware attacks: A preventable disaster (Mar 5, 2020),
available at: <https://www.microsoft.com/security/blog/2020/03/05/human-operated-ransomware-attacks-a-preventable-disaster/>

1 customers and loyalty account members entrust it with highly sensitive personal
2 information.

3 53. By obtaining, collecting, and using Plaintiff's and Class Members' PII,
4 Defendants assumed legal and equitable duties and knew or should have known that
5 it was responsible for protecting Plaintiff's and Class Members' PII from disclosure.

6 54. Plaintiff and the Class Members have taken reasonable steps to
7 maintain the confidentiality of their PII and would not have entrusted it to
8 Defendants absent a promise to safeguard that information.

9 55. Upon information and belief, in the course of collecting PII from
10 customers and loyalty account members, Defendants promised to provide
11 confidentiality and adequate security for their data through its applicable privacy
12 policy and through other disclosures in compliance with statutory privacy
13 requirements.

14 56. Plaintiff and the Class Members relied on Defendants to keep their PII
15 confidential and securely maintained, to use this information for business purposes
16 only, and to make only authorized disclosures of this information.

17 ***Defendants Knew, Or Should Have Known, of the Risk Because Retail***
18 ***Companies In Possession Of PII Are Particularly Susceptible To Cyber***
Attacks

19 57. Defendants' data security obligations were particularly important given
20 the substantial increase in cyber-attacks and/or data breaches targeting retail
21 companies that collect and store PII, like Defendants, preceding the date of the
22 breach.

23 58. Data breaches, including those perpetrated against retail companies that
24 store PII in their systems, have become widespread.

25 59. In 2023, an all-time high for data compromises occurred, with 3,205
26 compromises affecting 353,027,892 total victims. Of the 3,205 recorded data
27 compromises, 809 of them, or 25.2% were in the medical or healthcare industry.
28 The estimated number of organizations impacted by data compromises has increased

1 by +2,600 percentage points since 2018, and the estimated number of victims has
2 increased by +1400 percentage points. The 2023 compromises represent a 78
3 percentage point increase over the previous year and a 72 percentage point hike from
4 the previous all-time high number of compromises (1,860) set in 2021.

5 60. In light of recent high profile data breaches at other industry leading
6 companies, including T-Mobile, USA (37 million records, February-March 2023),
7 23andMe, Inc. (20 million records, October 2023), Wilton Reassurance Company
8 (1.4 million records, June 2023), NCB Management Services, Inc. (1 million
9 records, February 2023), Defendants knew or should have known that the PII that
10 they collected and maintained would be targeted by cybercriminals.

11 61. Indeed, cyber-attacks, such as the one experienced by Defendants, have
12 become so notorious that the Federal Bureau of Investigation (“FBI”) and U.S.
13 Secret Service have issued a warning to potential targets so they are aware of, and
14 prepared for, a potential attack. As one report explained, smaller entities that store
15 PII are “attractive to ransomware criminals...because they often have lesser IT
16 defenses and a high incentive to regain access to their data quickly.”¹⁴

17 62. Additionally, as companies became more dependent on computer
18 systems to run their business,¹⁵ *e.g.*, working remotely as a result of the Covid-19
19 pandemic, and the Internet of Things (“IoT”), the danger posed by cybercriminals is
20 magnified, thereby highlighting the need for adequate administrative, physical, and
21 technical safeguards.¹⁶

23 ¹⁴ [https://www.law360.com/consumerprotection/articles/1220974/fbi-secret-
24 service-warn-of-targeted-ransomware?nl_pk=3ed44a08-fcc2-4b6c-89f0-
25 aa0155a8bb51&utm_source=newsletter&utm_medium=email&utm_campaign=co
nsumerprotection](https://www.law360.com/consumerprotection/articles/1220974/fbi-secret-service-warn-of-targeted-ransomware?nl_pk=3ed44a08-fcc2-4b6c-89f0-aa0155a8bb51&utm_source=newsletter&utm_medium=email&utm_campaign=consumerprotection)

26 ¹⁵[https://www.federalreserve.gov/econres/notes/feds-notes/implications-of-cyber-
27 risk-for-financial-stability-20220512.html](https://www.federalreserve.gov/econres/notes/feds-notes/implications-of-cyber-risk-for-financial-stability-20220512.html)

28 ¹⁶ [https://www.picussecurity.com/key-threats-and-cyber-risks-facing-financial-
services-and-banking-firms-in-2022](https://www.picussecurity.com/key-threats-and-cyber-risks-facing-financial-services-and-banking-firms-in-2022)

1 63. Defendants knew and understood unprotected or exposed PII in the
2 custody of insurance companies, like Defendants, is valuable and highly sought after
3 by nefarious third parties seeking to illegally monetize that PII through unauthorized
4 access.

5 64. At all relevant times, Defendants knew, or reasonably should have
6 known, of the importance of safeguarding the PII of Plaintiff and Class Members
7 and of the foreseeable consequences that would occur if Defendants' data security
8 system was breached, including, specifically, the significant costs that would be
9 imposed on Plaintiff and Class Members as a result of a breach.

10 65. Plaintiff and Class Members now face years of constant surveillance of
11 their financial and personal records, monitoring, and loss of rights. The Class is
12 incurring and will continue to incur such damages in addition to any fraudulent use
13 of their PII.

14 66. The injuries to Plaintiff and Class Members were directly and
15 proximately caused by Defendants' failure to implement or maintain adequate data
16 security measures for the PII of Plaintiff and Class Members.

17 67. The ramifications of Defendants' failure to keep secure the PII of
18 Plaintiff and Class Members are long lasting and severe. Once PII is stolen,
19 fraudulent use of that information and damage to victims may continue for years.

20 68. As retail companies in custody of the PII of their customers, Defendants
21 knew, or should have known, the importance of safeguarding PII entrusted to them
22 by Plaintiff and Class Members, and of the foreseeable consequences if its data
23 security systems were breached. This includes the significant costs imposed on
24 Plaintiff and Class Members as a result of a breach. Defendants failed, however, to
25 take adequate cybersecurity measures to prevent the Data Breach.

26 ***Value Of Personally Identifying Information***

27 69. The Federal Trade Commission ("FTC") defines identity theft as "a
28 fraud committed or attempted using the identifying information of another person

1 without authority.”¹⁷ The FTC describes “identifying information” as “any name or
2 number that may be used, alone or in conjunction with any other information, to
3 identify a specific person,” including, among other things, “[n]ame, Social Security
4 number, date of birth, official State or government issued driver’s license or
5 identification number, alien registration number, government passport number,
6 employer or taxpayer identification number.”¹⁸

7 70. The PII of individuals remains of high value to criminals, as evidenced
8 by the prices they will pay through the dark web. Numerous sources cite dark web
9 pricing for stolen identity credentials.¹⁹

10 71. Based on the foregoing, the information compromised in the Data
11 Breach is significantly more valuable than the loss of, for example, credit card
12 information in a retailer data breach because, there, victims can cancel or close credit
13 and debit card accounts. The information compromised in this Data Breach is
14 impossible to “close” and difficult, if not impossible, to change—dates of birth and
15 names.

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

19 73. The fraudulent activity resulting from the Data Breach may not come
20 to light for years. There may be a time lag between when harm occurs versus when
21 it is discovered, and also between when PII is stolen and when it is used. According
22 to the U.S. Government Accountability Office (“GAO”), which conducted a study
23 regarding data breaches:

24 _____
25 ¹⁷ 17 C.F.R. § 248.201 (2013).

26 ¹⁸ *Id.*

27 ¹⁹ *Your personal data is for sale on the dark web. Here’s how much it costs*, Digital
28 Trends, Oct. 16, 2019, available at:
<https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/>

1 [L]aw enforcement officials told us that in some cases, stolen data may
2 be held for up to a year or more before being used to commit identity
3 theft. Further, once stolen data have been sold or posted on the Web,
4 fraudulent use of that information may continue for years. As a result,
5 studies that attempt to measure the harm resulting from data breaches
6 cannot necessarily rule out all future harm.²⁰

7
8 74. Plaintiff and Class Members now face years of constant surveillance of
9 their financial and personal records, monitoring, and loss of rights. The Class is
10 incurring and will continue to incur such damages in addition to any fraudulent use
11 of their PII.

