

1 Scott Edward Cole, Esq. (S.B. #160744)
Clyde H. Charlton, Esq. (S.B. #127541)
2 Matthew R. Bainer, Esq. (S.B. #220972)
SCOTT COLE & ASSOCIATES, APC
3 1970 Broadway, Suite 950
Oakland, California 94612
4 Telephone: (510) 891-9800
Facsimile: (510) 891-7030
5 web: www.scalaw.com

6 John D. Moore, Esq. (S.B. #95655)
HENN, ETZEL & MOORE
7 1970 Broadway, Suite 950
Oakland, California 94612
8 Telephone: (510) 893-6300
Facsimile: (510) 433-1298

9
10 Attorneys for Representative Plaintiff
and the Plaintiff Classes

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14
15 MARK WITRIOL, individually, and on
behalf of all others similarly situated,)

16 Plaintiffs,)

17 vs.)

18 LEXISNEXIS GROUP, a corporation;)
REED ELSEVIER, INC., a corporation;)
19 and SEISINT, INC., a corporation.)

20 Defendants.)

Case No.: C05-02392

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF AND
RESTITUTION**

DEMAND FOR JURY TRIAL

21
22 Representative Plaintiff alleges as follows:

23
24 **PRELIMINARY STATEMENT**

25 1. Representative Plaintiff, on his own behalf and on behalf of those persons similarly
26 situated, brings this class action against Defendants LexisNexis Group, Reed Elsevier, Inc., and
27 Seisint, Inc. (hereinafter collectively referred to as "Defendants"), seeking compensatory and
28 punitive damages due to Defendants' negligent conduct and their systematic and willful violation

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9800

1 of. *inter alia*, the Fair Credit Reporting Act ("FCRA"). 15 U.S.C. §1681 et seq., the California
2 Consumer Reporting Agencies Act ("CCRAA"). California Civil Code §1785.1 et seq. and the
3 California Investigative Consumer Reporting Agencies Act ("ICRAA"). California Civil Code
4 §1786 et seq. This class action also seeks to redress Defendants' unlawful invasion of the
5 constitutional, common law and statutory privacy rights of the Representative Plaintiff and Class
6 Members under state and federal law, and seeks restitution and injunctive relief pursuant to the
7 FCRA, CCRAA and California Business and Professions Code §§17200 et seq.

8 2. Representative Plaintiff brings this action on behalf of himself and all other persons
9 similarly situated (hereinafter referred to as the "Class Members," the "Plaintiff Classes" and/or,
10 more specifically, the "National Class" and/or the "California Class") who have had their names,
11 addresses, social security numbers, credit information and/or other personal identifying information
12 disclosed by Defendants to unauthorized third parties, at any time since June 13, 2003.

13 3. Defendants are engaged in the business of compiling and selling personal information
14 about consumers to third parties and of procuring consumer credit reports for the purpose of
15 reselling the reports, or information contained therein, for profit. Defendants possess databases
16 containing private and sensitive credit, financial and other confidential information of millions of
17 individuals nationwide. Defendants have failed to maintain the confidentiality of such information
18 and have unlawfully sold, disclosed and/or distributed the confidential personal information of at
19 least 310,000 individuals to unauthorized persons and/or entities. Defendants' records reveal that
20 at least 64,145 of these individuals reside within the State of California. Representative Plaintiff and
21 the Class Members seek to recover statutory, punitive and other damages arising from Defendants'
22 unlawful conduct, disgorgement of all unjust enrichment, an injunction against Defendants' unlawful
23 conduct, and reasonable attorneys' fees and costs of suit.

24
25 **JURISDICTION AND VENUE**

26 4. This Court has general jurisdiction of this action pursuant to the provisions of the
27 Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681p, federal question jurisdiction under 28
28 U.S.C. §1331 and diversity jurisdiction under 28 U.S.C. §1332. This Court also has supplemental

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 THE WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 jurisdiction to consider claims arising under California state law pursuant to 28 U.S.C. §1367.

2 5. Venue as to Defendants is proper in this Judicial District pursuant to 15 U.S.C.
3 §1681p and 28 U.S.C. §1391. Defendants reside in this District within the meaning of 28 U.S.C.
4 § 1391(b) and (c). and they transact business. have agents. and otherwise have sufficient contacts
5 within this District to subject them to personal jurisdiction herein.

