

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

PATRICIA A. KAHLE	)	CIVIL ACTION NO. 1:05CV756
	)	
ON BEHALF OF HERSELF	)	JUDGE WATSON
AND OTHERS SIMILARLY SITUATED	)	
	)	
Plaintiff,	)	FIRST AMENDED
	)	CLASS ACTION COMPLAINT
vs.	)	AND JURY DEMAND
	)	
LITTON LOAN SERVICING, L.P.	)	
	)	
Defendant.	)	

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Plaintiff, Patricia A. Kahle, for her First Amended Class Action Complaint, on her behalf and on behalf of similarly situated individuals, states as follows:

**FIRST AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND**

1. This is a First Amended Class Action brought by Patricia A. Kahle on her behalf and on behalf of all other similarly situated persons (the “Class”) who have or had mortgage loans serviced by Litton Loan Servicing, L.P. (“Defendant”), and who had their financial records with information including their names, social security numbers, addresses of mortgaged properties and other records misappropriated and/or otherwise obtained by certain parties. As a result, Plaintiff and the Class will and have incurred financial loss, including the cost of obtaining credit theft protection services to assure that the stolen information is not being used without authorization.

**PARTIES, JURISDICTION, VENUE**

2. Plaintiff realleges Paragraph 1 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

3. Plaintiff Patricia A. Kahle (“Kahle”) is and at all times mentioned herein, a citizen and resident of the County of Hamilton, State of Ohio. She had her mortgage loan for her residence at 2895 Observatory Avenue in the County of Hamilton, State of Ohio, serviced by the Defendant. Plaintiff Kahle was notified that a third party stole her personal financial information maintained by Defendant. A copy of the notice is attached hereto marked Exhibit A.

4. Litton Loan Servicing, L.P., is a limited partnership, with corporate headquarters in Houston, Texas and with a servicing office located in Atlanta, Georgia.

5. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act (“CAFA”), codified at 28 U.S.C. §1332(d), 1453, because: (1) the putative class action consists of at least 100 proposed class members; (2) the citizenship of at least one putative class member is different from that of Defendant; and (3) the aggregate amount in controversy by the claims of the plaintiffs and the proposed class members exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

6. Venue is proper in this District pursuant to 28 U.S.C. §1391(a) because a substantial part of the events or omissions giving rise to the claim occurred here.

**GENERAL ALLEGATIONS**

7. Plaintiff realleges Paragraphs 1 through 6 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

8. When entering into a mortgage loan, individuals are required to disclose their name, social security number, residence address and other personal information (“Personal Information”).

9. Defendant’s business is servicing mortgage loans.

10. Individuals’ Personal Information as disclosed in their financial records was stored by the Defendant in an electronic data storage system.

11. Individuals’ Personal Information kept by the Defendant was stolen, misappropriated and/or otherwise obtained by third persons as a result of a break-in at Defendant’s Atlanta office in August, 2005 which resulted in the theft of computer hardware (the “Theft”).

12. Individuals had confidentiality and privacy rights as to their Personal Information and Defendant had a duty to maintain the confidentiality and privacy rights of the Personal Information such that the Personal Information would remain secure and be used only for Defendant’s legitimate business purpose.

13. Individuals’ Personal Information was stolen by third parties as a result of the Theft.

14. Defendant, upon information and belief, unreasonably delayed in notifying individuals of the Theft and in some instances, notices were not received until November, 2005.

15. On information and belief, thousands of individuals had their Personal Information stolen as a result of the Theft.

16. Individuals notified by the Defendant of the Theft were advised to monitor their credit, but Defendant offered no assistance or reimbursement for the cost or loss related to the credit monitoring and/or the identity theft.

17. It will be necessary for Individuals that have been victimized by the Theft to have credit monitoring for many years, at great expense to them, and as a direct result of the negligence of Defendant.

18. Individuals have and will continue to suffer emotional distress over the theft of their Personal Information and/or identity and the possibility that unauthorized persons will use their information to their detriment.

**ALLEGATIONS PERTAINING TO THE PLAINTIFF**

19. Plaintiff realleges Paragraphs 1 through 18 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

20. When entering into the Plaintiff's mortgage loan with The Provident Bank ("Provident") for her residence, Plaintiff was required to disclose her name, social security number, residence address and other personal information ("Plaintiff's Personal Information").

