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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

E-filing

6 Attorneys for Representative Plaintiffs
and the Plaintiff Class

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 **CRYSTAL GARCIA, ROY GARCIA,**
12 **individually, and on behalf of all others**
13 **similarly situated,**

C Case **06 3762**
CLASS ACTION **MHP**

13 Plaintiffs,
14 vs.
15 **UNIONBANCAL CORPORATION,**
16 **Defendant.**

COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION
Demand for Jury Trial

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

18 Representative Plaintiffs allege as follows:

20 **INTRODUCTION**

21 1. This class action complaint is brought by Representative Plaintiffs, individually and
22 on behalf of all others similarly situated who presently have or previously had checking, savings, or
23 other depository accounts with defendant UNIONBANCAL CORPORATION (hereinafter "Union
24 Bank of California", "Union Bank" or "Defendant"), and had their confidential personal and
25 financial information stolen, misappropriated and/or otherwise disclosed or mishandled in a manner
26 that led to its theft, misappropriation and/or disclosure, without authorization, by Defendant's
27 officers, agents, employees and/or representatives, resulting in financial loss, the need for credit
28 monitoring, and exposure to fraud, among other damages.

PLAINTIFF(S)

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2 6. Representative Plaintiffs are natural persons who are "consumer(s)," as defined and
3 protected by the FCRA and the CCRAA.

4 7. As used throughout this Complaint, the terms "Class Members" and/or "Plaintiff
5 Class" refer to the named plaintiffs herein as well as each and every person eligible for membership
6 in the Plaintiff Class, as further described and defined below.

7 8. At all times relevant herein, the Representative Plaintiffs were, and now are, persons
8 within the class of persons further described and defined herein.

9 9. At all times herein relevant, Class Members had checking, savings and/or other
10 depository accounts with defendant Union Bank of California. Class Members' confidential
11 personal and financial information is and was included within Defendant's databases and at
12 Defendant's financial centers and, as a result of the acts and omissions detailed herein, had their
13 private and confidential personal and financial information stolen, misappropriated and/or otherwise
14 disclosed or mishandled in a manner than led to its theft, misappropriation and/or disclosure, without
15 Class Members' authorization, through the conduct of Defendant's officers, agents, employees
16 and/or representatives, resulting in financial loss, the need for credit monitoring, and exposure to
17 fraud, among other damages.

18
19 **DEFENDANT(S)**

20 10. At all times relevant herein, defendant Union Bank of California is/was a corporation
21 or other business entity, duly licensed, located and doing business within, but not limited to, the
22 jurisdiction of the United States District Court for the Northern District of California. At all times
23 relevant herein, Defendant maintained its headquarters in San Francisco, California.

24 11. Defendant Union Bank of California is a commercial financial institution that, at all
25 times relevant herein, was and is in the business of providing account services to consumers and
26 businesses throughout the State of California and is and was engaged in the business of maintaining
27 nonpublic account holder information, including, but not limited to account holders' names,
28 addresses, telephone numbers, account numbers, types of accounts, account opening dates, account

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9899

1 balances, social security numbers and, occasionally, interest rates, for that purpose.

2 12. At all time periods relevant hereto, Defendant engaged in banking operations within
3 the State of California and directly solicited citizens thereof to open checking, savings and other
4 depository accounts with Defendant.

5 13. At all times relevant herein, Defendant has been a consumer credit reporting agency
6 and an investigative consumer reporting agency in the business of collecting, selling and distributing
7 consumer information which has been acquired from, *inter alia*, account holders and disclosed or
8 furnished to third parties through the existence of, *inter alia*, co-branding agreements and marketing
9 efforts of third parties pursuant to contractual agreements with Defendant.

10
11 **CLASS ACTION ALLEGATIONS**

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

15 All persons who have held checking, savings, or other depository
16 accounts with defendant Union Bank of California and, without
17 whose authorization, whose private and confidential personal and
18 financial information was stolen from and/or misappropriated or
19 otherwise disclosed by Defendant on or about April 2006.

20 15. Excluded from the class are Defendant, its officers, directors, affiliates, agents,
21 representatives, employees, subsidiaries, and predecessors in interest, and all officers or employees
22 of any such entity.

