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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PHILIPPE GROSS, individually
and on behalf of a class of similarly
situated persons

Plaintiff,

vs.

UNIVERSITY OF HAWAII'I; M.R.C.
GREENWOOD, in her official capacity
as President, University of Hawai'i;
HOWARD H. KARR, in his official
capacity as Chair, University of Hawai'i
Board of Regents; DAVID LASSNER,
in his official capacity as Vice President,
Information Technology/Chief
Information Officer, University of
Hawai'i

Defendants.

Case No. **CIV 10 00684** ACK LEK
(Civil Rights Action)
(Class Action)

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND MONETARY
DAMAGES; SUMMONS TO ANSWER
COMPLAINT**

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND MONETARY DAMAGES**

1. In October 2010, the University of Hawai'i was notified that 40,101 names, social security numbers, dates of birth, and other extremely detailed personal information for University of Hawai'i alumni was posted on an insecure website for almost a year by a retired faculty member who had been conducting research.

2. This is the fourth security breach by the University of Hawai'i in the last eighteen months. In June 2010, a hacker penetrated an unsecured server with names, social security numbers and credit card numbers for 53,821 UH students, guests, and alumni. In February 2010, 35 names and credit card numbers were made available on a public computer at the Pacific Aviation Training Center (PATC) at Honolulu Community College. In April 2009, the UH system breached another 15,487 names and social security numbers (hereafter "SSN") of students who applied for financial aid at Kapi'olani Community College, along with their parents' personal information, when a server became infected with malware.

3. This class action seeks an injunction: (a) forbidding UH from violating the constitutional rights of its students, faculty and guests, as protected by the right to privacy of the United States and Hawai'i Constitutions by the unauthorized released of private information, including but not limited to SSN and

(b) mandating that the University of Hawai'i take appropriate measures to ensure the protection of private information within its possession.

4. This class action complaint also seeks monetary damages to compensate class members for expenses including but not limited to enrollment in credit report monitoring program(s), time spent in monitoring credit reports, credit card and bank statements, and identity theft insurance.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1343 and 1367; 42 U.S.C. §§ 1983 & 1988 and HRS Chapter 662, the State Tort Liability Act. Plaintiff alleges violations of the right to privacy of the United States Constitution and the Constitution of the State of Hawai'i, and negligence.

6. Venue is proper under in the District of Hawai'i pursuant to 28 U.S.C. § 1391(b). All defendants reside and the claims arose within the District of Hawai'i.

PARTIES

PLAINTIFF

7. Plaintiff PHILIPPE GROSS (hereafter "Plaintiff Gross") is and has been a resident of the State of Hawai'i at all times pertinent hereto. Plaintiff Gross was a registered student at the University of Hawai'i Manoa at relevant

times between 1990 through 1998.

8. During this time he was required to provide the University of Hawai'i Manoa with private and personal information, including, but not limited to his SSN. He did so with the understanding that this information was to be treated as private and confidential by the University of Hawai'i Manoa, that the information would be securely stored, maintained, and would not be released to any third parties without his explicit permission and knowledge.

9. Between 1998 through 2009, Plaintiff at relevant times purchased a parking permit for his scooter from the University of Hawai'i Manoa parking office. During this time Plaintiff Gross was either a student at the University of Hawai'i Manoa or an employee with the University of Hawai'i Manoa.

10. Plaintiff Gross was required to provide the University of Hawai'i Manoa parking office with private and personal information, including, but not limited to his SSN. He did so with the understanding that this information was to be treated as private and confidential by the University of Hawai'i Manoa, that the information would be securely stored, maintained, and would not be released to any third parties without his explicit permission and knowledge.

11. In February of 2010, while applying for a position with the Department of Health for the State of Hawai'i, Plaintiff Gross was informed that

four (4) other individual names were discovered with his SSN listed as the SSN for those names. None of these names were known to or used by Plaintiff Gross as any type of alias. Upon information and belief, Plaintiff Gross was the victim of identity theft.

12. In August of 2010, Plaintiff Gross discovered that unauthorized use of his credit card had occurred in Georgia at nine (9) different gas stations between August 8 and August 11 for a total of \$742.20. Plaintiff Gross's credit card issuer canceled his current credit card and reissued him a new credit card with a new number causing delays in his automatic payment and causing him to have to pay late fees. Plaintiff Gross has never at any time relevant to this matter given his credit card to an unknown unauthorized third party to use.

13. Upon information and belief, Plaintiff Gross was the victim of credit card and identity theft.

14. Upon information and belief, the only way that Plaintiff Gross's SSN or credit card information could have been available to unknown, unauthorized parties was through the information security breaches of the University of Hawai'i information systems which contained his private and confidential information, including, but not limited to his SSN.

