

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

RAYMOND T. THROCKMORTON,)
III, TIMOTHY T. ISHII, and REGINA)
NEWSON,)

Plaintiffs,)

v.)

Docket No. _____

METROPOLITAN GOVERNMENT)
OF NASHVILLE AND DAVIDSON)
COUNTY, THE WACKENHUT)
CORPORATION, and SPECIALIZED)
SECURITY CONSULTANTS, INC.)

Defendants.)

VERIFIED COMPLAINT

Plaintiffs Raymond T. Throckmorton, III, Timothy T. Ishii, and Regina Newson for their cause of action against Defendants Metropolitan Government of Nashville and Davidson County, The Wackenhut Corporation, and Specialized Security Consultants, Inc. (hereinafter collectively, "Defendants") state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Raymond T. Throckmorton, III, is a citizen and resident of Metropolitan Nashville and Davidson County in the State of Tennessee and is registered to vote.

2. Plaintiff Timothy T. Ishii, is a citizen and resident of Metropolitan Nashville and Davidson County in the State of Tennessee and is registered to vote.

3. Plaintiff Regina Newson is a citizen and resident of Metropolitan Nashville and Davidson County in the State of Tennessee and is registered to vote.

4. Defendant Metropolitan Government of Nashville and Davidson County, (hereinafter “Metro”), is a political subdivision of the State of Tennessee responsible for oversight, rule making, compliance with state and Federal law, and control of the Davidson County Election Commission, (hereinafter “DCEC”) which Metro oversees. Metro and the DCEC are “information holders” as defined in T.C.A §47-18-2107(a)(2).

5. Defendant The Wackenhut Corporation (hereinafter “Wackenhut”) is a for-profit corporation authorized to do business in the State of Tennessee, and its principal place of business is located at 4200 Wackenhut Drive, Suite 100, Palm Beach Gardens, Florida, 33410. The Wackenhut Corporation may be served with process through its registered agent, The Prentice-Hall Corporation System, Inc., located at 2908 Poston Avenue, Nashville, Tennessee, 37203.

6. Defendant Specialized Security Consultants, Inc. (hereinafter “SSC”) is a for-profit corporation authorized to do business in the State of Tennessee, and its principal place of business is located at 1018 Mires Road, Mt. Juliet, Tennessee, 37122. Specialized Security Consultants, Inc. may be served with process through its registered agent, John B. Linkill, located at 2525A Lebanon Road, Nashville, Tennessee, 37214.

8. The acts, errors and omissions complained of herein were committed within Metropolitan Nashville and Davidson County, Tennessee, and as such, this Court has proper venue and jurisdiction over the matter under the laws of Tennessee.

FACTS

9. Before December 24, 2007, Plaintiffs registered to vote in Metropolitan Nashville and Davidson County by providing the DCEC with individual personal information including, but not limited to, their first name or first initial and last name, address and their social security number or driver license number. All of this information is

not lawfully made available to the general public from federal, state, or local government records (hereinafter "Personal Information"). Personal Information is defined in T.C.A. §47-18-2107(a)(3)).

10. The DCEC is an agency of Metro.

11. Metro employees typed or entered all of Plaintiffs' Personal Information into a computer and/or computer system that the DCEC owns or licenses and saved as electronic data on multiple DCEC computers.

12. The electronic data on the DCEC's computers containing Personal Information was never encrypted by Defendants as required by Metro policy after the Plaintiffs' Personal Information was entered.

13. On or before December 24, 2007, the Metro Department of General Services, an agency of Metro, executed a five-year contract with Defendant Wackenhut to provide security at several Metro government buildings, including the Metro Office Building located at 800 Second Avenue South, Nashville, Tennessee, 37210 (hereinafter "DCEC Offices").

14. On or before December 24, 2007, Defendant Wackenhut subcontracted with Defendant SSC to provide security at the DCEC Offices.

15. On or about December 24, 2007, at approximately 9:45 p.m., an employee of Defendant SSC was working as a security guard and on-duty at the DCEC Offices.

16. On or about December 24, 2007, at approximately 9:45 p.m., a break-in occurred at the DCEC Offices in which an individual shattered a window, entered the DCEC Offices, and took multiple pieces of equipment, including the DCEC computers containing Plaintiffs' Personal Information, without authorization (hereinafter the "break-

in”). Approximately Three Hundred and Thirty-Seven Thousand (337,000) individuals’ Personal Information was contained on the DCEC computers at the time of the break-in.

17. At the time of the break-in, the stolen computers containing the Plaintiffs’ Personal Information had been left out in the open on top of desks after business hours in violation of DCEC protocol.

18. At the time of the break-in, the stolen computers’ passwords and usernames necessary to gain access to the computers and Plaintiffs’ Personal Information were taped to the computers.

19. At the time of the break-in, the video recording system cameras on the outside of the DCEC Offices were unplugged and had been for an unknown time prior to the break-in.

20. At the time of the break-in, the security guard on-duty, an employee of Defendant SSC was listening to Christmas music and/or visiting the break room and/or ordering food and failed to make his rounds in and around the DCEC Offices.