12
13 ***Defendants Fail To Comply With FTC Guidelines***

14 75. The Federal Trade Commission (“FTC”) has promulgated numerous
15 guides for businesses which highlight the importance of implementing reasonable
16 data security practices. According to the FTC, the need for data security should be
17 factored into all business decision-making.

18 76. In 2016, the FTC updated its publication, Protecting Personal
19 Information: A Guide for Business, which established cyber-security guidelines for
20 businesses. These guidelines note that businesses should protect the personal
21 consumer information that they keep; properly dispose of personal information that
22 is no longer needed; encrypt information stored on computer networks; understand
23 their network’s vulnerabilities; and implement policies to correct any security
24 problems.²¹

25 77. The guidelines also recommend that businesses use an intrusion
26 detection system to expose a breach as soon as it occurs; monitor all incoming traffic
27 for activity indicating someone is attempting to hack the system; watch for large

28

29 ²⁰ *Report to Congressional Requesters*, GAO, at 29 (June 2007), available at:
30 <https://www.gao.gov/assets/gao-07-737.pdf>

31 ²¹ *Protecting Personal Information: A Guide for Business*, Federal Trade
32 Commission (2016). Available at
33 [https://www.ftc.gov/system/files/documents/plain-language/pdf-0136_proteting-](https://www.ftc.gov/system/files/documents/plain-language/pdf-0136_proteting-personal-information.pdf)
34 [personal-information.pdf](https://www.ftc.gov/system/files/documents/plain-language/pdf-0136_proteting-personal-information.pdf)

1 amounts of data being transmitted from the system; and have a response plan ready
2 in the event of a breach.²²

3 78. The FTC further recommends that companies not maintain PII longer
4 than is needed for authorization of a transaction; limit access to sensitive data;
5 require complex passwords to be used on networks; use industry-tested methods for
6 security; monitor for suspicious activity on the network; and verify that third-party
7 service providers have implemented reasonable security measures.

8 79. The FTC has brought enforcement actions against businesses for failing
9 to adequately and reasonably protect consumer data, treating the failure to employ
10 reasonable and appropriate measures to protect against unauthorized access to
11 confidential consumer data as an unfair act or practice prohibited by Section 5 of the
12 Federal Trade Commission Act (“FTCA”), 15 U.S.C. § 45. Orders resulting from
13 these actions further clarify the measures businesses must take to meet their data
14 security obligations.

15 80. These FTC enforcement actions include actions against retail
16 companies, like Defendants.

17 81. Section 5 of the FTC Act, 15 U.S.C. § 45, prohibits “unfair . . . practices
18 in or affecting commerce,” including, as interpreted and enforced by the FTC, the
19 unfair act or practice by businesses, such as Defendants, of failing to use reasonable
20 measures to protect PII. The FTC publications and orders described above also form
21 part of the basis of Defendants’ duty in this regard.

22 82. Defendants failed to properly implement basic data security practices.

23 83. Defendants’ failure to employ reasonable and appropriate measures to
24 protect against unauthorized access to the PII of their customers or to comply with
25 applicable industry standards constitutes an unfair act or practice prohibited by
26 Section 5 of the FTC Act, 15 U.S.C. § 45.

27
28 ²² *Id.*

1 84. Upon information and belief, Defendants were at all times fully aware
2 of their obligations to protect the PII of their customers, Defendants were also aware
3 of the significant repercussions that would result from its failure to do so.
4 Accordingly, Defendants' conduct was particularly unreasonable given the nature
5 and amount of PII they obtained and stored and the foreseeable consequences of the
6 immense damages that would result to Plaintiff and the Class.

7 ***Defendants Fail To Comply With Industry Standards***

8 85. As noted above, experts studying cyber security routinely identify retail
9 companies in possession of PII as being particularly vulnerable to cyberattacks
10 because of the value of the PII which they collect and maintain.

11 86. Several best practices have been identified that, at a minimum, should
12 be implemented by retail companies in possession of PII, like Defendants, including
13 but not limited to: educating all employees; strong passwords; multi-layer security,
14 including firewalls, anti-virus, and anti-malware software; encryption, making data
15 unreadable without a key; multi-factor authentication; backup data and limiting
16 which employees can access sensitive data. Defendants failed to follow these
17 industry best practices, including a failure to implement multi-factor authentication.

18 87. Other best cybersecurity practices that are standard for retail companies
19 include installing appropriate malware detection software; monitoring and limiting
20 the network ports; protecting web browsers and email management systems; setting
21 up network systems such as firewalls, switches and routers; monitoring and
22 protection of physical security systems; protection against any possible
23 communication system; training staff regarding critical points. Defendants failed to
24 follow these cybersecurity best practices, including failure to train staff.

25 88. Defendants failed to meet the minimum standards of any of the
26 following frameworks: the NIST Cybersecurity Framework Version 2.0 (including
27 without limitation PR.AA-01, PR.AA.-02, PR.AA-03, PR.AA-04, PR.AA-05,
28 PR.AT-01, PR.DS-01, PR-DS-02, PR.DS-10, PR.PS-01, PR.PS-02, PR.PS-05,

1 PR.IR-01, DE.CM-01, DE.CM-03, DE.CM-06, DE.CM-09, and RS.CO-04), and the
2 Center for Internet Security's Critical Security Controls (CIS CSC), which are all
3 established standards in reasonable cybersecurity readiness.

4 89. These foregoing frameworks are existing and applicable industry
5 standards for retail companies, and upon information and belief, Defendants failed
6 to comply with at least one—or all—of these accepted standards, thereby opening
7 the door to the threat actor and causing the Data Breach.

8 ***Common Injuries & Damages***

9 90. As a result of Defendants' ineffective and inadequate data security
10 practices, the Data Breach, and the foreseeable consequences of PII ending up in the
11 possession of criminals, the risk of identity theft to the Plaintiff and Class Members
12 has materialized and is imminent, and Plaintiff and Class Members have all
13 sustained actual injuries and damages, including: (i) invasion of privacy; (ii) theft of
14 their PII; (iii) lost or diminished value of PII; (iv) lost time and opportunity costs
15 associated with attempting to mitigate the actual consequences of the Data Breach;
16 (v) loss of benefit of the bargain; (vi) lost opportunity costs associated with
17 attempting to mitigate the actual consequences of the Data Breach; (vii) nominal
18 damages; and (viii) the continued and certainly increased risk to their PII, which: (a)
19 remains unencrypted and available for unauthorized third parties to access and
20 abuse; and (b) remains backed up in Defendants' possession and is subject to further
21 unauthorized disclosures so long as Defendants fail to undertake appropriate and
22 adequate measures to protect the PII.

23 ***Data Breaches Increase Victims' Risk Of Identity Theft***

24 91. The unencrypted PII of Class Members will end up for sale on the dark
25 web as that is the *modus operandi* of hackers.

26 92. Unencrypted PII may also fall into the hands of companies that will use
27 the detailed PII for targeted marketing without the approval of Plaintiff and Class
28 Members. Simply put, unauthorized individuals can easily access the PII of Plaintiff

1 and Class Members.

2 93. The link between a data breach and the risk of identity theft is simple
3 and well established. Criminals acquire and steal PII to monetize the information.
4 Criminals monetize the data by selling the stolen information on the black market to
5 other criminals who then utilize the information to commit a variety of identity theft
6 related crimes discussed below.

7 94. Plaintiff's and Class Members' PII is of great value to hackers and
8 cyber criminals, and the data stolen in the Data Breach has been used and will
9 continue to be used in a variety of sordid ways for criminals to exploit Plaintiff and
10 Class Members and to profit off their misfortune.

