

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

B.J.F, an individual, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

PNI DIGITAL MEDIA, INC.,

Defendant.

NO. 2:15-cv-1643

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, on behalf of herself and all others similarly situated, alleges:

NATURE OF THE CASE

1. Between approximately June 2014 and July 2015, Defendant PNI Digital Media, Inc. (“PNI”) was subject to a data breach (the “PNI data breach”), when hackers stole the personal financial information of numerous individuals whose information was included in PNI’s electronic records. The personal and financial information obtained by the hackers includes name, telephone number, mailing address, email address, username, hashed password, and credit card information (including card number, expiration date, and verification code). Such information will allow criminals to create fraudulent credit or debit accounts for the purchasing

1 of goods or the withdrawal of money. There was absolutely no reason for those who perpetrated
2 the data breach to undertake such an effort other than to illegally profit. Thus, there can be no
3 doubt that the personal information taken in the PNI data breach has been sold, or made available
4 for sale, to criminals.

5
6 2. PNI's conduct – failing to take adequate and reasonable measures to ensure its
7 data systems were protected, failing to take available steps to prevent and stop the breach from
8 ever happening, failing to disclose to its customers the material facts that it did not have adequate
9 computer systems and security practices to safeguard customers' personal information, failing to
10 recognize that a breach had occurred for months, and failing to provide timely and adequate
11 notice of the PNI data breach – has caused substantial consumer harm and injuries to consumers
12 across the United States.

13
14 3. As a result of the PNI data breach, numerous individuals whose personal
15 information was in PNI electronic records have been exposed to fraud and these individuals have
16 been harmed. The injuries suffered by the proposed Class as a direct result of the PNI data
17 breach include: time and effort spent dealing with the fallout of the data breach; costs of dealing
18 with the data breach; theft of their personal information; costs associated with the detection and
19 prevention of identity theft and medical identity theft and unauthorized use of their personal
20 information; costs associated with attempts to ameliorate, mitigate, and deal with the actual and
21 future consequences of the data breach, including finding fraudulent charges, cancelling and
22 reissuing cards, purchasing credit monitoring and identity theft protection services, imposition of
23 withdrawal and purchase limits on compromised accounts, and the stress, nuisance, and
24 annoyance of dealing with all issues resulting from the PNI data breach; the imminent and
25 certainly impending injury flowing from potential fraud and identify theft posed by their
26

1 personal information being placed in the hands of hackers; damages to and diminution in value
2 of their personal information entrusted to PNI for the sole purpose of maintaining electronic
3 records and with the mutual understanding that PNI would safeguard Plaintiff's and Class
4 members' data against theft and not allow access and misuse of their data by others; and
5 continued risk to their personal information, which remains in the possession of PNI and which
6 is subject to further breaches so long as PNI fails to undertake appropriate and adequate
7 measures to protect Plaintiff's and Class members' data in its possession.
8

9 4. Plaintiff seeks to remedy these harms, and prevent their future occurrence, on
10 behalf of herself and all similarly situated individuals whose personal information was stolen as a
11 result of the PNI data breach. Plaintiff asserts claims against PNI for violations of Hawaii's and
12 Washington's data breach statute, negligence, breach contract and breach of implied contract,
13 bailment, and unjust enrichment. On behalf of herself and all similarly situated consumers,
14 Plaintiff seeks to recover damages, including actual and statutory damages, and equitable relief,
15 restitution, disgorgement, costs, and reasonable attorney fees.
16

17 **PARTIES**

18 5. Plaintiff Brandee J. Faria (listed by initials in the caption to reduce her risk of
19 further harm) is domiciled in Hawaii and is a citizen of the State of Hawaii. Ms. Faria received
20 an email from Costco Photo Center informing her that her personal information was
21 compromised as a result of the PNI data breach. Ms. Faria was harmed by having her personal
22 information compromised. She has already spent significant time and worry devoted to the
23 problem.
24

25 6. Plaintiff would not have given, or not allowed PNI to be given, her personal
26 information had PNI told her that it lacked adequate computer systems and data security

1 practices to safeguard customers' personal information from theft, and had PNI provided her
2 with timely and accurate notice of the PNI data breach.