21. The break-in remained undiscovered by Defendants or DCEC for approximately forty-eight (48) hours after it occurred despite the existence of a shattered window in the DCEC Offices.

22. Defendants have failed to notify Plaintiffs in the most expedient time possible without reasonable delay. Defendants have also failed to notify, without reasonable delay, any consumer reporting agencies or credit bureaus of the unauthorized disclosure of Personal Information.

23. Plaintiffs’ unencrypted Personal Information has been disclosed without authorization and remains in the possession of an unauthorized individual.

24. The Tennessee Consumer Protection Act, in T.C.A. §47-18-2107, contemplates immediate and irreparable harm to persons whose Personal Information has been disclosed without authorization by an inappropriate or promiscuous negligent breach of a security system.

25. It is the duty of Metro to adhere to the requirements of T.C.A. §47-18-2107 and to take such steps as may be required to prevent further and additional harm to Plaintiffs.

CAUSES OF ACTION

TENNESSEE CONSUMER PROTECTION ACT

26. The failure to encrypt and to maintain, without compromise, the security, confidentiality and integrity of the Personal Information of Plaintiffs in possession of Metro constitutes a breach of statutory duty pursuant to T.C.A. §47-18-2107(a)(1).

27. As a consequence of this breach, Plaintiffs have suffered an ascertainable loss of money, property, or thing of value wherever situated as defined in T.C.A. §47-18-109.

28. As a consequence of this breach, Plaintiffs must now purchase a credit report and monitoring of credit record for not less than 90 days.

29. Should there be a further loss by virtue of misuse of Plaintiffs private information, Defendants are liable for all services necessary to correct information reported to credit agencies through the misuse of Personal Information.

30. Metro is required to notify each voter of the security breach pursuant to T.C.A. §47-18-2107(b).

31. Metro is further required to notify, without unreasonable delay, all consumer reporting agencies and credit bureaus, because more than One Thousand (1,000) persons'

information has been compromised pursuant to T.C.A. §47-18-2107(g), on behalf of each voter.

32. Each Plaintiff having been injured by a violation of this section is entitled to damages and injunctive relief, cumulative to other remedies at law pursuant to T.C.A. §47-18-2107(h).

GOVERNMENTAL TORT LIABILITY ACT AND NEGLIGENCE

33. By virtue of the foregoing acts of negligence, Defendants Wackenhut and SSC are liable under principles of common law, and Defendant Metro is liable under the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 et seq., for injury suffered by Plaintiffs. Each Defendant is guilty of negligence and liable to Plaintiffs for all injuries proximately caused thereby.

CLASS ACTION ALLEGATIONS SEEKING INJUNCTIVE AND EQUITABLE RELIEF

34. In addition to the Plaintiffs' individual claims, this action is brought as a Class Action seeking certain equitable relief from Defendant and may properly be so maintained pursuant to the provisions of Rule 23 of the Tennessee Rules of Civil Procedure.

35. A Class Action is superior to other available methods for the fair and effective adjudication of this claim and is sought to rectify the breach of security and failure of Defendants to protect personal and confidential information which has materially compromised the security, confidentiality of personal information maintained by Defendants which, if not immediately addressed, will result in irreparable harm to members of the class.

CLASS DEFINITION

36. Plaintiffs bring this action on their own behalf and as a Class Action under the provisions of Rules 23.01, 23.02(2) and 23.03(3) of the Tennessee Rules of Civil Procedure on behalf of all members of a Class of Plaintiffs defined as follows: All

individuals whose unencrypted personal information and computerized data was held and meant to be secured by Defendants on DCEC's computers, computer system, computer hard drives, computer discs, and other likely repositories of such information and was subject to unauthorized disclosure resulting in the material compromise of the security, confidentiality and integrity of that personal information (hereinafter the "Class").

37. Plaintiffs reserve the right to modify the Class definition based on the results of discovery.

NUMEROSITY

38. Plaintiffs do not know the exact number of Class members, because this information is within the control of Defendant, but Plaintiffs believe, on good faith information and belief, the number of Class members is approximately Three Hundred and Thirty-Seven Thousand (337,000).

39. The Class members are sufficiently numerous, so that joinder of all Class members is impracticable.

40. The precise number of members in the Class and their identities and address may be determined from Defendant's records.

41. The Class is readily ascertainable.

42. The likelihood of individual Class members prosecuting separate claims is remote because the damages suffered by each individual Class member may be relatively small.

EXISTENCE OF COMMON LAW AND FACTS

43. There are well-defined questions of law and fact common to the members of the Class which predominate over any questions affecting only individual members,

including legal and factual issues relating to liability and damages, which include, but are not limited to:

A. Defendants' legal responsibility to prevent the unauthorized acquisition of unencrypted data that materially compromises the security, confidentiality, or integrity of personal information maintained by Defendants.

B. Defendants' and DCEC's failure to disclose any breach of the security of the system, following discovery or notification of the breach in the security of the data, to the Class, whose unencrypted personal information was, or reasonably believed to have been, acquired by an unauthorized person, in the most expedient time possible and without unreasonable delay as required by state law.