6
7 **PLAINTIFFS**

8 6. Representative Plaintiff Mark Witriol is a natural person who resides in Alameda
9 County. California and is a "consumer" as defined and protected by the FCRA and the CCRAA.

10 7. Representative Plaintiff's personal identifying information is included within
11 Defendants' databases.

12 8. Defendants have sold. disclosed and/or disseminated Representative Plaintiff's
13 private credit. financial and/or other personal information. without his authorization or consent. in
14 violation of the FCRA. the CCRAA and other laws and statutes.

15 9. As used throughout this Complaint. the terms "Class Members" and/or "Plaintiff
16 Classes" refer to the named plaintiff herein as well as each and every person eligible for membership
17 in the Plaintiff Classes. as further described and defined below.

18 10. At all times relevant herein. the Representative Plaintiff was. and now is. a person
19 within each of the Classes of persons further described and defined herein.

20
21 **DEFENDANTS**

22 11. At all times relevant herein. Defendant LexisNexis Group is/was a corporation or
23 other business entity. duly licensed. located and doing business in. but not limited to. the County of
24 Alameda. State of California and other counties throughout the United States. At all times relevant
25 herein. this Defendant has been a consumer credit reporting agency and an investigative consumer
26 reporting agency in the business of collecting. selling. and distributing consumer information.

27 12. At all times relevant herein. Defendant Reed Elsevier. Inc. is/was a corporation or
28 other business entity. duly licensed. located and doing business in. the County of Alameda. State of

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 California and other counties throughout the United States. At all times relevant herein, this
2 Defendant has been a consumer credit reporting agency and an investigative consumer reporting
3 agency in the business of collecting, selling and distributing consumer information.

4 13. At all times relevant herein, Defendant Seisint, Inc. is/was a corporation or other
5 business entity, duly licensed, located and doing business in, but not limited to, the County of
6 Alameda, State of California and other counties throughout the United States. At all times relevant
7 herein, this Defendant has been a consumer credit reporting agency and an investigative consumer
8 reporting agency in the business of collecting, selling, and distributing consumer information.

9
10 **CLASS ACTION ALLEGATIONS**

11 14. Representative Plaintiff brings this action individually and as a class action on behalf
12 of all persons similarly situated and proximately damaged by Defendants' unlawful conduct,
13 including, but not necessarily limited to, the following Plaintiff Classes:

14 **National Class:**

15 All persons residing within the United States whose names,
16 addresses, social security numbers, consumer credit reports and/or
17 other personal identifying information were disclosed by Defendants
18 and/or their agents, affiliates and/or subsidiaries to unauthorized
19 third parties, at any time since June 13, 2003.

20 **California Class:**

21 All persons residing within the State of California whose names,
22 addresses, social security numbers, consumer credit reports and/or
23 other personal identifying information were disclosed by Defendants
24 and/or their agents, affiliates and/or subsidiaries to unauthorized
25 third parties, at any time since June 13, 2003.

26 15. Defendants, their officers and directors are excluded from each of the Classes.

27 16. This action has been brought and may properly be maintained as a class action under
28 FRCP, Rule 23 and 15 U.S.C. § 1681p because there is a well-defined community of interest in the
litigation and the proposed Classes are easily ascertainable.

a. **Numerosity:** A class action is the only available method for the fair and
efficient adjudication of this controversy. The members of the class are so
numerous that joinder of all members is impractical, if not impossible.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-4800

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insofar as Representative Plaintiff is informed and believes and, on that basis, alleges that the total number of Class Members is at least 310,000 individuals. Membership in the Plaintiff Classes will be determined upon analysis of records maintained by Defendants.

b. Commonality: The Representative Plaintiff and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, thereby making a class action superior to other available methods for the fair and efficient adjudication of the controversy. Consequently, class certification is proper under FRCP, Rule 23 (a) and (b). These common questions include, but are not limited to:

1. whether Defendants violated and/or failed to comply with the FCRA and the CCRAA;
2. whether Defendants' violations of and/or noncompliance with the FCRA and th CCRAA were willful;
3. whether Defendants' violations of and/or noncompliance with the FCRA and the CCRAA were knowing, intentional or reckless acts committed with a conscious disregard of the rights of Representative Plaintiff and the Class Members;
4. whether Defendants' violations of and/or noncompliance with the FCRA and th CCRAA were negligent;
5. whether, as a result of Defendants' violation of and/or noncompliance with the FCRA and the CCRAA, Representative Plaintiff and the Plaintiff Classes are entitled to statutory damages and/or attorneys' fees;
6. whether, as a result of Defendants' violation of and/or noncompliance with the FCRA and the CCRAA, Representative Plaintiff and the Plaintiff Classes are entitled to nominal damages;
7. whether, as a result of Defendants' violation of and/or noncompliance with the FCRA and the CCRAA, Representative Plaintiff and the Plaintiff Classes are entitled to exemplary and/or punitive damages;
8. whether, as a result of Defendants' violation of and/or noncompliance with the FCRA and the CCRAA, Representative Plaintiff and the Plaintiff Classes are entitled to injunctive relief; and
9. whether Representative Plaintiff and the Plaintiff Classes are entitled to restitution of all amounts of Defendants' unjust enrichment.

c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Plaintiff Classes. The Representative Plaintiff and all members of the Plaintiff Classes sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of state and federal law, as alleged herein.

d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

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and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests. Moreover, the Representative Plaintiff is informed and believes, and based thereon alleges, that Defendants have acted in a manner generally applicable to all claims, thereby making appropriate injunctive and monetary relief for all members of each class. Consequently, class certification is proper under FRCP, Rule 23(b).

e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Classes, in that the Representative Plaintiff's claims are typical of those of the Plaintiff Classes and the Representative Plaintiff has the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to the vigorous prosecution of this case and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Plaintiff Classes as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

17. Defendants are in the business of assembling, evaluating, selling and distributing consumer credit information and other personal and confidential consumer information, furnishing consumer credit reports and other private consumer information to third parties, for profit.

18. Defendants possess and maintain computer databases of consumer identity and credit information for use in generating credit/background reports and in verifying information supplied by individuals as part of business transactions, such as credit, insurance, employment or housing applications. These databases include the credit activity and personal data of millions of individual consumers in the United States. Defendants procure the information contained within their databases from other entities such as mortgage companies, banks, consumer credit reporting agencies and governmental agencies.

19. Defendants furnish consumer reports and other personal information to third parties and, in so doing, communicate information relating to consumers' creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics and/or mode of living,

1 Defendants know or reasonably should know that the information they disclose is obtained from
2 personal information maintained by private companies and/or government agencies. The
3 information is used or expected to be used by Defendants and third parties to serve as a factor in
4 establishing consumers' eligibility for personal, family or household credit, insurance, housing or
5 employment.

6 20. The information and reports that Defendants furnish to third parties constitute
7 "consumer reports" within the meaning of the FCRA, 15 U.S.C. §1681a(d), "consumer credit
8 reports" within the meaning of the CCRAA, California Civil Code §1785.3(c), and "investigative
9 consumer reports" within the meaning of the ICRAA, California Civil Code §1786.2(c).

10 21. Defendants furnish these consumer reports to their business customers, in interstate
11 commerce, for monetary fees or dues. Moreover, each of the Defendants is a "consumer reporting
12 agency" within the meaning of the FCRA, 15 U.S.C. §1681a(f), a "consumer credit reporting
13 agency" within the meaning of the CCRAA, California Civil Code §1785.3(d) and an "investigative
14 consumer reporting agency" within the meaning of the ICRAA, California Civil Code §1786.2 (d).

15 22. Defendants may furnish a consumer report or file to any person or entity only for
16 limited permissible purposes, as narrowly defined in the FCRA, §15 U.S.C. 1681b and described
17 in the CCRAA, California Civil Code §1785.11 and the ICRAA, California Civil Code §1786.12.

18 23. Consumers have a strong expectation of privacy and a privacy interest in the personal
19 identifying information contained in the credit reports sold, disclosed and/or distributed by
20 Defendants and other credit reporting agencies, upon which their eligibility for consumer credit is
21 largely determined.

22 24. Defendants failed to establish reasonable security precautions or maintain reasonable
23 administrative procedures to preclude their selling, disclosing and/or distributing the Representative
24 Plaintiff's and the Plaintiff Classes' consumer reports and/or confidential information to
25 unauthorized third parties.

26 25. Defendants failed to require and ensure that their customers maintain reasonable
27 security precautions to preclude unauthorized third parties from gaining access to Defendants'
28 databases and procuring Representative Plaintiff's and the Class Members' private information.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 THE WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 26. During the relevant time period, Defendants have, without authorization or consent,
2 disclosed consumer reports and personal information relating to the Representative Plaintiff and the
3 Class Members to unauthorized third parties with no permissible purpose(s) for receiving and using
4 such information. Defendants have thereby violated federal and state statutes as described herein
5 and have further violated the privacy rights of the Representative Plaintiff and the Class Members,
6 who hold reasonable expectations that their credit information shall be maintained in a secure and
7 confidential manner.

