

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

VIRGINIA B. TOWNSEND, the parent,
guardian and next friend of her minor children,
on Behalf of Herself and all Others Similarly
Situated,

Plaintiff,

v.

THE PRINCETON REVIEW, INC.,

Defendant.

Case No:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, on behalf of herself and all other persons similarly situated, alleges on information and belief (except as to paragraphs 4 and 5, which are alleged on personal knowledge) as follows:

INTRODUCTION

1. On August 18, 2008, it was revealed in a New York Times article that the Defendant, the Princeton Review, Inc., had placed on its website, in a form available to the public, "strictly confidential" personal information about, and standardized test scores of, approximately 34,000 minor Sarasota, Florida students, and that the confidential information and test scores of those students had been publicly obtainable from the Defendant's website for no less than seven weeks. The New York Times article further revealed that the Defendant had also made the personal information of approximately 74,000 minor students in Fairfax, Virginia publicly available on its website, again for at least seven weeks. In addition, according to the article, some of the exposed personal data of the Florida and Virginia students could be found through search engines on the Internet. The article further indicated that Defendant had neglected several accepted on-line security

practices. As a result of this data breach, personal, private and confidential information regarding the Florida and Virginia students was exposed and made publicly available, severely damaging the privacy rights of all of those minors. Plaintiff brings this action, as the parent, guardian and next friend of her minor children, on behalf of all similarly situated parents, guardians and next friends of the minor students described herein.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d), because the amount in controversy exceeds \$5 million, Plaintiff or at least one class member has citizenship diverse from the Defendant and there are more than 100 members of the class on behalf of which this class action is brought.

3. Venue is proper in this Court under 28 U.S.C. § 1391(a), because, among other reasons, a substantial part of the events giving rise to the claims occurred in this judicial district.

PARTIES

4. Plaintiff Virginia Townsend is a resident of the State of Florida. Plaintiff Virginia B. Townsend is the parent, guardian and next friend of her two minor children ages 13 (thirteen) and 8 (eight), whose names are not stated herein to protect their privacy, and she sues herein in that legal capacity. Hereinafter, the Plaintiff Virginia B. Townsend is referred to as the "Plaintiff" and the Plaintiff's minor children are referred to as the "Plaintiff's Children." The Plaintiff's Children are residents of the State of Florida and are students in the Sarasota County School System, Florida school system.

5. The Defendant Princeton Review, Inc. (“Defendant” or “Princeton Review”) is a corporation organized under the laws of the State of Delaware. Its principal executive offices are located in New York, New York. Princeton Review, a test preparation company, transacts substantial business throughout the United States and specifically in Florida, including in Sarasota, where it was hired by the Sarasota school system to build an on-line tool to help the county measure students’ academic progress.

THE FACTS

6. On August 18, 2008, the New York Times published an article indicating that Defendant had published “strictly confidential” personal data and standardized test scores of approximately 34,000 Sarasota, Florida students on its website, and that such data and test scores were available on Defendant’s website for at least seven weeks. The article revealed that Defendant had also published the personal data of approximately 74,000 additional students in Fairfax, Virginia on its website.

7. The confidential information regarding the Florida students, which was made publicly available by the Defendant on its website, included, but was not necessarily limited to, the students’ birthdays and ethnicities, whether they had learning disabilities, their standardized test scores, student identification numbers, social security numbers, and whether English was their second language. The confidential information regarding the Virginia students, which was also made publicly available by the Defendant on its website, included, but was not necessarily limited to, the students’ names, birthdays and student identification numbers. That type of personal information about the students, which was made publicly available by the Defendant on its website, is collectively referred to herein as the “Students’ Confidential Personal Information.”

8. On September 16, 2008, the Plaintiff was informed by the Sarasota school system that Students' Confidential Personal Information regarding Plaintiff's Children had been made publicly available by the Defendant on its website.

9. Defendant negligently failed to protect the Students' Confidential Personal Information because the Defendant negligently failed to follow several accepted on-line security practices. The personal data that was published should have been password-protected and encrypted, and should have also remained in Defendant's private database, but instead the personal data was negligently listed on easy-to-find, publicly viewable web pages for at least seven weeks. In addition to failing to properly restrict access to the Students' Confidential Personal Information, Defendant also combined confidential and innocuous files on the same computers, which is understood in the industry to be a poor practice.