11 95. One such example of criminals piecing together bits and pieces of
12 compromised PII for profit is the development of "Fullz" packages.²³

13 96. With "Fullz" packages, cyber-criminals can cross-reference two
14 sources of PII to marry unregulated data available elsewhere to criminally stolen
15

16
17 ²³ "Fullz" is fraudster speak for data that includes the information of the victim,
18 including, but not limited to, the name, address, credit card information, social
19 security number, date of birth, and more. As a rule of thumb, the more information
20 you have on a victim, the more money that can be made off of those credentials.
21 Fullz are usually pricier than standard credit card credentials, commanding up to
22 \$100 per record (or more) on the dark web. Fullz can be cashed out (turning
23 credentials into money) in various ways, including performing bank transactions
24 over the phone with the required authentication details in-hand. Even "dead Fullz,"
25 which are Fullz credentials associated with credit cards that are no longer valid, can
26 still be used for numerous purposes, including tax refund scams, ordering credit
27 cards on behalf of the victim, or opening a "mule account" (an account that will
28 accept a fraudulent money transfer from a compromised account) without the
victim's knowledge. *See, e.g.,* Brian Krebs, *Medical Records for Sale in
Underground Stolen From Texas Life Insurance Firm*, Krebs on Security (Sep. 18,
2014), <https://krebsonsecuritv.com/2014/09/medical-records-for-sale-in-underground-stolen-from-texas-life-insurance-finn/>

1 data with an astonishingly complete scope and degree of accuracy in order to
2 assemble complete dossiers on individuals.

3 97. The development of “Fullz” packages means here that the stolen PII
4 from the Data Breach can easily be used to link and identify it to Plaintiff’s and Class
5 Members’ phone numbers, email addresses, and other unregulated sources and
6 identifiers. In other words, even if certain information such as emails, phone
7 numbers, or credit card numbers may not be included in the PII that was exfiltrated
8 in the Data Breach, criminals may still easily create a Fullz package and sell it at a
9 higher price to unscrupulous operators and criminals (such as illegal and scam
10 telemarketers) over and over.

11 98. The existence and prevalence of “Fullz” packages means that the PII
12 stolen from the data breach can easily be linked to the unregulated data (like contact
13 information) of Plaintiff and the other Class Members.

14 99. Thus, even if certain information (such as contact information) was not
15 stolen in the data breach, criminals can still easily create a comprehensive “Fullz”
16 package.

17 100. Then, this comprehensive dossier can be sold—and then resold in
18 perpetuity—to crooked operators and other criminals (like illegal and scam
19 telemarketers).

20 ***Loss Of Time To Mitigate Risk Of Identity Theft & Fraud***

21 101. As a result of the recognized risk of identity theft, when a Data Breach
22 occurs, and an individual is notified by a company that their PII was compromised,
23 as in this Data Breach, the reasonable person is expected to take steps and spend
24 time to address the dangerous situation, learn about the breach, and otherwise
25 mitigate the risk of becoming a victim of identity theft or fraud. Failure to spend
26 time taking steps to review accounts or credit reports could expose the individual to
27 greater financial harm – yet, the resource and asset of time has been lost.

28 102. Plaintiff and Class Members have spent, and will spend additional time

1 in the future, on a variety of prudent actions, such as researching and verifying the
2 legitimacy of the Data Breach. Accordingly, the Data Breach has caused Plaintiff
3 and Class Members to suffer actual injury in the form of lost time—which cannot be
4 recaptured—spent on mitigation activities.

5 103. Plaintiff’s mitigation efforts are consistent with the U.S. Government
6 Accountability Office that released a report in 2007 regarding data breaches (“GAO
7 Report”) in which it noted that victims of identity theft will face “substantial costs
8 and time to repair the damage to their good name and credit record.”²⁴

9 104. Plaintiff’s mitigation efforts are also consistent with the steps that FTC
10 recommends that data breach victims take several steps to protect their personal and
11 financial information after a data breach, including: contacting one of the credit
12 bureaus to place a fraud alert (consider an extended fraud alert that lasts for seven
13 years if someone steals their identity), reviewing their credit reports, contacting
14 companies to remove fraudulent charges from their accounts, placing a credit freeze
15 on their credit, and correcting their credit reports.²⁵

16 105. And for those Class Members who experience actual identity theft and
17 fraud, the United States Government Accountability Office released a report in 2007
18 regarding data breaches (“GAO Report”) in which it noted that victims of identity
19 theft will face “substantial costs and time to repair the damage to their good name
20 and credit record.”^[4]

21 ///

22 ///

23 ///

24 _____
25 ²⁴ See United States Government Accountability Office, GAO-07-737, Personal
26 Information: Data Breaches Are Frequent, but Evidence of Resulting Identity Theft
27 Is Limited; However, the Full Extent Is Unknown (June 2007),
<https://www.gao.gov/new.items/d07737.pdf>.

28 ²⁵ See Federal Trade Commission, *Identity Theft.gov*,
<https://www.identitytheft.gov/Steps>

1 ***Diminution of Value of PII***

2 106. PII is a valuable property right.²⁶ Its value is axiomatic, considering the
3 value of Big Data in corporate America and the consequences of cyber thefts include
4 heavy prison sentences. Even this obvious risk to reward analysis illustrates beyond
5 doubt that PII has considerable market value.

6 107. Sensitive PII can sell for as much as \$363 per record according to the
7 Infosec Institute.²⁷

8 108. An active and robust legitimate marketplace for PII also exists. In 2019,
9 the data brokering industry was worth roughly \$200 billion.²⁸

10 109. In fact, the data marketplace is so sophisticated that consumers can
11 actually sell their non-public information directly to a data broker who in turn
12 aggregates the information and provides it to marketers or app developers.^{29,30}

13 110. Consumers who agree to provide their web browsing history to the
14 Nielsen Corporation can receive up to \$50.00 a year.³¹

15 111. As a result of the Data Breach, Plaintiff's and Class Members' PII,
16 which has an inherent market value in both legitimate and dark markets, has been
17 damaged and diminished by its compromise and unauthorized release. However, this

18 _____
19 ²⁶ See "Data Breaches Are Frequent, but Evidence of Resulting Identity Theft Is
20 Limited; However, the Full Extent Is Unknown," p. 2, U.S. Government
21 Accountability Office, June 2007, <https://www.gao.gov/new.items/d07737.pdf>
22 ("GAO Report").

23 ²⁷ See, e.g., John T. Soma, et al, Corporate Privacy Trend: The "Value" of Personally
24 Identifiable Information ("PII") Equals the "Value" of Financial Assets, 15 Rich.
25 J.L. & Tech. 11, at *3-4 (2009) ("PII, which companies obtain at little cost, has
26 quantifiable value that is rapidly reaching a level comparable to the value of
27 traditional financial assets.") (citations omitted).

28 ²⁸ See Ashiq Ja, *Hackers Selling Healthcare Data in the Black Market*, InfoSec (July
29 27, 2015), [https://resources.infosecinstitute.com/topic/hackers-selling-healthcare-
30 data-in-the-black-market/](https://resources.infosecinstitute.com/topic/hackers-selling-healthcare-data-in-the-black-market/)

²⁹ <https://www.latimes.com/business/story/2019-11-05/column-data-brokers>

³⁰ <https://datacoup.com/>

³¹ <https://digi.me/what-is-digime/>

1 transfer of value occurred without any consideration paid to Plaintiff or Class
2 Members for their property, resulting in an economic loss. Moreover, the PII is now
3 readily available, and the rarity of the Data has been lost, thereby causing additional
4 loss of value.

5 112. At all relevant times, Defendants knew, or reasonably should have
6 known, of the importance of safeguarding the PII of Plaintiff and Class Members,
7 and of the foreseeable consequences that would occur if Defendants' data security
8 system was breached, including, specifically, the significant costs that would be
9 imposed on Plaintiff and Class Members as a result of a breach.

10 113. The fraudulent activity resulting from the Data Breach may not come
11 to light for years.

12 114. Plaintiff and Class Members now face years of constant surveillance of
13 their financial and personal records, monitoring, and loss of rights. The Class is
14 incurring and will continue to incur such damages in addition to any fraudulent use
15 of their PII.

16 115. Defendants were, or should have been, fully aware of the unique type
17 and the significant volume of data on Defendants' network, amounting to, upon
18 information and belief, hundreds of thousands of individuals' detailed personal
19 information and, thus, the significant number of individuals who would be harmed
20 by the exposure of the unencrypted data.

21 116. The injuries to Plaintiff and Class Members were directly and
22 proximately caused by Defendants' failure to implement or maintain adequate data
23 security measures for the PII of Plaintiff and Class Members.