21. Defendant's business is servicing mortgage loans and Defendant subsequently acquired certain of Provident's loan servicing business from Provident including the servicing of Plaintiff's mortgage loans with Provident.

22. Plaintiff's Personal Information as disclosed on her financial records was stored by the Defendant in an electronic data storage system.

23. As part of the Defendant's acquisition, Plaintiff's Personal Information was transferred to Defendant.

24. Plaintiff had confidentiality and privacy rights in regards to her Personal Information and Defendant had a duty to maintain the confidentiality and privacy rights of Plaintiff's Personal Information and assure that Plaintiff's Personal Information would remain secure and be used only for Defendant's legitimate business purposes.

25. Without Plaintiff's knowledge or consent, Plaintiff's Personal Information kept by the Defendant was stolen, misappropriated and/or otherwise obtained by third persons as a result of a break-in at Defendant's Atlanta office in August, 2005 which resulted in the Theft.

26. Defendant unreasonably delayed notifying the Plaintiff of the Theft.

27. Upon information and belief, hundreds of individuals who had their Personal Information stolen as a result of the Theft were residents of Ohio.

28. Plaintiff was notified by the Defendant of the Theft and were advised to obtain credit monitoring, but Defendant offered no assistance or reimbursement for the cost or loss related to the credit monitoring and/or the identity theft.

29. It will be necessary for Plaintiff to have credit monitoring for many years, at great expense to Plaintiff and as a direct result of the negligence of Defendant.

30. Plaintiff has and will continue to suffer emotional distress over the theft of her identity and the possibility that unauthorized persons will use her information to her detriment.

#### **CLASS ALLEGATIONS**

31. Plaintiff realleges Paragraphs 1 through 30 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

32. Plaintiff also brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a Class. The Class consists of:

All individuals who had their Personal Information stolen, misappropriated and/or otherwise obtained from the computer data storage systems of Defendant as a result of the Theft.

33. The Class is also hereby divided into a subclass:

All residents of the State of Ohio who had their Personal Information stolen, misappropriated and/or otherwise obtained

from the computer data storage systems of Defendant as a result of the Theft (the "Subclass").

34. Excluded from the Class are the Defendant, any person or other entity employed by, related to, or affiliated with Defendant, the judge assigned to this case and his or her staff, and counsel of record for Plaintiff and Defendant.

35. Plaintiff is a member of the Class she seeks to represent and a member of the Subclass.

36. On information and belief, the Class and the Subclass are each believed to include hundreds of persons whose Personal Information was stolen as a result of the Theft. As a result, joinder of all Class members in a single action is impracticable.

37. There are important questions of law or fact common to the entire Class and the Subclass, including, but not limited to:

- a. Whether Defendant was negligent in its storage, retention, dissemination, and protection of Plaintiff's Personal Information and the Personal Information of the Class and the Subclass;
- b. Whether Defendant systematically, intentionally and wrongfully failed to protect Plaintiff's Personal Information and members of the Class and the Subclass and their Personal Information;
- c. Whether Defendant failed to adequately protect the privacy of the Plaintiff and the members of the Class and the Subclass;
- d. Whether Defendant breached its duty of confidentiality by failing to adequately protect the Plaintiff's Personal Information and the Personal Information of the members of the Class and the Subclass;

- e. Whether Defendant wrongfully put its own interests ahead of the interests of the members of the Class and the Subclass;
- f. Whether Defendant defrauded Plaintiff and members of the Class and the Subclass;
- g. Whether Defendant violated the Ohio Consumer Sales Practice Act;
- h. Whether Defendant violated the Unauthorized Use of Computer Act.

38. The important questions common to the members of the Class and the Subclass, including those identified in the previous paragraph, predominate over any questions unique to individual members of the Class and the Subclass.

39. The claims of Plaintiff are typical of the claims of other members of the Class and the Subclass. Like all members of the Class and the Subclass, Plaintiff was entitled to have her Personal Information protected by Defendant.

40. There are no conflicts between the interests of Plaintiff and those of the Class and the Subclass, and on information and belief, there are no defenses unique to any of them.

41. Plaintiff will fairly and adequately assert and protect the interests of the Class and the Subclass in that:

- a. Plaintiff is represented by experienced and able class action counsel;
- b. Plaintiff has no conflicts of interest with the other members of the Class and the Subclass; and
- c. Defendant has acted or refused to act on grounds generally applicable to the Class and the Subclass thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class and the Subclass as a whole.