10. While the Students' Confidential Personal Information was available for public consumption on Defendant's website for at least seven weeks, and some of this data could even be found through search engines on the Internet such as Google, Defendant was apparently completely unaware of the situation. In fact, as reported in the above referenced August 18, 2008 New York Times article, the Defendant first learned that the Students' Confidential Personal Information was publicly available on its website when it was so informed by the New York Times on August 18, 2008. The New York Times, in turn, had learned of the situation when it was contacted by another test-preparatory company which informed the New York Times that it had accessed the Students' Confidential Personal Information while conducting competitive research. The Defendant negligently failed to monitor its network and access logs, which would have enabled the Defendant to discover that the Students' Confidential Personal Information was publicly available on its website prior to the Defendant learning those facts from the New York Times on August 18, 2008. This

aspect of Defendant's negligence caused the Students' Confidential Personal Information to remain publicly available on the Defendant's website for a longer period of time.

11. As a direct result of the Defendant's negligence, the Students' Confidential Personal Information -- including student birthdays and ethnicities, whether the students had learning disabilities, whether English was their second language, their standardized test scores, student identification numbers and social security numbers -- was exposed to the public.

12. As a direct result of the Defendants' negligence, Students' Confidential Personal Information of the Plaintiff's Children and all other children whose information was published by Princeton Review on its website during the Class Period has been compromised. These minor children's privacy rights have been violated, and they have been exposed to the risk of fraud and identify theft, which risk their parents and they will need to expend time, effort and money in an attempt to mitigate, and they have suffered other damages.

13. The Plaintiff, on behalf of Plaintiff's Children, and all members of the class, on behalf of their minor children, as a direct result of the Defendant's negligent conduct, will have to spend, over a long period of time, considerable time and/or money in monitoring their personal data for fraudulent activity and/or identify theft in order to prevent harm being done to them, and to remedy any harm caused to date and in the future.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of herself and all other persons similarly situated. The Class consists of:

all parents or legal guardians of minor students anywhere in the United States whose Students' Confidential Personal Information was

publicly available on Defendant's website at any time on or prior to August 18, 2008.

The Class does not include Princeton Review or any of its officers, directors, employees or agents.

15. The exact number of Class Members and their identities are unknown at this time. However, based on the New York Times article, which reports that the Students' Confidential Personal Information of as many as 108,000 minor students in Sarasota, Florida and Fairfax, Virginia was published on Defendant's website, the Class is so numerous that joinder of all individual Class Member is impracticable.

16. There are many questions of law and fact that are common to all Members of the Class, including the following:

1. Whether Defendant acted negligently in failing to properly safeguard Class Members' children's Students' Confidential Personal Information;
2. Whether Defendant violated industry standards concerning the handling and storage of Class Members' children's Students' Confidential Personal Information;
3. Whether Defendant negligently failed to identify the breaches of its computer data systems as soon as practicable once such breaches had occurred;
4. Whether Defendant breached contracts with certain school districts, including the school districts in Sarasota, Florida and Fairfax, Virginia, to which Plaintiffs, Plaintiffs' Children, the Class Members and their minor children were intended third party beneficiaries.
5. Whether Defendant engaged in unfair or deceptive trade acts or practices under the consumer protection laws of Florida and Virginia or other states in

which it did business by failing properly to safeguard the children's Students' Confidential Personal Information; and

6. Whether and to what extent Plaintiff and the Members of the Class and their children have been damaged by Defendant's unlawful conduct.

17. Plaintiff's claims are typical of the claims of all Class Members, because all such claims arise from the same set of facts regarding Defendant's failure to protect the Students' Confidential Personal Information of the minor children of all of the Class Members. Plaintiff has no interests that are antagonistic to the interests of other Class Members.

18. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel who are highly competent and experienced in the prosecution of class actions of this type.

19. This class action is a fair and efficient method by which to adjudicate the claims of Plaintiff and the Class, because:

1. Common questions of law and fact predominate over any question affecting any individual Class Member; and
2. The prosecution of separate actions by individual Class Members would likely create a risk of inconsistent or varying adjudications with respect to individual Members of the Class, which could establish incompatible standards of conduct for the Defendant or allow some Class Members' claims to affect adversely other Class Members' abilities to protect their interests.

20. Plaintiff anticipates no difficulty in the management of this litigation as a class action.

21. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation, while also providing redress for claims that may be too small to support the expense of individual cases.

22. For all the foregoing reasons, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

NEGLIGENCE

23. Plaintiff repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

24. Because Defendant was entrusted with the Students' Confidential Personal Information with the obligation to maintain the privacy and confidentiality of that information, Defendant had a duty, including a fiduciary duty, to keep such information private and secure and to take all necessary steps to prevent third parties from gaining unauthorized access to it.

25. Defendant negligently breached this duty, thereby damaging Plaintiffs, Plaintiffs' Children, the Members of the Class and their minor children.