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

26 a. Numerosity: A class action is the only available method for the fair and
27 efficient adjudication of this controversy. The members of the class are so
28 numerous that joinder of all members is impractical, if not impossible, insofar
as Representative Plaintiffs are informed and believe and, on that basis,
allege that the total number of Class Members is in the thousands, if not tens
of thousands, of individuals. Membership in the Plaintiff Class will be
determined upon analysis of records maintained by Defendant.

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

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 900
OAKLAND, CA 94612
TEL: (510) 891-9900

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b. Commonality: The Representative Plaintiffs 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) the events and circumstances surrounding the alleged theft of Class Members' confidential personal and financial information from Defendant and/or an employee thereof;
- 2) whether Defendant maintained adequate internal security measures to protect its customers' confidential personal and financial information from theft and/or unauthorized disclosure to third parties;
- 3) whether Defendant timely notified all Class Members of the breach of their confidential personal and financial information;
- 4) whether Defendant made negligent and/or fraudulent misrepresentations of fact to Class Members;
- 5) whether Defendant was negligent in its storage, retention, dissemination, and protection of the confidential personal and financial information of Class Members;
- 6) whether Defendant's conduct violated privacy rights of Class Members;
- 7) whether Defendant violated and/or failed to comply with the FCRA, CCRAA and/or ICRAA;
- 8) whether Defendant's violations of and/or noncompliance with the FCRA, CCRAA and/or ICRAA were willful, knowing, intentional and/or reckless acts committed with a conscious disregard of the rights of Class Members;
- 9) whether Defendant's violations of and/or noncompliance with the FCRA, CCRAA and/or ICRAA were negligent;
- 10) whether, as a result of Defendant's violation of and/or noncompliance with the FCRA, CCRAA and/or ICRAA, Class Members are entitled to actual, statutory and/or punitive damages and/or attorneys' fees;
- 11) whether Class Members are entitled to injunctive relief; and
- 12) whether Class Members are entitled to restitution of all amounts of Defendant's unjust enrichment.

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

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (415) 891-9800

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d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense 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 Plaintiffs are informed and believe and, based thereon, allege that Defendant has 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 Plaintiffs in this class action are adequate representatives of the Plaintiff Class, in that the Representative Plaintiffs' claims are typical of those of the Plaintiff Class and the Representative Plaintiffs have the same interests in the litigation of this case as the Class Members. The Representative Plaintiffs are committed to the vigorous prosecution of this case and have retained competent counsel, experienced in litigation of this nature. The Representative Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the Plaintiff Class as a whole. The Representative Plaintiffs anticipate no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

17. At all times relevant hereto, defendant Union Bank of California maintained over 300 banking offices within the State of California, many of which are located within this judicial district.

18. As a full-service commercial bank, Defendant advertises its availability to and does provide a broad mix of financial services to businesses and individuals, including, but not limited to checking, savings, or other depository accounts. When Class Members opened their accounts with Defendant, Class Members were required to disclose personal identifying information such as name, social security number, date of birth, address and telephone number.

19. Among other services and functions, Defendant is 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.

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1 20. Defendant possesses and maintains computer databases of consumer identity and
2 credit information for use in generating credit/background reports and in verifying information
3 supplied by individuals as part of business transactions, such as credit, insurance, employment or
4 housing applications.

5 21. Defendant furnishes consumer reports and other personal information to third parties
6 and, in so doing, communicates information relating to consumers' creditworthiness, credit standing,
7 credit capacity, character, general reputation, personal characteristics and/or mode of living. The
8 information is used or expected to be used by Defendant and third parties to serve as a factor in
9 establishing consumers' eligibility for personal, family or household credit, insurance, housing or
10 employment. Defendant knows or reasonably should know that Class Members have an expectation
11 of privacy in the confidential personal and financial information they provide to Defendant.

12 22. The information and reports that Defendant maintains and discloses and/or furnishes
13 to third parties constitute "consumer reports" within the meaning of the FCRA (15 U.S.C.
14 §1681a[d]), "consumer credit reports," within the meaning of the CCRAA (California Civil Code
15 §1785.3[c]) and "investigative consumer reports," within the meaning of the ICRAA (California
16 Civil Code §1786.2[c]).