42. A class action is superior to the other available methods for the fair and efficient adjudication of the controversy, in that:

- a. The Class and the Subclass are not so large in size that there would be any difficulty in managing them;
- b. The prosecution of separate actions by individual Class and Subclass members would create a risk of inconsistent or varying adjudications and incompatible standards of conduct;
- c. Many members of the Class and the Subclass may be unaware of the existence of their claims without the notice provided by a class action;
- d. Given the complexities of the issues and expenses of litigation, the claims of many or most individual members of the Class and the Subclass may be too small, as a practical matter, to justify separate actions against the Defendant;
- e. On the other hand, the claims of the individual members of the Class and the Subclass are not so small that a class action would be unjustified in light of its expense and effort;
- f. The Class and the Subclass are readily identifiable and Defendant can specify by computer records the name and address of all members of the Class and the Subclass.

43. A class action will conserve administrative and judicial resources by avoiding unnecessary multiplication of claims and litigation.

**CAUSES OF ACTION**

**COUNT I: NEGLIGENCE**

44. Plaintiff realleges Paragraphs 1 through 43 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

45. Defendant had a duty to Plaintiff and the members of the Class and the Subclass to protect and secure the confidentiality of the Personal Information.

46. Defendant failed to exercise reasonable care to prevent the stealing, misappropriating, and/or other obtaining Plaintiff's and members of the Class's and the Subclass's Personal Information by third parties.

47. Defendant failed to exercise reasonable and ordinary care in safeguarding the Plaintiff's and members of the Class's and the Subclass's Personal Information, including but not limited to by failing to encrypt the Personal Information.

48. Defendant failed to exercise reasonable and ordinary care in implementing security measures which would have prevented the theft of the Personal Information.

49. Defendant failed to exercise ordinary and reasonable care in promptly notifying the Plaintiff and members of the Class and the Subclass of the Theft.

50. Defendant failed to exercise ordinary and reasonable care in promptly providing credit monitoring to the Plaintiff and the members of the Class and the Subclass.

51. As a result of these and other acts and omissions, Defendant breached its duties to the Plaintiff, the Class and the Subclass, as a direct and proximate result of this negligence Plaintiff and the members of the Class and the Subclass have and will continue to incur emotional distress, cost of credit monitoring and identity theft.

**COUNT II: INVASION OF PRIVACY**

52. Plaintiff realleges Paragraphs 1 through 51 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

53. Plaintiff and members of the Class and the Subclass had privacy rights related to their Personal Information, and Defendant had a duty to protect those privacy rights and assure that the Personal Information would be secure with Defendant and would be used only for Defendant's legitimate business purposes. The Personal Information in Defendant's possession was private in nature, and not intended to be accessible to the public.

54. Instead, Plaintiff's and members of the Class's and the Subclass's Personal Information was stolen, misappropriated and/or obtained by third persons.

55. Defendant failed to properly protect the Personal Information, including but not limited to failing to encrypt such Personal Information such that the third parties could not misappropriate and effectively steal the Personal Information and/or commit identity theft.

56. As a result of these and other acts and omissions, Defendant breached its duties to protect the privacy of the Plaintiff, the Class and the Subclass, as a direct and proximate result Plaintiff and the members of the Class and the Subclass have and will continue to incur emotional distress, cost of credit monitoring and identity theft.

**COUNT III: BREACH OF DUTY OF CONFIDENTIALITY**

57. Plaintiff realleges Paragraphs 1 through 56 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

58. Defendant's business relationship with the Plaintiff and members of the Class and Subclass requires the Defendant to keep Plaintiff's and members of the Class's and the Subclass's Personal Information confidential.

59. Instead, the Plaintiff's and members of the Class's and the Subclass's Personal Information was communicated to third persons without Plaintiff's and members of the Class's and the Subclass's knowledge or consent, and Defendant failed to protect such Personal Information from Theft, including but not limited to encrypting such Personal Information to protect its confidentiality.

60. As a result of these and other acts and omissions, Defendant breached these duties to the Plaintiff, the Class and the Subclass.

61. As a result of these and other acts and omissions, Defendant breached its duties to the Plaintiff, the Class and the Subclass, as a direct and proximate result of this breach of duty Plaintiff and the members of the Class and the Subclass have and will continue to incur emotional distress, cost of credit monitoring and identity theft.