24 ***Future Cost of Credit and Identity Theft Monitoring is Reasonable and***
25 ***Necessary***

26 117. Given the type of targeted attack in this case, sophisticated criminal
27 activity, and the type of PII involved, there is a strong probability that entire batches
28 of stolen information have been placed, or will be placed, on the black market/dark

1 web for sale and purchase by criminals intending to utilize the PII for identity theft
2 crimes –e.g., opening bank accounts in the victims’ names to make purchases or to
3 launder money; file false tax returns; take out loans or lines of credit; or file false
4 unemployment claims.

5 118. Such fraud may go undetected until debt collection calls commence
6 months, or even years, later. An individual may not know that his or her PII was
7 used to file for unemployment benefits until law enforcement notifies the
8 individual’s employer of the suspected fraud. Fraudulent tax returns are typically
9 discovered only when an individual’s authentic tax return is rejected.

10 119. Consequently, Plaintiff and Class Members are at an increased risk of
11 fraud and identity theft for many years into the future.

12 120. The retail cost of credit monitoring and identity theft monitoring can
13 cost around \$200 a year per Class Member. This is reasonable and necessary cost to
14 monitor to protect Class Members from the risk of identity theft that arose from
15 Defendants’ Data Breach.

16 ***Loss Of Benefit Of The Bargain***

17 121. Furthermore, Defendants’ poor data security practices deprived
18 Plaintiff and Class Members of the benefit of their bargain. When agreeing to pay
19 Defendants and/or its agents for retail products or services, Plaintiff and other
20 reasonable consumers understood and expected that they were, in part, paying for
21 the product and/or service and necessary data security to protect the PII, when in
22 fact, Defendants did not provide the expected data security. Accordingly, Plaintiff
23 and Class Members received products or services that were of a lesser value than
24 what they reasonably expected to receive under the bargains they struck with
25 Defendants.

26 ***Plaintiff Anastasia Weatherford’s Experience***

27 122. Plaintiff Anastasia Weatherford is a customer who has purchased
28 products from both Hot Topic and Torrid in recent years.

1 123. As a condition of purchasing products at Defendants, she was required
2 to provide her PII to Defendants, including her name, contact information, address,
3 date of birth, and other sensitive information.

4 124. Upon information and belief, at the time of the Data Breach, Defendants
5 maintained Plaintiff's PII in its system.

6 125. Plaintiff Anastasia Weatherford is very careful about sharing her
7 sensitive PII. Plaintiff stores any documents containing her PII in a safe and secure
8 location. She has never knowingly transmitted unencrypted sensitive PII over the
9 internet or any other unsecured source. Plaintiff would not have entrusted her PII to
10 Defendants had she known of Defendants' lax data security policies.

11 126. Upon information and belief, Plaintiff's PII was targeted, accessed, and
12 acquired in the Data Breach.

13 127. As a result of the Data Breach, Plaintiff made reasonable efforts to
14 mitigate the impact of the Data Breach, including researching and verifying the
15 legitimacy of the Data Breach. Plaintiff has spent significant time dealing with the
16 Data Breach—valuable time Plaintiff otherwise would have spent on other activities,
17 including but not limited to work and/or recreation. This time has been lost forever
18 and cannot be recaptured.

19 128. Plaintiff suffered actual injury from having her PII compromised as a
20 result of the Data Breach including, but not limited to: (i) invasion of privacy; (ii)
21 theft of her PII; (iii) lost or diminished value of PII; (iv) lost time and opportunity
22 costs associated with attempting to mitigate the actual consequences of the Data
23 Breach; (v) loss of benefit of the bargain; (vi) lost opportunity costs associated with
24 attempting to mitigate the actual consequences of the Data Breach; (vii) nominal
25 damages; and (viii) the continued and certainly increased risk to her PII, which: (a)
26 remains unencrypted and available for unauthorized third parties to access and
27 abuse; and (b) remains backed up in Defendants' possession and is subject to further
28 unauthorized disclosures so long as Defendants fail to undertake appropriate and

1 adequate measures to protect the PII.

2 129. Plaintiff additionally suffered actual injury in the form of experiencing
3 an increase in spam calls, texts, and/or emails, which, upon information and belief,
4 was caused by the Data Breach. This misuse of her PII was caused, upon information
5 and belief, by the fact that cybercriminals are able to easily use the information
6 compromised in the Data Breach to find more information about an individual, such
7 as their phone number or email address, from publicly available sources, including
8 websites that aggregate and associate personal information with the owner of such
9 information. Criminals often target data breach victims with spam emails, calls, and
10 texts to gain access to their devices with phishing attacks or elicit further personal
11 information for use in committing identity theft or fraud.

12 130. The Data Breach has caused Plaintiff to suffer fear, anxiety, and stress,
13 which has been compounded by the fact that Defendants have still not fully informed
14 her of key details about the Data Breach's occurrence.

15 131. As a result of the Data Breach, Plaintiff anticipates spending
16 considerable time and money on an ongoing basis to try to mitigate and address
17 harms caused by the Data Breach.

18 132. As a result of the Data Breach, Plaintiff is at a present risk and will
19 continue to be at increased risk of identity theft and fraud for years to come.

20 133. Plaintiff Anastasia Weatherford has a continuing interest in ensuring
21 that her PII, which, upon information and belief, remains backed up in Defendants'
22 possession, is protected and safeguarded from future breaches.

23 **CLASS ALLEGATIONS**

24 134. Plaintiff brings this nationwide class action on behalf of herself and on
25 behalf of all others similarly situated, pursuant to Fed. R. Civ. P. 23(a), 23(b)(1),
26 23(b)(2), 23(b)(3), 23(c)(4) and/or 23(c)(5).

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28 ///

1 135. The Class that Plaintiff seeks to represent is defined as follows:

2 **Nationwide Class**

3 All individuals residing in the United States whose PII was accessed
4 and/or acquired by an unauthorized party as a result of the data breach
5 that occurred at Defendants in or about October 2024 2024 (the
6 “Class”).

7 136. Excluded from the Class are the following individuals and/or entities:
8 Defendants and Defendants’ parents, subsidiaries, affiliates, officers and directors,
9 and any entity in which Defendants have a controlling interest; all individuals who
10 make a timely election to be excluded from this proceeding using the correct protocol
11 for opting out; and all judges assigned to hear any aspect of this litigation, as well as
12 their immediate family members.

13 137. Plaintiff reserves the right to amend the definitions of the Class or add
14 a Class or Subclass if further information and discovery indicate that the definitions
15 of the Class should be narrowed, expanded, or otherwise modified.

16 138. Numerosity: The members of the Class are so numerous that joinder of
17 all members is impracticable, if not completely impossible. Although the precise
18 number of individuals is currently unknown to Plaintiff and exclusively in the
19 possession of Defendant, upon information and belief, thousands of individuals were
20 impacted. The Class is apparently identifiable within Defendants’ records.

21 139. Common questions of law and fact exist as to all members of the Class
22 and predominate over any questions affecting solely individual members of the
23 Class. Among the questions of law and fact common to the Class that predominate
24 over questions which may affect individual Class members, including the following:

- 25 a. Whether and to what extent Defendants had a duty to protect the
26 PII of Plaintiff and Class Members;
- 27 b. Whether Defendants had respective duties not to disclose the PII
28 of Plaintiff and Class Members to unauthorized third parties;
- c. Whether Defendants had respective duties not to use the PII of
Plaintiff and Class Members for non-business purposes;

- 1 d. Whether Defendants failed to adequately safeguard the PII of
- 2 Plaintiff and Class Members;
- 3 e. Whether and when Defendants actually learned of the Data
- 4 Breach;
- 5 f. Whether Defendants adequately, promptly, and accurately
- 6 informed Plaintiff and Class Members that their PII had been
- 7 compromised;
- 8 g. Whether Defendants violated the law by failing to promptly
- 9 notify Plaintiff and Class Members that their PII had been
- 10 compromised;
- 11 h. Whether Defendants failed to implement and maintain
- 12 reasonable security procedures and practices appropriate to the
- 13 nature and scope of the information compromised in the Data
- 14 Breach;
- 15 i. Whether Defendants adequately addressed and fixed the
- 16 vulnerabilities which permitted the Data Breach to occur;
- 17 j. Whether Plaintiff and Class Members are entitled to actual
- 18 damages and/or nominal damages as a result of Defendants’
- 19 wrongful conduct; and
- 20 k. Whether Plaintiff and Class Members are entitled to injunctive
- 21 relief to redress the imminent and currently ongoing harm faced
- 22 as a result of the Data Breach.