8 27. Representative Plaintiff and members of the Plaintiff Classes have been injured and
9 damaged by the improper disclosure of their names, addresses, social security numbers, credit
10 reports and other private financial information. Defendants have unlawfully sold, disclosed and/or
11 distributed such consumer information to unauthorized third parties in violation of, among other
12 things, Plaintiff's and members of the Plaintiff Classes' privacy rights under the United States and
13 California Constitutions, their common law and statutory rights of privacy, the FCRA, the CCRAA,
14 the California Investigative Consumer Reporting Agencies Act (ICRAA) and the California
15 Information Practices Act of 1977 ("IPA"), as alleged herein.

16 28. Defendants knew or reasonably should have known that their consumer credit-based
17 products and the information contained therein constitute consumer reports within the meaning of
18 the FCRA, the CCRAA, ICRAA, and the IPA, and that those reports were not being used by the
19 third parties to which they were disclosed for permissible purposes under these statutes. Defendants
20 nevertheless disclosed such information in violation of those statutes and the privacy rights of the
21 Representative Plaintiff and the Class Members. Moreover, Defendants have acted willfully,
22 recklessly and/or in conscious disregard of the Representative Plaintiff's and the Class Members'
23 rights, and in so doing, have derived substantial income and profits from the unlawful disclosure of
24 this consumer information.

25 29. Defendants breached their duty to prevent the disclosure, by Defendants and/or their
26 customers, of the Representative Plaintiff's and the Class Members' confidential information to
27 unauthorized third persons.

28 30. Defendants knowingly and intentionally disclosed the Representative Plaintiff's and

1 the Class Members' consumer reports to unauthorized third parties, which persons and/or entities
2 did not have permissible purposes for receiving and/or using such information. Defendant knew or
3 reasonably should have known that this information was obtained from private information
4 maintained by state and/or federal agencies, among other sources. Law enforcement personnel
5 suspect that the motive behind such parties' unauthorized acquisition of credit reports and consumer
6 information from Defendants is identity theft, which constitutes a real and ongoing threat to
7 Representative Plaintiff and the Class Members. Identity theft severely damages the credit and
8 reputation of its victims. Defendants' knowing and intentional disclosure of private consumer
9 information was done in a systematic manner to generate revenue and profits for Defendants, at the
10 expense of Representative Plaintiff and the Plaintiff Classes, in conscious disregard of their rights.
11 Defendants have been unjustly enriched as a result of their unlawful conduct.

12 31. Defendants also willfully, recklessly, and/or in conscious disregard of the
13 Representative Plaintiff's and the Class Members' rights, failed to notify, in a timely manner, those
14 consumers whose credit reports and information were improperly disclosed. Defendants did not
15 begin to inform the affected individuals of the unlawful disclosure for several months after
16 Defendants' discovery of same. Defendants' belated notice was both incomplete and inadequate
17 under the law.

18
19 **FIRST CAUSE OF ACTION**
20 **(General Negligence)**
Plaintiff and All Class Members against Defendants

21 32. Representative Plaintiff incorporates in this cause of action each and every
22 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
23 herein.

24 33. As custodians of the Representative Plaintiff's and the Class Members' personal and
25 confidential information, which Defendants sell and/or disclose to their customers, for profit, in the
26 regular course of their business, Defendants owe a duty of care to the Representative Plaintiff and
27 the Class Members to prevent access to such information by unauthorized third parties.

28 34. Defendants breached their duty of care to Representative Plaintiff and the Class

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 Members by selling and/or disclosing the Representative Plaintiff's and the Class Members'
2 personal and confidential information to unauthorized third parties and/or allowing such
3 unauthorized third parties to improperly access Defendant's and/or their customers' databases and
4 retrieve such personal and confidential information.

5 35. Defendants' acts and/or omissions, as described herein, resulted in the disclosure of
6 the Representative Plaintiff's and the Class Members' private and confidential information to
7 unauthorized third parties, thereby actually and proximately causing the injuries and damages
8 suffered by the Representative Plaintiff and the Class Members.