DEFENDANTS

15. Defendant UNIVERSITY OF HAWAI'I is a public educational

institution and constitutionally independent corporation created by the Constitution of the State of Hawai‘i, Article X, § 5.

16. Defendant M.R.C. GREENWOOD is President of the University of Hawai‘i and is sued in her official capacity.

17. Defendant HOWARD H. KARR, is Chair, University of Hawai‘i Board of Regents and is sued in his official capacity

18. Defendant DAVID LASSNER, is Vice President for Information Technology/ Chief Information Officer, University of Hawai‘i and is sued in his official capacity.

FACTUAL ALLEGATIONS

19. In 2006, Governor Linda Lingle signed into law Act 137, codified as HRS Chapter 487J, Relating to Social Security Numbers. The Legislature found that

identity theft is a serious crime, with lasting negative repercussions on the finances and life of the person whose identity was stolen. One of the tools most frequently used to steal a person's identity is the person's social security number. While it was originally introduced by the federal government to keep track of payroll taxes, its use has spread so that it has virtually become a universal identifier. Security experts recommend, to the greatest extent possible, that people protect their social security number and use it only for its intended federal purposes.

The purpose of this Act is to minimize the abuses associated with the fraudulent use of a social security number by restricting its use as an identifier.

Act 137 (2006).

20. Act 137 prohibited the continued use of social security numbers except under limited circumstances and required government agencies, including the University of Hawai'i to "make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this chapter are complied with." HRS §487J-2(b)(11).

21. In November 2007, the University adopted Executive Policy E2.214 Security and Protection of Sensitive Information. In its Executive Policy statement, the University stated that it is

committed to handle all sensitive information carefully and responsibly. The first tenet of the University's philosophy is to limit the use of, storage of and access to sensitive information to situations where it is required for the operations of the institution. In such cases, the University must provide appropriate guidance and controls to protect them information it uses in its pursuit of teaching, learning, research, service and administration.

Id. § II.

22. The University also declared that "sensitive information" (including social security numbers and credit card numbers) was supposed to be "subject to protection from public access or inappropriate disclosure." Id. § III (b).

23. With respect to social security numbers in particular, the University stated that its policy was that a “ Social Security Number (SSN) may not be used as an identifier in any new University information system, and its use as an identifier shall be phased out in all existing systems.” Id. § IV (emphasis added).

24. The University policy also stated that

Violators may also be subject to applicable civil and/or criminal penalties.

Id. § XII(b).

25. In December 2007, the Auditor, State of Hawai‘i, issued an Identity Theft Task Force Report to the Governor and Legislature, State of Hawai‘i on the Hawai‘i Identity Theft Study.

26. In the Report, the Task Force stated that “agencies must act, with a sense of urgency, to secure their records, to institute basic security policies, and to reduce collection of personal information to only that which is necessary. An agency that collects and maintains personal information must accept that the use of this information comes with a responsibility to safeguard, not as an afterthought, but as a priority.” Id., Introduction.

27. The Task Force Report contained several recommendations, including reducing the use of social security numbers and reducing the amount of personal information contained in agency records. Id.

28. Among the Task Force findings was that across the United States “[n]early half of the breaches in 2006 and 2007 involved universities and state and local government.” *Id.*, Chair’s Message.

29. The Task Force noted that the University of Hawai‘i had between 500,000 and 1 million records containing personal information. *Id.* at 85.

CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action on behalf of themselves and on behalf of a class of all those similarly situated pursuant to rule 23(a) and (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure. The proposed class consists of:

All persons whose confidential information was released or made available by the University of Hawai‘i during the privacy breaches of April 2009, February 2010, June 2010 and October 2010.

31. Membership of the Class is so numerous that joinder of all members is impracticable. There are over 100,000 putative class members.

32. Common questions of law and fact exist, including whether the Defendants violated the constitutional rights of the Class.

33. Plaintiff’s claims are typical of the claims of the other members of the class, in that they have had their constitutional right to privacy violated.

34. Plaintiff will fairly and adequately represent and protect the interests of the class. The interests of Plaintiff are coincident with, and not

antagonistic to, those of the Class. Therefore, Plaintiff has no conflict of interest with the Class. In addition, Plaintiff is represented by counsel who are experienced and competent in the prosecution of class action litigation.

35. Class requirements under FRCP 23(b)(1) are met because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the party opposing the class and would lead to repetitious trials of the numerous common questions of facts and law.