3 7. Plaintiff has suffered actual injury from having her personal information
4 compromised and stolen in and as a result of the PNI data breach.

5 8. Defendant PNI is a corporation organized and existing under the laws of the
6 Canadian province of British Columbia, with its principal place of business and headquarters in
7 Vancouver, British Columbia. PNI is a software developer that provides software platforms
8 targeted to businesses who offer photo services to consumers.
9

10 **JURISDICTION AND VENUE**

11 9. This Court has diversity jurisdiction under the Class Action Fairness Act, 28
12 U.S.C. § 1332(d)(2), because this is a class action involving more than 100 class members, the
13 amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and the class
14 members are citizens of a state other than Defendant's state or country of citizenship, which is
15 Canada. This Court may also exercise supplemental jurisdiction over the state law claim pled
16 below.
17

18 10. This Court has personal jurisdiction over PNI because it regularly conducts
19 business in Washington, and has sufficient minimum contacts in Washington.

20 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because PNI
21 regularly transacts business here; some of the Class members reside in this District; and Costco
22 (through which many Class members were introduced to PNI) is headquartered in Issaquah,
23 Washington, within the District. As such, the causes of action for the putative Class members
24 also arose, in part, in this District.
25
26

FACTS

1
2 12. PNI provides a proprietary transactional software platform that is used by several
3 leading retailers such as Costco, CVS Pharmacy, and Rite Aid to sell personalized photo services
4 and products to consumers.

5
6 13. PNI's digital software connects these retailers' websites, in-store kiosks, and
7 mobile platforms so that consumers are presented with a uniform storefront at a retailer's photo
8 center service.

9 14. Historically, PNI's software platform has been used in over 19,000 retail locations
10 and 8,000 kiosks, where consumers made over 18 million transactions for personalized photo
11 products.

12 15. Plaintiff has utilized PNI's software platform through Costco Photo Center, where
13 Ms. Faria created an account on costcophotocenter.com for her digital photo needs.

14 16. Ms. Faria either established a contractual relationship with PNI or is a third-party
15 beneficiary of PNI's contractual relationship with Costco.

16 17. In connection with her costcophotocenter.com account, Ms. Faria provided PNI
17 with sensitive personal and/or financial information such as her first and last name, payment card
18 number, expiration date, card verification code, address, phone number, email address, and
19 username and password for logging into her costcophotocenter.com account.

20 18. When Ms. Faria provided PNI with this sensitive personal and financial
21 information, she reasonably believed PNI would maintain this personal and financial information
22 in a secure manner and provided her information to PNI on that basis.

23 19. Had Ms. Faria known that PNI would not maintain her information in a
24 reasonably secure manner, she would not have provided that information to PNI.
25
26

1 20. On September 29, 2015, The Costco Photo Center Team sent Ms. Faria an email
2 with the subject line: “Costco Photo Center Security Update.”

3 21. The email received by Ms. Faria included the following information:

4 As you may be aware, the company that hosts the online Costco Photo Center
5 suffered a security compromise that caused our photo site to be taken offline for
6 several weeks. Although we do not know the exact date of Costco’s compromise,
7 an unauthorized party appears to have accessed the host company’s system from
8 June 19, 2014 to July 15, 2015. At some point, the unauthorized party deployed
9 malware within the host company’s systems. Several retailers were impacted, but
10 we do not know the extent of that impact. Our investigation indicates that some
11 Costco members who typed information into their account may have had that
12 information taken. You are receiving this notice because you have a Costco Photo
13 Center online account, and there is a possibility that if you logged on during the
14 affected time period, your email address and password were compromised. If you
15 created a new account during the affected time period, your name and phone
16 number also may have been compromised. We do not believe, however, that
17 stored information or your photos were at risk. Costco.com itself was not
18 impacted.

19 The site was taken offline on July 17 so that it could be rebuilt with additional
20 security measures at a variety of levels. As a precaution, all stored credit card
21 information was deleted. When we resume taking payments online, the site will
22 have new payment technology with enhanced security features. We continue to
23 work closely with our hosting company to implement security tolls and tests to
24 protect our members’ personal data.