**COUNT IV: FRAUD**

62. Plaintiff realleges Paragraphs 1 through 61 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

63. The Plaintiff was induced to give Personal Information to secure a real estate mortgage loan and because she thought the Personal Information would remain secure. Plaintiff relied on the fact that her Personal Information would be private.

64. Instead, the information held by the Defendant was stolen, misappropriated and/or otherwise obtained by third parties and the Defendant failed to protect the Personal Information, including but not limited to by causing such Personal Information to be encrypted.

65. As a result of these and other acts and omissions, Defendant defrauded the Plaintiff, the Class and the Subclass, as a direct and proximate result of this fraud Plaintiff and the members of the Class and the Subclass have and will continue to incur emotional distress, cost of credit monitoring and identity theft.

**COUNT V: UNAUTHORIZED USE OF COMPUTER (ORC 2913.04)**

66. Plaintiff realleges Paragraphs 1 through 65 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

67. Defendant, by and through its employees, agents and servants, allowed access to its data system, computer systems, and computer networks to obtain the Personal Information of Plaintiff, the Class and the Subclass for non-business related purposes and without the knowledge or consent of Plaintiff, the Class or the Subclass in violation of ORC §2913.04.

68. As a direct and proximate result of this violation, Plaintiff and the members of the Class and Subclass have and will continue to incur emotional distress, cost of credit monitoring and identity theft.

**COUNT VI: CONSUMER SALES PRACTICE ACT (ORC 1345)**

69. Plaintiff realleges Paragraphs 1 through 68 of this First Amended Class Action Complaint and incorporates by reference herein as if fully rewritten.

70. Defendant provided loan servicing to the consumer class with claims that the private information solicited for purposes of the loan would remain secure.

71. Defendant allowed or permitted, by and through its agents, employees, and/or servants, access to its computerized data base, which is not open to the public allowing a third party access to this private information of the Plaintiff, the Class and the Subclass.

72. The foregoing acts and conduct of Defendant are deceptive in that it represented to the consumer class that such information would remain secure and/or that it had the technology or policies to secure such information when Defendant did not have such security measures, including but not limited to the failure to encrypt such information in the event that the information would fall into the hands of third parties in violation of Ohio Revised Code 1345.02.

73. Such practice is deceptive and unconscionable in providing the Plaintiff and the members of the Class and the Subclass with a false sense of security that the private data is secure and would remain secure.

74. As a direct and proximate result of Defendant's conduct, Plaintiff and the members of the Class and the Subclass have and will continue to incur emotional distress, cost of credit monitoring and identity theft.

#### **RELIEF SOUGHT**

WHEREFORE, Plaintiff and members of the Class and the Subclass respectfully request that this Court grant the following relief the Defendant:

1) That this action may be maintained as a class action under Rule 23(a) and (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure, and that notice to the Class and the Subclass be provided in compliance with Fed. R. Civ. P. 23(c)(3), and appointing Plaintiff as the representatives of the Class and the Subclass and Plaintiff's counsel as counsel for the Class and the Subclass;

2) Ordering Defendant to establish a credit monitoring program, at Defendant's expense, to ensure timely detection of any and all persons who attempt to use Plaintiff's and members of the Class's and the Subclass's Personal Information as a result of the careless and reckless conduct of Defendant;

3) Ordering Defendant to establish new security measures, policies, and procedures designed to protect the unauthorized disclosure of Personal Information of the Plaintiff and members of the Class and the Subclass;

4) Ordering that a Special Master be appointed to ensure that Defendant adequately enforce the above policy and procedures;

5) Awarding Plaintiff and members of the Class and the Subclass compensatory, and punitive damages, and restitution, in an amount to be proven at trial,

6) Awarding the Class and Subclass their costs and expenses in this litigation, including, but not limited to, expert fees and reasonable attorneys' fees.

7) That the Court award Plaintiff and members of the Class and the Subclass such other and further relief as may be necessary and appropriate.

### **JURY DEMAND**

Plaintiff demands a jury by trial, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable of right by a jury.

Respectfully Submitted,

/s/ Colleen M Hegge

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Trial Attorneys for Plaintiff and Plaintiff Class

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above Amended Complaint was served via ECF, this 13<sup>th</sup> day of January 2006 upon the following:

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/s/ Colleen M. Hegge  
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