36. Class requirements under FRCP 23(b)(2) are met because the party opposing the Class (Defendants herein) have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole. Defendants has acted (by violating their constitutional rights to privacy) and refused to act (by failing to take adequate measures to protect class members' privacy interests) on grounds generally applicable to the Class.

37. Class requirements under FRCP 23(b)(3) are met because the questions of law and fact common to the members of the Class are important and predominate over any questions affecting only individual members regarding:

- a. The legal obligations of Defendants;
- b. The knowledge and conduct of the Defendants;

c. Damages to Class Members.

38. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would engender. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of the controversy.

39. The disposition of Plaintiff's claims in a class action will benefit both the parties and the Court, because Plaintiffs' claims are similar to those of the proposed class. The monetary value of individual claims are miniscule in relation to the costs of an individual suit. A class action is the only proceeding in which class members can, as a practical matter, recover.

40. Plaintiff and the members of the class have suffered irreparable harm and damages as a result of the Defendants' wrongful conduct as alleged herein. Absent a class action, Plaintiffs and the members of the class will continue to suffer losses, thereby allowing these violations of law to proceed without remedy.

CAUSES OF ACTION

CAUSE OF ACTION I

**VIOLATION OF THE RIGHT TO PRIVACY OF DUE PROCESS CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(PURSUANT TO 42 USC § 1983)**

41. Plaintiff realleges all of the above allegations

42. Defendants' actions violate the right to privacy of the due process clause of the Fourteenth Amendment to the United States Constitution.

43. Defendants' federal constitutional violations entitle the Class to injunctive and declaratory relief, and attorneys' fees and costs.

CAUSE OF ACTION II

**VIOLATION OF THE RIGHT TO PRIVACY OF ARTICLE I, § 6 OF THE CONSTITUTION
OF THE STATE OF HAWAI'I**

44. Plaintiff realleges all of the above allegations.

45. Defendants' actions violate the right to privacy of Article I, § 6 of the Constitution of the State of Hawai'i.

46. Defendants' state constitutional violations entitle the Class to injunctive and declaratory relief, and attorneys' fees and costs.

DECLATORY AND INJUNCTIVE RELIEF ALLEGATIONS

47. Plaintiff realleges all of the above allegations.

48. An actual and immediate controversy has arisen and now exists between Plaintiff and Defendants, which parties have genuine and opposing

interests and which interests are direct and substantial. Defendants have violated, and continue to violate, Plaintiff's constitutional rights to privacy. Plaintiff and the Class are entitled to declaratory and injunctive relief.

49. Plaintiff and the Class have no adequate remedy at law to stop the continuing constitutional violations. Unless enjoined by the Court, Defendants will continue to infringe on Plaintiff and the Class's constitutionally-protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiff and the class from continuing violations requires temporary, preliminary, and permanent injunctive relief.

**CAUSE OF ACTION III
NEGLIGENCE
STATE OF HAWAI'I TORT CLAIMS ACT, HRS CHAPTER 662**

50. Plaintiff realleges all of the above allegations.

51. Defendants' actions were negligent.

52. Defendants' negligence proximately caused Plaintiffs damage in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all persons similarly situated, respectfully requests that this Court:

1. Assume jurisdiction over this action;
2. Certify the class as requested;

3. Issue a declaratory judgment stating that Defendants have violated the right to privacy of the United States Constitution and the Constitution of the State of Hawai'i;

4. Grant all injunctive relief necessary to cease Defendants' violations of Plaintiffs' constitutional rights;

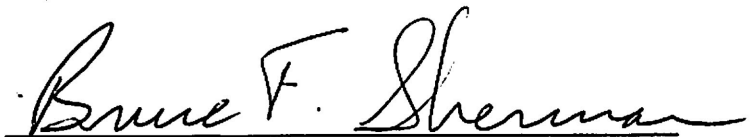
5. Grant such other declaratory and injunctive relief as may be appropriate;

6. Award Plaintiff reasonable attorneys' fees, reasonable expert witness fees, and other costs of action pursuant to 42 USC § 1988 and other applicable laws;

6. Grant monetary damages in an amount to be shown as trial and

7. Order such other relief at the Court deems just and proper.

DATED: Honolulu, Hawai'i, November 18, 2010.



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Technology/Chief Information Officer,
University of Hawai'i

Defendants.

Case No _____
(Civil Rights Action)
(Class Action)

SUMMONS

SUMMONS

TO: ALL ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY, Bruce F. Sherman, 1164 Bishop Street, Suite 124, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty ^{-one} (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled Court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, NOV 18 2010

SUE BEITIA
CLERK

/s/ Eileen Sakoda
DEPUTY CLERK