17 23. Defendant furnishes these consumer reports to, *inter alia*, other financial institutions
18 and in joint venture (e.g., co-branding, joint marketing) efforts, often in interstate commerce, for
19 Defendant's monetary gain. Moreover, Defendant is a "consumer reporting agency," within the
20 meaning of the FCRA (15 U.S.C. §1681a[f]), a "consumer credit reporting agency," within the
21 meaning of the CCRAA (California Civil Code §1785.3[d]) and an "investigative consumer
22 reporting agency," within the meaning of the ICRAA (California Civil Code §1786.2 [d]).

23 24. Defendant may furnish or disclose a consumer report or file to a person or entity only
24 for limited permissible purposes, as narrowly defined in the FCRA (15 U.S.C. §1681b), the CCRAA
25 (California Civil Code §1785.11) and the ICRAA (California Civil Code §1786.12).

26 25. At no time did Class Members authorize Defendant, or any of Defendant's officers,
27 agents, employees and/or representatives to disclose or permit the disclosure of Class Members'
28 confidential personal and financial information to any third party without prior notification.

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

1 26. Class Members had a reasonable expectation that their confidential personal and
2 financial information, as well as information regarding their banking accounts (e.g., account
3 numbers, type of accounts, account opening dates and balances and/or interest rates) would be stored
4 and maintained exclusively by Defendant, by and through its officers, agents, employees and/or
5 representatives, in such a manner as to protect the integrity, accuracy and confidentiality of said
6 information.

7 27. At all times relevant hereto, Defendant communicated to Class Members and the
8 public that the confidential personal and financial information provided to Defendant for the purpose
9 of opening and maintaining checking, savings and/or other depository accounts would remain secure
10 (with reasonable measures in place and strictly maintained in order to ensure that security) and would
11 only be used in connection with Defendant's legitimate business purposes.

12 28. Despite these promises, Defendant failed to establish reasonable security precautions
13 or maintain reasonable administrative procedures to preclude its selling, disclosing and/or
14 distributing Class Members' consumer reports and/or confidential information to unauthorized third
15 parties.

16 29. Moreover, despite these promises, Defendant failed to require and ensure that its
17 officers, agents, employees and/or representatives implemented, maintained and/or adhered to
18 reasonable security precautions to preclude unauthorized third parties from procuring Class
19 Members' private information.

20 30. Specifically, on or about April 25, 2006, Defendant contacted Representative
21 Plaintiffs and informed them that bank reports containing Representative Plaintiffs' personal and
22 financial information, theretofore provided by Representative Plaintiffs and/or entrusted to
23 Defendant, had been left in one of Defendant's manager's briefcase, outside of any of Defendant's
24 financial centers, and were thereafter allegedly stolen.

25 31. Representative Plaintiffs are informed and believe and, on that basis, allege that, at
26 no time prior to the date of said alleged theft, did Defendant inform any Class Member that
27 Defendant's account holders' confidential personal and financial information would be maintained
28 within the briefcase of any bank officer, agent, employee and/or representative and/or removed from

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

1 Defendant's bank premises for any reason. As such, Class Members' confidential personal and
2 financial information was recklessly and/or negligently maintained and/or disclosed to third parties
3 without Class Members' prior knowledge or consent.

4 32. As a result, Defendant has, without authorization or consent, disclosed consumer
5 reports and personal information relating to Class Members to unauthorized third parties with no
6 permissible purpose(s) for receiving and using such information. Defendant has thereby violated,
7 *inter alia*, Class Members' privacy rights under the California Constitution, their common law and
8 statutory rights of privacy, the FCRA, the CCRAA and the ICRAA, as alleged herein.

9 33. Defendant knew or reasonably should have known that its consumer credit-based
10 products and the information contained therein constituted consumer reports within the meaning of
11 the FCRA, the CCRAA and the ICRAA, and that those reports would not be used by the third parties
12 to which they were disclosed for permissible purposes under these statutes. Defendant nevertheless
13 negligently, recklessly and/or wilfully disclosed such information in violation of these statutes and/or
14 in conscious disregard of the privacy rights of Class Members.