25 Now that the site is online again, we are requiring that all users reset their
26 passwords the first time they access the site. In addition, we strongly recommend
that you change your password on all other sites or services where you used the
same password used for the photo site.

 There is additional information about this situation accessible from the help
section of the online Costco Photo Center: www.costcophotocenter.com/faqs.
You may also call us at 866-329-0155.

 22. Plaintiff’s personal and financial information was compromised in and as a result
of the PNI data breach.

 23. Ms. Faria was harmed by having her financial and personal information
compromised and faces the imminent threat of future additional harm from the increased risk of

1 identity theft and fraud due to her financial and/or personal information being sold on the
2 Internet black market and/or misused by criminals. For example, Plaintiff has already spent a
3 significant amount of her valuable time in dealing with the fallout of the data breach.

4 CLASS ACTION ALLEGATIONS

5 24. Plaintiff brings all claims as class claims under Federal Rule of Civil Procedure
6
7 23. The requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(3) are met with respect
8 to the Class defined below.

9 25. The Plaintiff Class consists of all United States citizens whose personal
10 information was compromised by the PNI data breach.

11 26. Excluded from the Class is PNI, including any entity in which PNI has a
12 controlling interest or is a parent or subsidiary, as well as the officers, directors, affiliates, legal
13 representatives, heirs, predecessors, successors, and assigns of PNI. Also excluded are the
14 judges and court personnel in this case and any members of their immediate families.

15
16 27. **Numerosity.** The Class is so numerous that joinder of all members is
17 impracticable. The Class includes thousands, possibly hundreds of thousands, of individuals
18 whose personal information was compromised by the PNI data breach.

19 28. **Commonality.** There are numerous questions of law and fact common to
20 Plaintiff and the Class, including the following:

- 21 • whether PNI engaged in the wrongful conduct alleged herein;
- 22 • whether PNI's conduct was deceptive, unfair, unconscionable and/or unlawful;
- 23 • whether PNI owed a duty to Plaintiff and members of the Class to adequately protect
24 their personal information and to provide timely and accurate notice of the PNI data
25 breach to Plaintiff and members of the Class;
- 26

- 1 • whether PNI breached its duties to protect the personal information of Plaintiff and
2 members of the Class by failing to provide adequate data security and whether PNI
3 breached its duty to provide timely and accurate notice to Plaintiff and members of the
4 Class;
- 5 • whether PNI knew or should have known that its computer systems were vulnerable to
6 attack;
- 7 • whether PNI's conduct, including its failure to act, resulted in or was the proximate cause
8 of the breach of its systems, resulting in the loss of the personal information;
- 9 • whether PNI unlawfully failed to inform Plaintiff and members of the Class that it did not
10 maintain computers and security practices adequate to reasonably safeguard personal
11 information and whether PNI failed to inform Plaintiff and members of the Class of the
12 data breach in a timely and accurate manner;
- 13 • whether Plaintiff and members of the Class suffered injury, including ascertainable
14 losses, as a result of PNI's conduct (or failure to act);
- 15 • whether Plaintiff and members of the Class are entitled to recover damages; and
- 16 • whether Plaintiff and Class members are entitled to equitable relief, including injunctive
17 relief, restitution, disgorgement, and/or other equitable relief.

18
19
20
21 29. **Typicality.** Plaintiff's claims are typical of the claims of the Class in that she,
22 like all Class members, had her personal information compromised in the PNI data breach.

23 30. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the Class.
24 Plaintiff has retained counsel who are experienced in class-action and complex litigation.
25 Plaintiff has no interests that are adverse to, or in conflict with, other members of the Class.
26

1 31. The questions of law and fact common to the Class members predominate over
2 any questions which may affect only individual members.