9 36. The Representative Plaintiff and the Class Members have suffered injuries and
10 damages as the direct and proximate result of Defendants breach of their duty of care, including but
11 not limited to, mental and emotional distress and anxiety, costs associated with monitoring and
12 repairing credit impaired by the unauthorized release of private information, attorneys' fees, costs
13 of suit, and other injuries and damages according to proof at trial.

14 37. As a direct and proximate result of the conduct alleged herein, Representative
15 Plaintiff and the Class Members seek to recover their actual damages, including, but not limited to
16 all damages, of any nature, resulting from the disclosure of their personal information to
17 unauthorized third parties and/or their failure to prevent access by said third parties to such
18 information.

19
20 **SECOND CAUSE OF ACTION**
21 **(Willful Violation of The Fair Credit Reporting Act; 15 U.S.C. §§1681b, 1681n)**
22 **Plaintiff and National Class Members Against Defendants**

23 38. Representative Plaintiff incorporates in this cause of action each and every allegation
24 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

25 39. Defendants furnished consumer reports and other personal information regarding
26 Representative Plaintiff and National Class Members to unauthorized third parties by disclosing,
27 selling and/or distributing said consumer reports, information, products and services to unknown and
28 unauthorized persons and/or entities.

40. Defendants disclosed the foregoing consumer reports without any permissible

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 THE WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9800

1 purpose(s) therefor, as required under the FCRA, 15 U.S.C. §1681b.

2 41. Defendants willfully failed to comply with the FCRA by knowingly and intentionally
3 disclosing consumer reports and other personal identifying information to unauthorized third parties.
4 in conscious disregard of the Representative Plaintiff's and the National Class Members' rights
5 under the FCRA, 15 U.S.C. §1681n.

6 42. As a direct and proximate result of the conduct alleged herein, Representative
7 Plaintiff and the National Class Members seek to recover actual damages, including, but not limited
8 to all damages, of any nature, resulting from the unlawful disclosure of their credit reports and
9 personal information to unauthorized third parties. Representative Plaintiff also, or alternatively,
10 seeks statutory damages, penalties, and/or exemplary or punitive damages, as provided by statute
11 and as further set forth in the Prayer for Relief herein.

12
13 **THIRD CAUSE OF ACTION**
14 **(Negligent Noncompliance With FCRA, 15 U.S.C. §§1681b, 1681o)**
15 **Plaintiff and National Class Members Against Defendants**

16 43. Representative Plaintiff incorporates in this cause of action each and every allegation
17 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

18 44. Defendants provided consumer reports and information regarding Representative
19 Plaintiff and the National Class Members to unauthorized third parties by disclosing, selling and/or
20 distributing consumer reports, information, products and other similar services to unknown and
21 unauthorized persons or entities without any legitimate interest in or right to such data.

22 45. Defendants disclosed the foregoing consumer reports without any permissible
23 purpose(s) therefor, as required under the FCRA, 15 U.S.C. §1681b.

24 46. Defendants' disclosure of the foregoing consumer reports constitutes negligent
25 noncompliance with the FCRA under 15 U.S.C. §1681o in that Defendants failed to use ordinary
26 care to secure and maintain the privacy and confidentiality of the Representative Plaintiff's and the
27 Class Members' credit reports and personal information.

28 47. As a direct and proximate result of the conduct alleged herein, Representative
Plaintiff and the National Class Members seek to recover actual damages, including, but not limited

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 to all damages, of any nature, resulting from the unlawful disclosure of their credit reports and
2 personal information to unauthorized third parties. Representative Plaintiff also, or alternatively,
3 seeks statutory damages, penalties, and/or exemplary or punitive damages, as provided by statute
4 and as further set forth in the Prayer for Relief herein.

5
6 **FOURTH CAUSE OF ACTION**
7 **(Violation of the CCRAA, California Civil Code §§1785.11, 1785.14, 1785.19 and 1785.22)**
8 **Plaintiff and California Class Members Against Defendants**

9 48. Defendants violated the California Credit Reporting Agencies Act, including, *inter*
10 *alia*, §§1785.11, 1785.14, 1785.19 and 1785.22 thereof, by disclosing, selling and/or distributing
11 the Representative Plaintiff's and the California Class Members' credit, financial and other private
12 information to unauthorized third parties, thereby causing actual damages to Representative Plaintiff
13 and the California Class Members.

14 49. Defendants furnished the foregoing consumer credit reports and private information
15 to third parties under circumstances prohibited by Civil Code § 1785.11.