15
16 **FIRST CAUSE OF ACTION**
17 **(Negligence)**

18 34. Representative Plaintiffs incorporate in this cause of action each and every allegation
19 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

20 35. As custodians of the Class Members' confidential personal and financial information,
21 Defendant owed a duty of care to Class Members to protect and secure Class Members' confidential
22 personal and financial information.

23 36. Defendant knew or should have known, through the exercise of reasonable care, that
24 its officers, agents, employees and/or representatives were failing to protect and secure Class
25 Members' confidential personal and financial information.

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

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

- 1 37. Defendant breached its duty of care to Class Members by:
 - 2 a. failing to implement reasonable security measures to prevent the theft and/or
 - 3 unauthorized disclosure of Class Members' confidential personal and
 - 4 financial information;
 - 5 b. failing to adequately supervise its officers, agents, employees and/or
 - 6 representatives to prevent the unauthorized access and disclosure of Class
 - 7 Members' confidential personal and financial information;
 - 8 c. failing to prevent the removal of Class Members' confidential personal and
 - 9 financial information from Defendant's premises and/or protect against its
 - 10 unauthorized disclosure to third parties;
 - 11 d. failing to properly secure and maintain its computer and electronic data
 - 12 storage system to prevent the theft and/or unauthorized disclosure of Class
 - 13 Members' confidential personal and financial information;
 - 14 e. failing to comply with any and all federal and state banking regulations
 - 15 regarding the protection of the Class Members' confidential personal and
 - 16 financial information; and
 - 17 f. such other negligence as may be identified during the course of discovery.

18 38. Defendant's acts and/or omissions, as described herein, resulted in the disclosure of
19 Class Members' private and confidential information to unauthorized third parties, thereby actually
20 and proximately causing the injuries and damages suffered by Class Members.

21 39. Defendant is vicariously liable for the negligent conduct of its officers, agents,
22 employees and/or representatives.

23 40. Class Members have suffered injuries and damages as the direct and proximate result
24 of Defendant's breach of its duty of care, including but not limited to, mental and emotional distress
25 and anxiety, costs associated with monitoring and repairing credit actually or potentially impaired
26 by the unauthorized release of private information, financial losses in an undetermined amount,
27 attorneys' fees, costs of suit, and other injuries and damages according to proof at trial.

28 41. As a direct and proximate result of the conduct alleged herein, Class Members seek
to recover their actual damages, including, but not limited to all damages, of any nature, resulting
from the disclosure of their confidential personal and financial information to unauthorized third
parties and/or Defendant's failure to prevent access by said third parties to such information.

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SECOND CAUSE OF ACTION
(Fraud)

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2
3 42. Representative Plaintiffs incorporate in this cause of action each and every allegation
4 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

5 43. Defendant fraudulently misrepresented to Class Members that Class Members'
6 confidential personal and financial information would be kept confidential and private when Class
7 Members opened their checking, savings and/or other depository accounts at Defendant's financial
8 centers and at various times thereafter. Defendant engaged in this fraud by the making of direct
9 statements to and/or by concealing or refusing to disclose all facts to Class Members surrounding
10 Defendant's sub-standard security measures and/or improperly trained and/or supervised personnel.

11 44. Defendant's representations were made to Class members through standardized
12 misrepresentations, uniform concealment and non-disclosure, through mass media advertising,
13 through Defendant's internet web site and through other information prepared and/or disseminated
14 by Defendant.

15 45. Prior to the making of these representations, concealments and/or non-disclosures,
16 Defendant knew that it maintained inadequate security measures and improperly trained and/or
17 supervised personnel such that it would be unable or unwilling to satisfy its promise of adequately
18 maintaining the confidentiality of Class Members' personal and financial information.

19 46. Defendant's false representations, concealments and/or non-disclosures to Class
20 Members were likely to and did, in fact, deceive Class Members. Based upon these representations,
21 concealments and/or non-disclosures, Class Members opened and, thereafter, continued to maintain
22 accounts at Defendant's financial centers.