23 140. Typicality: Plaintiff’s claims are typical of those of the other members
24 of the Class because Plaintiff, like every other Class Member, was exposed to
25 virtually identical conduct and now suffers from the same violations of the law as
26 each other member of the Class.

27 141. Policies Generally Applicable to the Class: This class action is also
28 appropriate for certification because Defendants acted or refused to act on grounds

1 generally applicable to the Class, thereby requiring the Court's imposition of
2 uniform relief to ensure compatible standards of conduct toward the Class Members
3 and making final injunctive relief appropriate with respect to the Class as a whole.
4 Defendants' policies challenged herein apply to and affect Class Members uniformly
5 and Plaintiff's challenges of these policies hinges on Defendants' conduct with
6 respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

7 142. Adequacy: Plaintiff will fairly and adequately represent and protect the
8 interests of the Class Members in that she has no disabling conflicts of interest that
9 would be antagonistic to those of the other Class Members. Plaintiff seeks no relief
10 that is antagonistic or adverse to the Class Members and the infringement of the
11 rights and the damages she has suffered are typical of other Class Members. Plaintiff
12 has retained counsel experienced in complex class action and data breach litigation,
13 and Plaintiff intend to prosecute this action vigorously.

14 143. Superiority and Manageability: The class litigation is an appropriate
15 method for fair and efficient adjudication of the claims involved. Class action
16 treatment is superior to all other available methods for the fair and efficient
17 adjudication of the controversy alleged herein; it will permit a large number of Class
18 Members to prosecute their common claims in a single forum simultaneously,
19 efficiently, and without the unnecessary duplication of evidence, effort, and expense
20 that hundreds of individual actions would require. Class action treatment will permit
21 the adjudication of relatively modest claims by certain Class Members, who could
22 not individually afford to litigate a complex claim against large corporations, like
23 Defendants. Further, even for those Class Members who could afford to litigate such
24 a claim, it would still be economically impractical and impose a burden on the courts.

25 144. The nature of this action and the nature of laws available to Plaintiff
26 and Class Members make the use of the class action device a particularly efficient
27 and appropriate procedure to afford relief to Plaintiff and Class Members for the
28 wrongs alleged because Defendants would necessarily gain an unconscionable

1 advantage since they would be able to exploit and overwhelm the limited resources
2 of each individual Class Member with superior financial and legal resources; the
3 costs of individual suits could unreasonably consume the amounts that would be
4 recovered; proof of a common course of conduct to which Plaintiff was exposed is
5 representative of that experienced by the Class and will establish the right of each
6 Class Member to recover on the cause of action alleged; and individual actions
7 would create a risk of inconsistent results and would be unnecessary and duplicative
8 of this litigation.

9 145. The litigation of the claims brought herein is manageable. Defendants’
10 uniform conduct, the consistent provisions of the relevant laws, and the ascertainable
11 identities of Class Members demonstrate that there would be no significant
12 manageability problems with prosecuting this lawsuit as a class action.

13 146. Adequate notice can be given to Class Members directly using
14 information maintained in Defendants’ records.

15 147. Unless a Class-wide injunction is issued, Defendants may continue in
16 its failure to properly secure the PII of Class Members, Defendants may continue to
17 refuse to provide proper notification to Class Members regarding the Data Breach,
18 and Defendants may continue to act unlawfully as set forth in this Complaint.

19 148. Further, Defendants have acted on grounds that apply generally to the
20 Class as a whole, so that class certification, injunctive relief, and corresponding
21 declaratory relief are appropriate on a class- wide basis.

22 149. Likewise, particular issues are appropriate for certification because
23 such claims present only particular, common issues, the resolution of which would
24 advance the disposition of this matter and the parties’ interests therein. Such
25 particular issues include, but are not limited to:

- 26 a. Whether Defendants failed to timely notify the Plaintiff and the
27 class of the Data Breach;
- 28 b. Whether Defendants owed a legal duty to Plaintiff and the Class

1 to exercise due care in collecting, storing, and safeguarding their
2 PII;

3 c. Whether Defendants' security measures to protect their data
4 systems were reasonable in light of best practices recommended
5 by data security experts;

6 d. Whether Defendants' failure to institute adequate protective
7 security measures amounted to negligence;

8 e. Whether Defendants failed to take commercially reasonable
9 steps to safeguard consumer PII; and

10 f. Whether adherence to FTC data security recommendations, and
11 measures recommended by data security experts would have
12 reasonably prevented the Data Breach.

13 **CAUSES OF ACTION**

14 **COUNT I**
15 **Negligence**

16 **(On Behalf of Plaintiff and the Class)**

17 150. Plaintiff re-alleges and incorporates by reference all preceding
18 allegations, as if fully set forth herein.

19 151. Defendants requires their customers, including Plaintiff and Class
20 Members, to submit non-public PII in the ordinary course of providing its retail
21 products and services.

22 152. Defendants gathered and stored the PII of Plaintiff and Class Members
23 as part of its business of soliciting its services to their customers, which solicitations
24 and services affect commerce.

25 153. Plaintiff and Class Members entrusted Defendants with their PII with
26 the understanding that Defendants would safeguard their information.

27 154. Defendants had full knowledge of the sensitivity of the PII and the types
28 of harm that Plaintiff and Class Members could and would suffer if the PII were
wrongfully disclosed.

1 155. By voluntarily undertaking and assuming the responsibility to collect
2 and store this data, and in fact doing so, and sharing it and using it for commercial
3 gain, Defendants had a duty of care to use reasonable means to secure and safeguard
4 their computer property—and Class Members’ PII held within it—to prevent
5 disclosure of the information, and to safeguard the information from theft.
6 Defendants’ duty included a responsibility to implement processes by which they
7 could detect a breach of its security systems in a reasonably expeditious period of
8 time and to give prompt notice to those affected in the case of a data breach.

9 156. Defendants had a duty to employ reasonable security measures under
10 Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, which prohibits
11 “unfair . . . practices in or affecting commerce,” including, as interpreted and
12 enforced by the FTC, the unfair practice of failing to use reasonable measures to
13 protect confidential data.

14 157. Defendants owed a duty of care to Plaintiff and Class Members to
15 provide data security consistent with industry standards and other requirements
16 discussed herein, and to ensure that its systems and networks adequately protected
17 the PII.

18 158. Defendants’ duty of care to use reasonable security measures arose as
19 a result of the special relationship that existed between Defendants and Plaintiff and
20 Class Members. That special relationship arose because Plaintiff and the Class
21 entrusted Defendants with their confidential PII, a necessary part of being customers
22 at Hot Topic or Torrid.

23 159. Defendants’ duty to use reasonable care in protecting confidential data
24 arose not only as a result of the statutes and regulations described above, but also
25 because Defendants is bound by industry standards to protect confidential PII.

26 160. Defendants were subject to an “independent duty,” untethered to any
27 contract between Defendants and Plaintiff or the Class.

28 161. Defendants also had a duty to exercise appropriate clearinghouse

1 practices to remove former customers' PII they were no longer required to retain
2 pursuant to regulations.

3 162. Moreover, Defendants had a duty to promptly and adequately notify
4 Plaintiff and the Class of the Data Breach.

5 163. Defendants had and continues to have a duty to adequately disclose that
6 the PII of Plaintiff and the Class within Defendants' possession might have been
7 compromised, how it was compromised, and precisely the types of data that were
8 compromised and when. Such notice was necessary to allow Plaintiff and the Class
9 to take steps to prevent, mitigate, and repair any identity theft and the fraudulent use
10 of their PII by third parties.