16 50. Defendants failed to maintain reasonable procedures designed to protect consumer
17 information and to avoid unlawful disclosure of same, in violation of Civil Code §§ 1785.14 and
18 1785.22.

19 51. Defendants failed to maintain the confidentiality of consumers' credit reports and
20 personal information by unlawfully disclosing such information to unauthorized third parties and,
21 in so doing, used the data received from other consumer credit reporting agencies in a manner
22 contrary to Defendants' agreements with them, in violation of Civil Code § 1785.19.

23 52. As a direct and proximate result of the conduct alleged herein, Representative
24 Plaintiff and the California Class Members seek to recover actual damages, including, but not
25 limited to all damages, of any nature, resulting from the unlawful disclosure of their credit reports
26 and personal information to unauthorized third parties. Representative Plaintiff also, or
27 alternatively, seeks statutory damages, penalties, and/or exemplary or punitive damages, as provided
28 by statute and as further set forth in the Prayer for Relief herein.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 THE WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9800

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FIFTH CAUSE OF ACTION
(Violation of the California ICRAA, California Civil Code §§1786.12 and 1786.20)
Plaintiff and California Class Members Against Defendants

53. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

54. Defendants, at all times relevant, collected consumer data on the Plaintiff and the California Class which included character, general reputation and medical information, personal characteristics, and mode of living. Defendants compiled and routinely supplied such investigative consumer reports and files to third parties, including insurance companies and employers, among others.

55. Defendants, in engaging in the unlawful activities complained of herein, violated the provisions of the California Investigative Consumer Reporting Agencies Act, including §§1786.12 and 1786.20 thereof, and thereby caused actual damage to the Representative Plaintiff and the California Class Members.

56. As a direct and proximate result of the conduct alleged herein, Representative Plaintiff and the California Class Members seek to recover actual damages, including, but not limited to all damages, of any nature, resulting from the unlawful disclosure of their credit reports and personal information to unauthorized third parties. Representative Plaintiff also, or alternatively, seeks statutory damages, penalties, and/or exemplary or punitive damages, as provided by statute and as further set forth in the Prayer for Relief herein.

SIXTH CAUSE OF ACTION
(Violation of the Information Practices Act, California Civil Code §1798.53)
Plaintiff and California Class Members Against Defendants

57. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

58. Representative Plaintiff and the California Class Members have legally protected privacy interests in their confidential credit, financial and other personal information and reasonable expectation of privacy in such information. This right to privacy, codified at California Civil Code

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 § 1798.53, vests citizens of the State of California, including Representative Plaintiff and the
2 California Class Members, with protection from the unlawful disclosure and/or use of such sensitive
3 information.

4 59. As alleged herein, Defendants violated Representative Plaintiff's and the California
5 Class Members' privacy rights and Civil Code § 1798.53 by intentionally selling, disclosing and
6 distributing their privileged financial, credit, and other confidential information, which Defendant
7 knew or reasonably should have known was obtained from personal information maintained by state
8 and/or federal agencies, to unauthorized third parties. Defendants intentionally disclosed Plaintiff's
9 and the California Class Members' personal information without their knowledge or consent. The
10 unauthorized sale, disclosure and distribution of such private data and information is offensive and
11 objectionable to a reasonable person of ordinary sensibilities.

12 60. As a result of Defendants' unlawful conduct, the privacy rights of the Representative
13 Plaintiff and the California Class Members have been violated, and Representative Plaintiff and
14 California Class Members have been injured and damaged as a result thereof.

15 61. Defendants' unlawful conduct as alleged herein was intentional, oppressive and/or
16 malicious, therefore Representative Plaintiff and the California Class Members are entitled to the
17 statutory damages set forth at Civil Code 1798.53, including exemplary damages, and all other
18 appropriate relief as further set forth in the Prayer for Relief herein.

19
20 **SEVENTH CAUSE OF ACTION**
21 **(Violation of California Business and Professions Code §§17200 et seq.)**
22 **Plaintiff and California Class Members Against Defendants**

23 62. Representative Plaintiff incorporates in this cause of action each and every
24 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
25 herein.

26 63. Defendants' unauthorized disclosure of the Representative Plaintiff's and the Class
27 Members' private information, their systematic violation of the FCRA, CCRAA, ICRAA and IPA,
28 as alleged herein, their unlawful invasion of Representative Plaintiff's and the California Class
Members' privacy rights and the other wrongful conduct alleged in this Complaint, reveal a pattern

1 and practice of unfair, unlawful and fraudulent business practices in violation of California Business
2 & Professions Code §17200 et seq.