23 47. Defendant's fraudulent misrepresentations were material to Class Members as Class
24 Members would not have disclosed their confidential personal and financial information to
25 Defendant had Class Members known of Defendant's inadequate security measures and improperly
26 trained and/or supervised personnel.

27 48. Defendant intended that Class Members rely upon its fraudulent misrepresentation
28 to induce Class Members to open and continue to maintain accounts at Defendant's financial centers.

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

1 49. Class Members have suffered the unauthorized disclosure and theft of their
2 confidential personal and financial information as a direct and proximate result of Defendant's
3 conduct as detailed herein.

4 50. As a direct and proximate result of Defendant's wrongful conduct, Class Members
5 have suffered financial losses in an undetermined amount, the loss of credit reputation, exposure to
6 fraud and identity theft, anxiety, embarrassment, mental anguish and emotional suffering.

7 51. Moreover, in that, at all times herein mentioned, Defendant intended to cause or acted
8 with reckless disregard of the probability of causing damage to Class Members, and because
9 Defendant was guilty of oppressive, fraudulent and/or malicious conduct, Class Members are entitled
10 to an award of exemplary or punitive damages against Defendant in an amount adequate to deter
11 such conduct in the future.

12
13 **THIRD CAUSE OF ACTION**
14 **(Negligent Misrepresentation)**

15 52. Representative Plaintiffs incorporate in this cause of action each and every allegation
16 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

17 53. Defendant made the above-described representations with the expectation that Class
18 members would act in reliance thereupon.

19 54. Defendant was negligent in making the representations described herein and had no
20 reasonable grounds for believing the representations to be true.

21 55. By reason of the special relationship between Defendant and Class Members,
22 Defendant had a duty to investigate and take appropriate measures to ensure that its officers, agents,
23 employees and/or representatives were properly protecting the confidential personal and financial
24 information of Class Members. If Defendant was unable and/or unwilling to conduct the
25 aforementioned investigation and/or to take the aforementioned appropriate measures, it had an
26 obligation to inform Class Members of said inability and/or unwillingness to do so.

27 56. Defendant breached this special duty by failing to properly supervise and control its
28 officers, agents, employees and/or representatives in order to safeguard against the unauthorized

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

1 disclosure of Class Members' confidential personal and financial information and by making the
2 representations, concealments and/or non-disclosures described herein.

3 57. The misrepresentations, concealments and/or non-disclosures by Defendant pertained
4 to matters of material fact. In those instances where the representations were affirmative statements
5 of fact, they were false.

6 58. Defendant should have known that it maintained inadequate security measures and
7 improperly trained and/or supervised personnel as well as that Class Members were both ignorant
8 of these facts and, in the exercise of reasonable diligence, could not have discovered these facts.

9 59. Defendant's misrepresentations, concealments and/or non-disclosures to Class
10 Members were likely to and did, in fact, deceive Class Members. Based upon these representations,
11 concealments and/or non-disclosures, Class Members opened and thereafter continued to maintain
12 accounts at Defendant's financial centers. Class Members would not have disclosed their
13 confidential personal and financial information to Defendant had Class Members known of
14 Defendant's inadequate security measures and improperly trained and/or supervised personnel.

15 60. Defendant's representations were negligently made to Class Members through
16 standardized misrepresentations, uniform concealment and non-disclosure, through mass media
17 advertising, through Defendant's internet web site and through other information prepared and/or
18 disseminated by Defendant.

19 61. As a direct and proximate result of Defendant's wrongful conduct, Class Members
20 have suffered financial losses in an undetermined amount, the loss of credit reputation, exposure to
21 fraud and identity theft, anxiety, embarrassment, mental anguish and emotional suffering.

22
23 **FOURTH CAUSE OF ACTION**
24 **(Invasion of Privacy)**

25 62. Representative Plaintiffs incorporate in this cause of action each and every allegation
26 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

27 63. Pursuant to Article I, Section I of the California Constitution, Class Members had a
28 reasonable and strong expectation of privacy and a privacy interest in the confidential personal and

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

1 financial information provided to and thereafter maintained by Defendant.