3 32. **Superiority.** A class action is superior to other available methods for the fair and
4 efficient adjudication of the controversy. Class treatment of common questions of law and fact is
5 superior to multiple individual actions or piecemeal litigation. Moreover, absent a class action,
6 most Class members would likely find the cost of litigating their claims prohibitively high and
7 would therefore have no effective remedy.
8

9 33. A class action is an appropriate method for the fair and efficient adjudication of
10 this controversy. There is no special interest in the members of the Class individually controlling
11 the prosecution of separate actions. The loss of money and other harm sustained by many
12 individual Class members will not be large enough to justify individual actions, especially in
13 proportion to the significant costs and expenses necessary to prosecute this action. The expense
14 and burden of individual litigation makes it impossible for many members of the Class
15 individually to address the wrongs done to them. Class treatment will permit the adjudication of
16 claims of Class members who could not afford individually to litigate their claims against
17 Defendant. Class treatment will permit a large number of similarly situated persons to prosecute
18 their common claims in a single form simultaneously, efficiently, and without duplication of
19 effort and expense that numerous individual actions would entail. No difficulties are likely to be
20 encountered in the management of this class action that would preclude its maintenance as a
21 class action, and no superior alternative exists for the fair and efficient adjudication of this
22 controversy.
23
24

25 34. Class certification, therefore, is appropriate under Federal Rules 23(a) and (b)(3).
26 The above common questions of law or fact predominate over any questions affecting individual

1 members of the Class, and a class action is superior to other available methods for the fair and
2 efficient adjudication of the controversy.

3 35. The prosecution of separate actions by the individual Class members would create
4 a risk of inconsistent or varying adjudications with respect to individual Class members, which
5 would establish incompatible standards of conduct for PNI. In contrast, the conduct of this
6 action as a class action presents far fewer management difficulties, conserves judicial resources
7 and the parties' resources, and protects the rights of each Class member.
8

9 **COUNT I – NEGLIGENCE**

10 36. Plaintiff incorporates by reference those paragraphs set out above as if fully set
11 forth herein.

12 37. PNI owed a duty to Plaintiff and members of the Class to exercise reasonable care
13 in obtaining, retaining, securing, safeguarding, deleting, and protecting their personal
14 information in its possession from being compromised, lost, stolen, accessed, and misused by
15 unauthorized persons. This duty included, among other things, designing, maintaining, and
16 testing PNI's security systems to ensure that Plaintiff's and Class members' personal information
17 in PNI's possession was adequately secured and protected. PNI further owed a duty to Plaintiff
18 and Class members to implement processes that would detect a breach of its security system in a
19 timely manner and to timely act upon warnings and alerts.
20

21 38. PNI owed a duty, as articulated in its own policies, to protect its customers'
22 personal information.
23

24 39. PNI owed a duty to timely disclose the material fact that PNI's computer systems
25 and data security practices were inadequate to safeguard individuals' personal information.
26

1 40. PNI breached these duties by the conduct alleged herein by (a) failing to protect
2 its customers' personal information; (b) failing to maintain adequate computer systems and data
3 security practices to safeguard customers' personal information; (c) failing to disclose the
4 material fact that PNI's computer systems and data security practices were inadequate to
5 safeguard customers' personal information; and (d) failing to disclose in a timely and accurate
6 manner to Plaintiff and members of the Class the material fact of the PNI data breach.
7

8 41. The conduct alleged herein caused Plaintiff and Class members to be exposed to
9 fraud and be harmed. The injuries suffered by Plaintiff and the proposed Class as a direct result
10 of the PNI data breach include: time, trouble, and anxiety expended only as a result of the data
11 breach; theft of their personal information; costs associated with the detection and prevention of
12 identity theft and medical identity theft and unauthorized use of their financial accounts and
13 medical identity; costs associated with time spent and the loss of productivity from taking time to
14 address and attempt to ameliorate, mitigate, and deal with the actual and future consequences of
15 the data breach, including finding fraudulent charges, cancelling and reissuing cards, purchasing
16 credit monitoring and identity theft protection services, imposition of withdrawal and purchase
17 limits on compromised accounts, and the stress, nuisance and annoyance of dealing with all
18 issues resulting from the PNI data breach; the imminent and certainly impending injury flowing
19 from potential fraud and identify theft posed by their personal information being placed in the
20 hands of hackers; damages to and diminution in value of their personal information entrusted to
21 PNI with the mutual understanding that PNI would safeguard Plaintiff's and Class members'
22 data against theft and not allow access and misuse of their data by others; and continued risk to
23 their personal information, which remains in the possession of PNI and which is subject to
24
25
26

1 further breaches so long as PNI fails to undertake appropriate and adequate measures to protect
2 Plaintiff's and Class members' data in its possession.