11 164. Defendants breached their duties, pursuant to the FTC Act and other
12 applicable standards, and thus was negligent, by failing to use reasonable measures
13 to protect Class Members' PII. The specific negligent acts and omissions committed
14 by Defendants include, but are not limited to, the following:

- 15 a. Failing to adopt, implement, and maintain adequate security measures
16 to safeguard Class Members' PII;
- 17 b. Failing to adequately monitor the security of their networks and
18 systems;
- 19 c. Allowing unauthorized access to Class Members' PII;
- 20 d. Failing to detect in a timely manner that Class Members' PII had been
21 compromised;
- 22 e. Failing to remove former customers' PII it was no longer required to
23 retain pursuant to regulations, and
- 24 f. Failing to timely and adequately notify Class Members about the Data
25 Breach's occurrence and scope, so that they could take appropriate
26 steps to mitigate the potential for identity theft and other damages.

27 165. Defendants violated Section 5 of the FTC Act by failing to use
28 reasonable measures to protect PII and not complying with applicable industry

1 standards, as described in detail herein. Defendants' conduct was particularly
2 unreasonable given the nature and amount of PII it obtained and stored and the
3 foreseeable consequences of the immense damages that would result to Plaintiff and
4 the Class.

5 166. Plaintiff and Class Members were within the class of persons the
6 Federal Trade Commission Act was intended to protect and the type of harm that
7 resulted from the Data Breach was the type of harm that the statute was intended to
8 guard against.

9 167. Defendants' violation of Section 5 of the FTC Act constitutes
10 negligence.

11 168. The FTC has pursued enforcement actions against businesses, which,
12 as a result of their failure to employ reasonable data security measures and avoid
13 unfair and deceptive practices, caused the same harm as that suffered by Plaintiff
14 and the Class.

15 169. A breach of security, unauthorized access, and resulting injury to
16 Plaintiff and the Class was reasonably foreseeable, particularly in light of
17 Defendants' inadequate security practices.

18 170. It was foreseeable that Defendants' failure to use reasonable measures
19 to protect Class Members' PII would result in injury to Class Members. Further, the
20 breach of security was reasonably foreseeable given the known high frequency of
21 cyberattacks and data breaches in the retail industry.

22 171. Defendants have full knowledge of the sensitivity of the PII and the
23 types of harm that Plaintiff and the Class could and would suffer if the PII were
24 wrongfully disclosed.

25 172. Plaintiff and the Class were the foreseeable and probable victims of any
26 inadequate security practices and procedures. Defendants knew or should have
27 known of the inherent risks in collecting and storing the PII of Plaintiff and the Class,
28 the critical importance of providing adequate security of that PII, and the necessity

1 for encrypting PII stored on Defendants' systems or transmitted through third party
2 systems.

3 173. It was therefore foreseeable that the failure to adequately safeguard
4 Class Members' PII would result in one or more types of injuries to Class Members.

5 174. Plaintiff and the Class had no ability to protect their PII that was in, and
6 possibly remains in, Defendants' possession.

7 175. Defendants were in a position to protect against the harm suffered by
8 Plaintiff and the Class as a result of the Data Breach.

9 176. Defendants' duty extended to protecting Plaintiff and the Class from
10 the risk of foreseeable criminal conduct of third parties, which has been recognized
11 in situations where the actor's own conduct or misconduct exposes another to the
12 risk or defeats protections put in place to guard against the risk, or where the parties
13 are in a special relationship. *See* Restatement (Second) of Torts § 302B. Numerous
14 courts and legislatures have also recognized the existence of a specific duty to
15 reasonably safeguard personal information.

16 177. But for Defendants' wrongful and negligent breach of duties owed to
17 Plaintiff and the Class, the PII of Plaintiff and the Class would not have been
18 compromised.

19 178. There is a close causal connection between Defendants' failure to
20 implement security measures to protect the PII of Plaintiff and the Class and the
21 harm, or risk of imminent harm, suffered by Plaintiff and the Class. The PII of
22 Plaintiff and the Class was lost and accessed as the proximate result of Defendants'
23 failure to exercise reasonable care in safeguarding such PII by adopting,
24 implementing, and maintaining appropriate security measures.

25 179. As a direct and proximate result of Defendants' negligence, Plaintiff
26 and the Class have suffered and will suffer injury, including but not limited to: (i)
27 invasion of privacy; (ii) theft of their PII; (iii) lost or diminished value of PII; (iv)
28 lost time and opportunity costs associated with attempting to mitigate the actual

1 consequences of the Data Breach; (v) loss of benefit of the bargain; (vi) lost
2 opportunity costs associated with attempting to mitigate the actual consequences of
3 the Data Breach; (vii) experiencing an increase in spam calls, texts, and/or emails;
4 (viii) statutory damages; (ix) nominal damages; and (x) the continued and certainly
5 increased risk to their PII, which: (a) remains unencrypted and available for
6 unauthorized third parties to access and abuse; and (b) remains backed up in
7 Defendants' possession and is subject to further unauthorized disclosures so long as
8 Defendants fail to undertake appropriate and adequate measures to protect the PII.

9 180. Additionally, as a direct and proximate result of Defendants'
10 negligence, Plaintiff and the Class have suffered and will suffer the continued risks
11 of exposure of their PII, which remain in Defendants' possession and is subject to
12 further unauthorized disclosures so long as Defendants fail to undertake appropriate
13 and adequate measures to protect the PII in its continued possession.

14 181. Plaintiff and Class Members are entitled to compensatory and
15 consequential damages suffered as a result of the Data Breach.

16 182. Plaintiff and Class Members are also entitled to injunctive relief
17 requiring Defendants to (i) strengthen its data security systems and monitoring
18 procedures; (ii) submit to future annual audits of those systems and monitoring
19 procedures; and (iii) continue to provide adequate credit monitoring to all Class
20 Members.

21 **COUNT II**
22 **Breach Of Implied Contract**
(On Behalf of Plaintiff and the Class)

23 183. Plaintiff re-alleges and incorporates by reference all preceding
24 allegations, as if fully set forth herein.

25 184. Plaintiff and Class Members were required to deliver their PII to
26 Defendants as part of the process of obtaining retail products or services provided
27 by Defendants. Plaintiff and Class Members paid money to Defendants in exchange
28 for products or services and would not have paid for Defendant's products, or would

1 have paid less for them, had they known that Defendant's data security practices
2 were substandard.

3 185. Defendants solicited, offered, and invited Class Members to provide
4 their PII as part of Defendants' regular business practices. Plaintiff and Class
5 Members accepted Defendants' offers and provided their PII to Defendants.

6 186. Defendants accepted possession of Plaintiff's and Class Members' PII
7 for the purpose of providing services to Plaintiff and Class Members.

8 187. Plaintiff and the Class purchased products and entrusted their PII to
9 Defendants. In so doing, Plaintiff and the Class entered into implied contracts with
10 Defendants by which Defendants agreed to safeguard and protect such information,
11 to keep such information secure and confidential, and to timely and accurately notify
12 Plaintiff and the Class if their data had been breached and compromised or stolen.

13 188. In entering into such implied contracts, Plaintiff and Class Members
14 reasonably believed and expected that Defendants' data security practices complied
15 with relevant laws and regulations (including FTC guidelines on data security) and
16 were consistent with industry standards.

17 189. Implicit in the agreement between Plaintiff and Class Members and the
18 Defendants to provide PII, was the latter's obligation to: (a) use such PII for business
19 purposes only, (b) take reasonable steps to safeguard that PII, (c) prevent
20 unauthorized disclosures of the PII, (d) provide Plaintiff and Class Members with
21 prompt and sufficient notice of any and all unauthorized access and/or theft of their
22 PII, (e) reasonably safeguard and protect the PII of Plaintiff and Class Members from
23 unauthorized disclosure or uses, (f) retain the PII only under conditions that kept
24 such information secure and confidential.

25 190. The mutual understanding and intent of Plaintiff and Class Members on
26 the one hand, and Defendants, on the other, is demonstrated by their conduct and
27 course of dealing.

28 191. On information and belief, at all relevant times Defendants

1 promulgated, adopted, and implemented written privacy policies whereby it
2 expressly promised Plaintiff and Class Members that it would only disclose PII
3 under certain circumstances, none of which relate to the Data Breach.