26. The public disclosure of the Students' Confidential Personal Information was a direct and proximate result of the Defendant's failure to use reasonable care to implement and maintain appropriate security procedures that would protect the Students' Confidential Personal Information of Plaintiff's Children and the Class Members' minor children, including their birthdays and ethnicities, whether they had learning disabilities, whether English was their second language, their standardized test scores, student identification numbers and even, in some instances, social security numbers.

27. It was reasonably foreseeable that the Defendant's breach of its duty of care with respect to the Students' Confidential Personal Information, including the Defendant's placing the Students' Confidential Personal Information on its public website, could and would result in third

parties obtaining unauthorized access to the Students' Confidential Personal Information of the minor children of the Class Members and could and would expose the minor children of the Class Members to the past on ongoing risk of the misuse of the Students' Confidential Personal Information including identity theft.

28. Defendant also had an on-going duty to monitor its computer data systems to determine if it had been compromised. Defendant breached this duty by failing to adequately monitor and identify that the Students' Confidential Personal Information was publicly available on its website over at least a seven-week period.

29. The foregoing compromise of the Students' Confidential Personal Information of Plaintiff's Children and the minor children of the members of the Class, and the resulting burden and loss of time and money that has been and will be spent seeking to prevent or undo the economic and noneconomic damages suffered by Plaintiff, Plaintiff's Children, the Members of the Class and their minor children, were the direct and proximate result of Defendant's violation of its duties.

COUNT II

BREACH OF CONTRACTS TO WHICH PLAINTIFF AND CLASS MEMBERS WERE INTENDED THIRD PARTY BENEFICIARIES

30. Plaintiff repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

31. Defendant and certain school districts, including the school districts in Sarasota, Florida and Fairfax, Virginia entered into contracts concerning the development of on-line tools to help measure students' academic progress and/or to measure and improve student performance.

Pursuant to those contracts, the school systems provided the Defendant with the Students' Confidential Personal Information. Plaintiff understands that these contracts required that Defendant safeguard the Students' Confidential Personal Information, keeping it confidential and maintaining it in a manner that would keep it from becoming available to persons outside of authorized persons at the Defendant or the school systems. Those provisions of the contracts entered into between the Defendant and the school systems were primarily and directly for the benefit of Plaintiff, Plaintiff's Children, the Class Members and their minor children.

32. The clear and manifest intent of the contracting parties was that the confidentiality provisions of the contracts would primarily and directly benefit the Plaintiff, Plaintiff's Children, the Class Members and their minor children.

33. Defendant breached the confidentiality provisions of the contracts and, as a result of these breaches, Plaintiff, Plaintiff's Children, the Class Members and their minor children have been damaged as alleged herein.

COUNT III

UNFAIR TRADE PRACTICES

34. Plaintiff repeats and realleges the allegations in each of the foregoing paragraphs as if fully set forth herein.

35. Defendant's failures to safeguard the Students' Confidential Personal Information of Plaintiff's Children and the Class Members' minor children who are residents of the State of Florida constituted unfair or deceptive trade acts or practices under the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 *et seq.*, which prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

36. Plaintiff, Plaintiff's Children and the Members of the Class and their minor children who are residents of the State of Florida were damaged as the result of Defendant's unfair or deceptive trade acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf and on behalf of the Members of the Class, respectfully requests:

- A. That the Court certify this action as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) and appoint Plaintiff as representatives of the Class and her counsel as counsel for the Class;
- B. That this Court enter judgment awarding damages to Plaintiff, Plaintiff's Children, the Members of the Class and their minor children;
- C. That this Court award injunctive relief, including but not limited to: (i) the provision of personal data monitoring and/or personal data monitoring services for Plaintiff, Plaintiff's Children, the Members of the Class and their minor children; (ii) the provision of identify theft insurance to Plaintiff, Plaintiff's Children, the Members of the Class and their minor children; and (iii) requiring that Defendant enhance the security of its computer data systems so that any further public disclosure of Students' Confidential Personal Information in the future will be prevented.;
- D. That the Court award civil penalties, attorneys' fees, expenses and the costs of this suit together with prejudgment and post-judgment interest at the maximum rate allowed by law; and

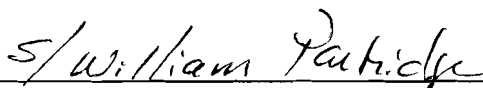
E. That this Court award such other and further relief as it may deem just and appropriate.

JURY TRIAL DEMAND

Plaintiff, on behalf of herself and the Members of the Class, demands a jury trial on all issues so triable.

Dated: September __, 2008

By their attorneys,



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