2 64. Class Members justifiably believed that their confidential personal and financial
3 information (including information regarding their banking accounts such as their account numbers,
4 type of accounts, account opening dates and balances and/or interest rates) would be stored and
5 maintained exclusively by Defendant, by and through its officers, agents, employees and/or
6 representatives in such a manner as to protect the integrity, accuracy and confidentiality of said
7 information. Indeed, as alleged further herein, Defendant represented to Class Members that such
8 information would be kept private and would only be used in connection with Defendant's legitimate
9 business purposes.

10 65. Defendant violated Article I, Section 1 of the California Constitution by failing to
11 exercise reasonable care to prevent the unauthorized access, use or dissemination of Class Members'
12 confidential personal and financial information, including failing to implement and maintain
13 reasonable security measures and failing to adequately train and/or supervise Defendant's officers,
14 agents, employees and/or representatives.

15 66. As a direct and proximate result of Defendant's wrongful conduct, Class Members
16 have suffered financial losses in an undetermined amount, the loss of credit reputation, exposure to
17 fraud and identity theft, anxiety, embarrassment, mental anguish and emotional suffering.

18 67. Moreover, in that, at all times herein mentioned, Defendant intended to cause or acted
19 with reckless disregard of the probability of causing damage to Class Members, and because
20 Defendant was guilty of oppressive, fraudulent and/or malicious conduct, Class Members are entitled
21 to an award of exemplary or punitive damages in an amount adequate to deter such conduct in the
22 future.

23
24 **FIFTH CAUSE OF ACTION**
25 **(Negligent Noncompliance with the FCRA, 15 U.S.C. §§1681b, 1681o)**

26 68. Representative Plaintiffs incorporate in this cause of action each and every allegation
27 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

28 69. Defendant provided consumer reports and information regarding Class Members to

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WORLD SAVINGS TOWER
1070 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9800

1 unauthorized third parties by disclosing, furnishing and/or otherwise revealing consumer reports and
2 information to unknown and unauthorized persons or entities without any legitimate interest in or
3 right to such data.

4 70. Defendant disclosed the foregoing consumer reports without any permissible
5 purpose(s) therefor, in violation of the FCRA (15 U.S.C. §1681b).

6 71. Defendant's disclosure of the foregoing consumer reports constituted negligent
7 noncompliance with the FCRA, pursuant to 15 U.S.C. §1681o, in that Defendant failed to use
8 ordinary care to secure and maintain the privacy and confidentiality of Class Members' credit reports
9 and confidential personal and financial information.

10 72. As a direct and proximate result of the foregoing, Class Members have suffered
11 financial losses in an undetermined amount, the loss of credit reputation, exposure to fraud and
12 identity theft, anxiety, embarrassment, mental anguish and emotional suffering.

13 73. As a direct and proximate result of the conduct alleged herein, Class Members seek
14 to recover actual damages, including, but not limited to all damages, of any nature, resulting from
15 the unlawful disclosure of Class Members' confidential personal and financial information to
16 unauthorized third parties. Class Members also, or alternatively, seeks statutory damages, penalties,
17 and/or exemplary or punitive damages, as provided by statute and as further set forth in the Prayer
18 for Relief herein.

19
20 **SIXTH CAUSE OF ACTION**
21 **(Violation of the CCRAA, California Civil Code §§1785.3, et seq.)**

22 74. Representative Plaintiffs incorporate in this cause of action each and every allegation
23 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

24 75. Defendant violated the California Credit Reporting Agencies Act, including, *inter*
25 *alia*, California Civil Code §§1785.11, 1785.14, 1785.19 and 1785.22 thereof, by furnishing Class
26 Members' consumer credit reports to unauthorized third parties, thereby causing actual damages to
27 Class Members.

28 76. Defendant furnished the foregoing consumer credit reports to third parties under

1 circumstances prohibited by California Civil Code § 1785.11.

2 77. As a direct and proximate result of the foregoing, Class Members have suffered
3 financial losses in an undetermined amount, the loss of credit reputation, exposure to fraud and
4 identity theft, anxiety, embarrassment, mental anguish and emotional suffering.