4 192. On information and belief, Defendants further promised to comply with
5 industry standards and to make sure that Plaintiff's and Class Members' PII would
6 remain protected.

7 193. Plaintiff and Class Members paid money to Defendants with the
8 reasonable belief and expectation that Defendants would use part of its earnings to
9 obtain adequate data security. Defendants failed to do so.

10 194. Plaintiff and Class Members would not have entrusted their PII to
11 Defendants or purchased their products in the absence of the implied contract
12 between them and Defendants to keep their information reasonably secure.

13 195. Plaintiff and Class Members would not have entrusted their PII to
14 Defendants in the absence of their implied promise to monitor their computer
15 systems and networks to ensure that it adopted reasonable data security measures.

16 196. Every contract in this State has an implied covenant of good faith and
17 fair dealing, which is an independent duty and may be breached even when there is
18 no breach of a contract's actual and/or express terms.

19 197. Plaintiff and Class Members fully and adequately performed their
20 obligations under the implied contracts with Defendants.

21 198. Defendants breached the implied contracts they made with Plaintiff and
22 the Class by failing to safeguard and protect their personal information, by failing to
23 delete the information of Plaintiff and the Class once the relationship ended, and by
24 failing to provide accurate notice to them that personal information was
25 compromised as a result of the Data Breach.

26 199. Defendants breached the implied covenant of good faith and fair
27 dealing by failing to maintain adequate computer systems and data security practices
28 to safeguard PII, failing to timely and accurately disclose the Data Breach to Plaintiff

1 and Class Members and continued acceptance of PII and storage of other personal
2 information after Defendants knew, or should have known, of the security
3 vulnerabilities of the systems that were exploited in the Data Breach.

4 200. As a direct and proximate result of Defendants' breach of the implied
5 contracts, Plaintiff and Class Members sustained damages, including, but not limited
6 to: (i) invasion of privacy; (ii) theft of their PII; (iii) lost or diminished value of PII;
7 (iv) lost time and opportunity costs associated with attempting to mitigate the actual
8 consequences of the Data Breach; (v) loss of benefit of the bargain; (vi) lost
9 opportunity costs associated with attempting to mitigate the actual consequences of
10 the Data Breach; (vii) experiencing an increase in spam calls, texts, and/or emails;
11 (viii) statutory damages; (ix) nominal damages; and (x) the continued and certainly
12 increased risk to their PII, which: (a) remains unencrypted and available for
13 unauthorized third parties to access and abuse; and (b) remains backed up in
14 Defendants' possession and is subject to further unauthorized disclosures so long as
15 Defendants fail to undertake appropriate and adequate measures to protect the PII.

16 201. Plaintiff and Class Members are entitled to compensatory,
17 consequential, and nominal damages suffered as a result of the Data Breach.

18 202. Plaintiff and Class Members are also entitled to injunctive relief
19 requiring Defendants to, *e.g.*, (i) strengthen their data security systems and
20 monitoring procedures; (ii) submit to future annual audits of those systems and
21 monitoring procedures; and (iii) immediately provide adequate credit monitoring to
22 all Class Members.

23 **COUNT III**
24 **Unjust Enrichment**
(On Behalf of Plaintiff and the Class)

25 203. Plaintiff re-alleges and incorporates by reference all preceding
26 allegations, as if fully set forth herein.

27 204. Plaintiff brings this Count in the alternative to the breach of implied
28 contract count above.

1 205. Plaintiff and Class Members conferred a monetary benefit on
2 Defendants. Specifically, they paid Defendants and/or its agents for retail products
3 or services and in so doing also provided Defendants with their PII. In exchange,
4 Plaintiff and Class Members should have received from Defendants the products or
5 services that were the subject of the transaction and should have had their PII
6 protected with adequate data security.

7 206. Defendants knew that Plaintiff and Class Members conferred a benefit
8 upon it and has accepted and retained that benefit by accepting and retaining the PII
9 entrusted to it. Defendants profited from Plaintiff's retained data and used Plaintiff's
10 and Class Members' PII for business purposes.

11 207. Defendants failed to secure Plaintiff's and Class Members' PII and,
12 therefore, did not fully compensate Plaintiff or Class Members for the value that
13 their PII provided.

14 208. Defendants acquired the PII through inequitable record retention as it
15 failed to investigate and/or disclose the inadequate data security practices previously
16 alleged.

17 209. If Plaintiff and Class Members had known that Defendants would not
18 use adequate data security practices, procedures, and protocols to adequately
19 monitor, supervise, and secure their PII, they would have entrusted their PII at
20 Defendants or obtained products or services at Defendants.

21 210. Plaintiff and Class Members have no adequate remedy at law.

22 211. Defendants enriched themselves by saving the costs it reasonably
23 should have expended on data security measures to secure Plaintiff's and Class
24 Members' Personal Information. Instead of providing a reasonable level of security
25 that would have prevented the hacking incident, Defendants instead calculated to
26 increase their own profit at the expense of Plaintiff and Class Members by utilizing
27 cheaper, ineffective security measures and diverting those funds to their own profit.
28 Plaintiff and Class Members, on the other hand, suffered as a direct and proximate

1 result of Defendants’ decision to prioritize their own profits over the requisite
2 security and the safety of their PII.

3 212. Under the circumstances, it would be unjust for Defendants to be
4 permitted to retain any of the benefits that Plaintiff and Class Members conferred
5 upon it.

6 213. As a direct and proximate result of Defendants’ conduct, Plaintiff and
7 Class Members have suffered and will suffer injury, including but not limited to: (i)
8 invasion of privacy; (ii) theft of their PII; (iii) lost or diminished value of PII; (iv)
9 lost time and opportunity costs associated with attempting to mitigate the actual
10 consequences of the Data Breach; (v) loss of benefit of the bargain; (vi) lost
11 opportunity costs associated with attempting to mitigate the actual consequences of
12 the Data Breach; (vii) experiencing an increase in spam calls, texts, and/or emails;
13 (viii) statutory damages; (ix) nominal damages; and (x) the continued and certainly
14 increased risk to their PII, which: (a) remains unencrypted and available for
15 unauthorized third parties to access and abuse; and (b) remains backed up in
16 Defendants’ possession and is subject to further unauthorized disclosures so long as
17 Defendants fail to undertake appropriate and adequate measures to protect the PII.

18 214. Plaintiff and Class Members are entitled to full refunds, restitution,
19 and/or damages from Defendants and/or an order proportionally disgorging all
20 profits, benefits, and other compensation obtained by Defendants from its wrongful
21 conduct. This can be accomplished by establishing a constructive trust from which
22 the Plaintiff and Class Members may seek restitution or compensation.

23 215. Plaintiff and Class Members may not have an adequate remedy at law
24 against Defendants, and accordingly, they plead this claim for unjust enrichment in
25 addition to, or in the alternative to, other claims pleaded herein.

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1 **COUNT IV**
2 **Violation of the California Unfair Competition Law,**
3 **Cal. Bus. & Prof. Code §17200 *et seq.***
4 **(On Behalf of Plaintiff and the Class)**

5 216. Plaintiff re-alleges and incorporates by reference all preceding
6 allegations, as if fully set forth herein.

7 217. Defendants are “persons” defined by Cal. Bus. & Prof. Code § 17201.

8 218. Defendants violated Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”)
9 by engaging in unlawful and unfair business acts and practices.

10 219. The acts and omissions complained of herein were designed and
11 emanated from Defendant’s California headquarters.

12 220. Defendants’ “unfair” acts and practices include:

- 13 a. by utilizing cheaper, ineffective security measures and diverting those
14 funds to their own profits, instead of providing a reasonable level of
15 security that would have prevented the hacking incident;
- 16 b. failing to follow industry standard and the applicable, required, and
17 appropriate protocols, policies, and procedures regarding the
18 encryption of data;
- 19 c. failing to timely and adequately notify Class Members about the Data
20 Breach’s occurrence and scope, so that they could take appropriate
21 steps to mitigate the potential for identity theft and other damages;
- 22 d. Omitting, suppressing, and concealing the material fact that it did not
23 reasonably or adequately secure Plaintiff’s and Class Members’
24 personal information; and
- 25 e. Omitting, suppressing, and concealing the material fact that it did not
26 comply with common law and statutory duties pertaining to the security
27 and privacy of Plaintiff’s and Class Members’ personal information.