3 64. Defendants' knowing failure to safeguard the Representative Plaintiff's and the Class
4 Members' personal and confidential information, and to adopt policies in accordance with and/or
5 to adhere to the fair credit reporting laws, all of which are binding upon and burdensome to
6 Defendant's competitors, engenders an unfair competitive advantage for Defendant, thereby
7 constituting an unfair business practice, as set forth in California Business & Professions Code §§
8 17200-17208.

9 65. Defendants have been unjustly enriched as a result of their unfair, unlawful and
10 fraudulent business acts and practices as alleged herein.

11 66. Representative Plaintiff and the California Class Members are entitled to an order
12 enjoining Defendants from engaging in the unfair, unlawful and fraudulent business practices
13 complained of herein under Business and Professions Code §§17200 et seq., and are also entitled
14 to restitution of all Defendants' unjust enrichment pursuant to California Business & Professions
15 Code §§17203 and 17204.

16
17 **RELIEF SOUGHT**

18 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the **Plaintiff**
19 **Classes**, prays for judgment and the following specific relief against **Defendants**, jointly and
20 severally, as follows:

- 21 1. An Order certifying the proposed Plaintiff Classes and/or any other appropriate
- 22 subclasses under FRCP, Rule 23;
- 23 2. An Order finding that Defendant's conduct in disclosing Representative Plaintiff's
- 24 and Class Members' personal information and/or failing to prevent unauthorized access to such
- 25 information was negligent;
- 26 3. An Order declaring that Defendants' sale, disclosure and/or dissemination of
- 27 consumer reports and personal information violated the FCRA, the CCRAA, the ICRAA and/or the
- 28 IPA;

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1690 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-0800

1 4. An award of actual damages resulting from Defendants' negligent conduct, in an
2 amount to be proven at trial;

3 5. An award of actual damages pursuant to the FCRA, 15 U.S.C. §1681n(1), of not less
4 than \$100 nor more than \$1,000 for each instance of Defendants' willful noncompliance with the
5 FCRA, in an amount to be proven at trial;

6 6. An award of actual damages pursuant to the CCRAA, California Civil Code
7 §1785.31(1) and (2)(A), in an amount to be proven at trial;

8 7. An award of punitive damages pursuant to the FCRA, 15 U.S.C. §1681n(2);

9 8. An award of punitive damages pursuant to the CCRAA, California Civil Code §
10 1785.31(2)(B), of not less than \$100 nor more than \$5,000 for each violation;

11 9. An award of punitive damages pursuant to the IPA, California Civil Code §1798.53,
12 of a minimum of \$2,500 per occurrence;

13 10. An award of actual and punitive damages pursuant to the ICRAA, California Civil
14 Code §1786.50, in an amount to be proven at trial;

15 11. An award of nominal damages under the FCRA, 15 U.S.C. §§ 1681n or 1681o, or as
16 otherwise permitted under state law, in an amount to be proven at trial;

17 12. An award of restitution in an amount to be proven at trial;

18 13. For all other Orders, findings and determinations identified and sought in this
19 Complaint;

20 14. For interest on the amount of any and all economic losses, at the prevailing legal rate;

21 15. For reasonable attorneys' fees and costs; and

22 16. For such other legal and/or equitable relief as the Court deems just and proper.

23

24 **JURY DEMAND**

25 Representative Plaintiff and the Plaintiff Classes hereby demand trial by jury on all issues
26 triable of right by jury.

27 ///

28 ///

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
1111 WORLD SAVINGS TOWER
1600 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9800

1 Dated: February 24, 2006

2 **SCOTT COLE & ASSOCIATES, APC**

3
4 By: /s/ Clyde H. Charlton

5 Scott Edward Cole. Esq.
6 Clyde H. Charlton. Esq.
7 Matthew R. Bainer. Esq.

8 Attorneys for the Representative Plaintiff
9 and the Plaintiff Classes

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11
12
13 SCOTT COLE & ASSOCIATES, APC
14 ATTORNEYS AT LAW
15 1111 WORLD SAVINGS TOWER
16 1690 BROADWAY, SUITE 950
17 OAKLAND, CA 94612
18 TEL: (510) 891-0800
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