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

11
12 **SEVENTH CAUSE OF ACTION**
13 **(Violation of the California ICRAA, California Civil Code §§1786, *et seq.*)**

14 79. Representative Plaintiffs incorporate in this cause of action each and every allegation
15 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

16 80. Defendant violated the Investigative Consumer Reporting Agencies Act, including,
17 *inter alia*, California Civil Code §§1786.12 and 1786.20 thereof, by furnishing investigative
18 consumer reports concerning Class Members to unauthorized third parties, thereby causing actual
19 damages to Class Members.

20 81. As a direct and proximate result of the foregoing, Class Members have suffered
21 financial losses in an undetermined amount, the loss of credit reputation, exposure to fraud and
22 identity theft, anxiety, embarrassment, mental anguish and emotional suffering.

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

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

EIGHTH CAUSE OF ACTION
(Violation of California Business and Professions Code §§17200 et seq.)

83. Representative Plaintiffs incorporate 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.

84. Defendant's unauthorized disclosure of Class Members' private information, its violations of the FCRA, CCRAA and ICRAA, as alleged herein, its unlawful invasion of Class Members' privacy rights and the other wrongful conduct alleged in this Complaint constitute unfair, unlawful and fraudulent business practices in violation of California Business & Professions Code §17200, et seq.

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

86. Defendant has been unjustly enriched as a result of its unfair, unlawful and fraudulent business acts and practices, as alleged herein.

87. Class Members are entitled to an Order enjoining Defendant from engaging in the unfair, unlawful and fraudulent business practices complained of herein under Business and Professions Code §§17200, et seq., and are, moreover, entitled to restitution of all Defendant's unjust enrichment, pursuant to California Business & Professions Code §§17203 and 17204.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the Plaintiff Class, pray for judgment and the following specific relief against Defendant, as follows:

1. For an Order certifying the proposed Plaintiff Class and/or any other appropriate subclass(es) under Federal Rules of Civil Procedure Rule 23;

2. For an Order finding that Defendant's conduct in disclosing Class Members' confidential personal and financial information and/or failing to prevent unauthorized access to such

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 950
OAKLAND, CA 94612
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- 1 information was intentional, reckless and/or negligent;
- 2 3. For an Order declaring that Defendant's disclosure and/or dissemination of Class
- 3 Members' confidential personal and financial information violated the FCRA, the CCRAA and the
- 4 ICRAA, among other laws identified herein;
- 5 4. For an award of actual damages resulting from Defendant's intentional, reckless
- 6 and/or negligent conduct in an amount to be proven at trial;
- 7 5. For an award of actual damages under the FCRA (15 U.S.C. §§ 1681n or 1681o) in
- 8 an amount to be proven at trial;
- 9 6. For an award of actual damages pursuant to the CCRAA (California Civil Code
- 10 §1785.31[1] and [2][A]) in an amount to be proven at trial and/or pursuant to California Civil Code
- 11 § 1785.31(2)(B) of not less than \$100, nor more than \$5,000, for each violation;
- 12 7. For an award of actual and punitive damages pursuant to the ICRAA (California Civil
- 13 Code §1786.50) in an amount to be proven at trial;
- 14 8. For an award of restitution in an amount to be proven at trial;
- 15 9. For all other Orders, findings and determinations identified and sought in this
- 16 Complaint;
- 17 10. For interest on the amount of any and all economic losses at the prevailing legal rate;
- 18 11. For reasonable attorneys' fees pursuant to, *inter alia*, the FCRA (15 U.S.C. § 1681o);
- 19 the CCRAA (California Civil Code §1785.31); the ICRAA California Civil Code §1786.50)
- 20 California Civil Procedure Code § 1021.5, and other applicable statutes;
- 21 12. For costs of suit herein incurred;
- 22 13. For such other legal and/or equitable relief as the Court deems just and proper.

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JURY DEMAND

Representative Plaintiffs, on behalf of themselves and the Plaintiff Class, hereby demand trial by jury on all issues triable of right by jury.

Dated: June 14, 2006

SCOTT COLE & ASSOCIATES, APC

By: 
Clyde H. Charlton, Esq.
Attorneys for the Representative Plaintiffs
and the Plaintiff Class

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 391-9800

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