C. Defendants' and DCEC's failure to notify the Class, as owners of the personal information, of any breach of the security of the computerized data immediately following discovery of unauthorized acquisition as required by state law.

D. Defendants' and DCEC's failure to properly secure the Class's personal information by taping passwords and usernames on the computers, unplugging security cameras, listening to music rather than guarding the data, and neglecting to encrypt the data on the computer equipment.

E. Defendants' and DCEC's failure to notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by federal law, of the timing, distribution and content of the notices as required by state law.

F. Such other legal and factual issues as may develop and arise during the course of discovery in this case moving forward.

44. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for the Defendant.

TYPICALITY

45. The Plaintiffs' claims are typical of the claims of the Class members they seek to represent. Plaintiffs share those claims in common with the Class members.

ADEQUACY OF REPRESENTATION

46. Plaintiffs will fairly and adequately protect the interests of the other members of the Class.

47. Plaintiffs are committed to and intend to prosecute this action vigorously.

48. The Plaintiffs have no interests that are adverse or antagonistic to those of other members of the Class.

49. Plaintiffs have retained counsel who are experienced in litigation of this type.

50. Plaintiffs envision no unusual difficulty in the management and maintenance of this Class Action as a Class Action.

PREDOMINANCE AND SUPERIORITY:

51. A Class Action is superior to other methods for the fair and effective adjudication of this controversy. Treatment as a Class Action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, effectively, and without duplication of effort and expense that numerous individual actions would engender.

52. This suit may also be maintained as a Class Action because questions of law and fact common to the Class predominate over the questions affecting only individual members of the Class and a Class Action is superior to other available means for the fair and

effective adjudication of this dispute. Damages suffered by each individual Class member may be relatively small, especially given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by the Defendants' conduct. Furthermore, it would be virtually impossible for the Class members, on an individual basis, to obtain effective redress to the wrongs done to them. Moreover, even if Class members themselves could afford such individual litigation, the Court system could not; individual litigation presents a potential for inconsistent and contradictory judgments. Individualized litigation increases the delay and expense to all parties in court systems presented by the legal issue of the case. By contrast, the Class Action device presents far fewer management difficulties, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

53. This suit may also be maintained as a Class Action because Plaintiffs and the Class seek declaratory and/or injunctive relief, and all of the above factors of numerosity, questions of fact and law, typicality and adequacy, are present. Moreover, Defendants have acted on grounds generally applicable to Plaintiffs and the Class as a whole, thereby making declaratory and/or injunctive relief proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand the following relief:

1. That process be issued requiring the Defendants to answer this Complaint within the time required by law;
2. That the Court enter an order determining that the actions involving claims common to all Class members, may be maintained as a Class action as contemplated by Rule 23 of the Tennessee Rules of Civil Procedure.

3. That Plaintiffs be awarded such damages as will fully compensate Plaintiffs for all injuries caused by the Defendant's actions in violation of Tennessee common and statutory law;

4. That Defendant Metro be required by mandatory injunction to notify each Plaintiff, including every member of the Class, of the breach of the security system caused by its conduct.

5. That Defendant Metro be required by mandatory injunction to inform each consumer reporting agency and credit bureau of the breach of the security system on behalf of each and every person whose Personal Information has been compromised.

6. That the Defendants procure a credit report for each Plaintiff from each credit bureau and credit reporting agency.

7. That the Defendants procure monitoring of credit reports of each person whose Personal Information has been compromised for not less than 90 days.

8. That the Defendants indemnify and hold harmless each voter whose Personal Information has been compromised.

9. That all monetary damages proven at trial be trebled pursuant to the Tennessee Consumer Protection Act.

10. That the Plaintiffs' attorneys be awarded reasonable attorneys fees and costs of this action.

11. That the Plaintiffs be awarded other damages as may be shown by the proof.

Respectfully submitted,

BLACKBURN & McCUNE, PLLC

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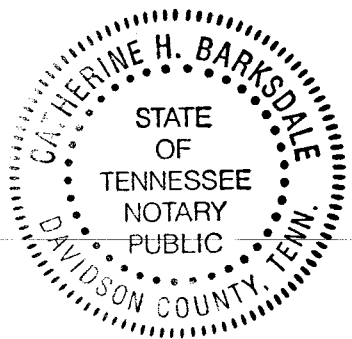
VERIFICATION

STATE OF TENNESSEE
COUNTY OF DAVIDSON

We, and each of us, Raymond T. Throckmorton, III, Timothy T. Ishii, and Regina Newson, after first being duly sworn, depose and state as follows: The allegations of the foregoing Complaint are true and accurate to the best of my knowledge, information and belief.

FURTHER AFFIANT SAITH NOT.

STATE OF: TENNESSEE
COUNTY OF: DAVIDSON


Raymond T. Throckmorton, III
Timothy T. Ishii
Regina Newson

My Commission Expires MAY 23, 2009
Sworn to and subscribed before me this 4th day of January, 2008.

My commission expires: 5-23-09
Catherine H. Barksdale
NOTARY PUBLIC (signature)