28 221. Defendants have engaged in “unlawful” business practices by violating
multiple laws, including the FTC Act, 15 U.S.C. § 45 and California common law.

1 222. Defendant’s unlawful, unfair, and deceptive acts and practices include:

- 2 a. Failing to implement and maintain reasonable security and privacy
3 measures to protect Plaintiff’s and Class Members’ personal
4 information, which was a direct and proximate cause of the Data
5 Breach;
- 6 b. Failing to identify foreseeable security and privacy risks, remediate
7 identified security and privacy risks, which was a direct and proximate
8 cause of the Data Breach;
- 9 c. Failing to comply with common law and statutory duties pertaining to
10 the security and privacy of Plaintiff’s and Class Members’ personal
11 information, including duties imposed by the FTC Act, 15 U.S.C. § 45,
12 which was a direct and proximate cause of the Data Breach;
- 13 d. Misrepresenting that it would protect the privacy and confidentiality of
14 Plaintiff’s and Class Members’ personal information, including by
15 implementing and maintaining reasonable security measures; and
- 16 e. Misrepresenting that it would comply with common law and statutory
17 duties pertaining to the security and privacy of Plaintiff’s and Class
18 Members’ personal information, including duties imposed by the FTC
19 Act, 15 U.S.C. § 45.

20 223. Defendants’ representations and omissions were material because they
21 were likely to deceive reasonable consumers about the adequacy of Defendants’ data
22 security and ability to protect the confidentiality of consumers’ personal information.

23 224. As a direct and proximate result of Defendants’ unfair and unlawful
24 acts and practices, Plaintiff and Class Members’ were injured and lost money or
25 property, which would not have occurred but for the unfair and deceptive acts,
26 practices, and omissions alleged herein, time and expenses related to monitoring
27 their financial accounts for fraudulent activity, an increased, imminent risk of fraud
28 and identity theft, and loss of value of their personal information.

1 225. Defendants' violations were, and are, willful, deceptive, unfair, and
2 unconscionable.

3 226. Plaintiff and Class Members would not have purchased products from
4 Defendants, or would have paid less for them, had they known that Defendants failed
5 to employ Plaintiff and Class Members have lost money and property as a result of
6 Defendants' conduct in violation of the UCL, as stated herein and above.

7 227. By deceptively storing, collecting, and disclosing their personal
8 information, Defendants have taken money or property from Plaintiff and Class
9 Members.

10 228. Defendants acted intentionally, knowingly, and maliciously to violate
11 California's Unfair Competition Law, and recklessly disregarded Plaintiff's and
12 Class Members' rights.

13 229. Plaintiff and Class Members seek all monetary and nonmonetary relief
14 allowed by law, including restitution of all profits stemming from Defendants' unfair
15 and unlawful business practices or use of their personal information; declaratory
16 relief; reasonable attorneys' fees and costs under California Code of Civil Procedure
17 § 1021.5; injunctive relief; and other appropriate equitable relief, including public
18 injunctive relief.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff Anastasia Weatherford, on behalf of herself and
21 Class Members, requests judgment against Defendants and that the Court grants
22 the following:

- 23 A. For an Order certifying the Class, and appointing Plaintiff and her
24 Counsel to represent the Class;
- 25 B. For equitable relief enjoining Defendants from engaging in the
26 wrongful conduct complained of herein pertaining to the misuse
27 and/or disclosure of the PII of Plaintiff and Class Members;
- 28 C. For injunctive relief requested by Plaintiff, including but not limited

1 to, injunctive and other equitable relief as is necessary to protect the
2 interests of Plaintiff and Class Members, including but not limited to
3 an order:

- 4 i. prohibiting Defendants from engaging in the wrongful and
5 unlawful acts described herein;
- 6 ii. requiring Defendants to protect, including through encryption, all
7 data collected through the course of its business in accordance with
8 all applicable regulations, industry standards, and federal, state or
9 local laws;
- 10 iii. requiring Defendants to delete, destroy, and purge the personal
11 identifying information of Plaintiff and Class Members unless
12 Defendants can provide to the Court reasonable justification for the
13 retention and use of such information when weighed against the
14 privacy interests of Plaintiff and Class Members;
- 15 iv. requiring Defendants to provide out-of-pocket expenses associated
16 with the prevention, detection, and recovery from identity theft, tax
17 fraud, and/or unauthorized use of their PII for Plaintiff's and Class
18 Members' respective lifetimes;
- 19 v. requiring Defendants to implement and maintain a comprehensive
20 Information Security Program designed to protect the
21 confidentiality and integrity of the PII of Plaintiff and Class
22 Members;
- 23 vi. prohibiting Defendants from maintaining the PII of Plaintiff and
24 Class Members on a cloud-based database;
- 25 vii. requiring Defendants to engage independent third-party security
26 auditors/penetration testers as well as internal security personnel to
27 conduct testing, including simulated attacks, penetration tests, and
28 audits on Defendants' systems on a periodic basis, and ordering

1 Defendants to promptly correct any problems or issues detected by
2 such third-party security auditors;

3 viii. requiring Defendants to engage independent third-party security
4 auditors and internal personnel to run automated security
5 monitoring;

6 ix. requiring Defendants to audit, test, and train its security personnel
7 regarding any new or modified procedures;

8 x. requiring Defendants to segment data by, among other things,
9 creating firewalls and controls so that if one area of Defendants'
10 network is compromised, hackers cannot gain access to portions of
11 Defendants' systems;

12 xi. requiring Defendants to conduct regular database scanning and
13 securing checks;

14 xii. requiring Defendants to establish an information security training
15 program that includes at least annual information security training
16 for all employees, with additional training to be provided as
17 appropriate based upon the employees' respective responsibilities
18 with handling personal identifying information, as well as
19 protecting the personal identifying information of Plaintiff and
20 Class Members;

21 xiii. requiring Defendants to routinely and continually conduct internal
22 training and education, and on an annual basis to inform internal
23 security personnel how to identify and contain a breach when it
24 occurs and what to do in response to a breach;

25 xiv. requiring Defendants to implement a system of tests to assess its
26 respective employees' knowledge of the education programs
27 discussed in the preceding subparagraphs, as well as randomly and
28 periodically testing employees' compliance with Defendants'

1 policies, programs, and systems for protecting personal identifying
2 information;

3 xv. requiring Defendants to implement, maintain, regularly review,
4 and revise as necessary a threat management program designed to
5 appropriately monitor Defendants' information networks for
6 threats, both internal and external, and assess whether monitoring
7 tools are appropriately configured, tested, and updated;

8 xvi. requiring Defendants to meaningfully educate all Class Members
9 about the threats that they face as a result of the loss of their
10 confidential personal identifying information to third parties, as
11 well as the steps affected individuals must take to protect herself;

12 xvii. requiring Defendants to implement logging and monitoring
13 programs sufficient to track traffic to and from Defendants'
14 servers; and

15 xviii. for a period of 10 years, appointing a qualified and independent
16 third party assessor to conduct a SOC 2 Type 2 attestation on an
17 annual basis to evaluate Defendants' compliance with the terms of
18 the Court's final judgment, to provide such report to the Court and
19 to counsel for the class, and to report any deficiencies with
20 compliance of the Court's final judgment;

21 D. For an award of damages, including actual, nominal, consequential,
22 and punitive damages, as allowed by law in an amount to be
23 determined;

24 E. For an award of attorneys' fees, costs, and litigation expenses, as
25 allowed by law;

26 F. For prejudgment interest on all amounts awarded; and

27 G. Such other and further relief as this Court may deem just and proper.

28 ///

1 Dated: November 13, 2024

Respectfully Submitted,

2 */s/ Daniel S. Robinson*

3 Daniel S. Robinson (SBN 244245)

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16 *The Proposed Class*

JURY TRIAL DEMANDED

Plaintiff Anastasia Weatherford hereby demands a trial by jury on all claims so triable.

Dated: November 13, 2024

Respectfully Submitted,

/s/ Daniel S. Robinson

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