3 **COUNT II – BREACH OF IMPLIED CONTRACT**

4 42. Plaintiff incorporates by reference those paragraphs set out above as if fully set
5 forth herein.

6
7 43. When Plaintiff and members of the Class provided their personal information to
8 PNI, Plaintiff and members of the Class entered into implied contracts with PNI pursuant to
9 which PNI agreed to safeguard and protect such information and to timely and accurately notify
10 Plaintiff and Class members that their data had been breached and compromised.

11 44. Plaintiff and Class members would not have provided and entrusted their personal
12 information to PNI in the absence of the implied contract between them and PNI.

13 45. Plaintiff and members of the Class fully performed their obligations under the
14 implied contracts with PNI.

15
16 46. PNI breached the implied contracts it made with Plaintiff and Class members by
17 failing to safeguard and protect the personal information of Plaintiff and members of the Class
18 and by failing to provide timely and accurate notice to them that their personal information was
19 compromised in and as a result of PNI data breach.

20 47. The losses and damages sustained by Plaintiff and Class members as described
21 herein were the direct and proximate result of PNI's breaches of the implied contracts between
22 PNI and Plaintiff and members of the Class.

23 **COUNT III – BREACH OF CONTRACT**

24
25 48. Plaintiff incorporates by reference those paragraphs set out above as if fully set
26 forth herein.

1 49. PNI has a contractual obligation to maintain the security of its customers'
2 personal information.

3 50. PNI breached that contractual obligation by failing to safeguard and protect the
4 personal information of Plaintiff and members of the Class and by failing to provide timely and
5 accurate notice to them that their personal information was compromised as a result of PNI data
6 breach.
7

8 51. The losses and damages sustained by Plaintiff and Class members as described
9 herein were either the direct and proximate result of PNI's breaches of the contracts between PNI
10 and Plaintiff and members of the Class or the direct and proximate result of PNI's breaches of its
11 contract(s) with Costco or other non-parties, of which Plaintiff and the Class are third-party
12 beneficiaries.
13

14 **COUNT IV – BAILMENT**

15 52. Plaintiff incorporates by reference those paragraphs set out above as if fully set
16 forth herein.

17 53. In having their personal information delivered to PNI for the purposes of photo
18 services, Plaintiff and Class members intended and understood that PNI would adequately
19 safeguard their personal and financial information.

20 54. PNI accepted possession of Plaintiff's and Class members' personal information
21 for the purpose of providing photo services.
22

23 55. By accepting possession of Plaintiff's and Class members' personal information,
24 PNI understood that Plaintiff and Class members expected PNI to adequately safeguard their
25 personal information. Accordingly, a bailment (or deposit) was established for the mutual
26 benefit of the parties.

1 63. PNI unreasonably delayed in informing the public, including Plaintiff and
2 members of the Class (or suitable Subclass) about the breach of security of Plaintiff's and Class
3 (or suitable Subclass) members' confidential and non-public personal information after PNI
4 knew or should have known that the data breach had occurred.

5 64. PNI failed to disclose to Plaintiff and the Class (or suitable Subclass) without
6 unreasonable delay and in the most expedient time possible, the breach of security of Plaintiff's
7 and Class (or suitable Subclass) members' personal and financial information when PNI knew or
8 reasonably believed such information had been compromised.

9 65. Plaintiff and members of the Class (or suitable Subclass) suffered harm directly
10 resulting from PNI's failure to provide and the delay in providing Plaintiff and Class (or suitable
11 Subclass) members with timely and accurate notice as required by the Hawaii and Washington
12 data breach statutes.

13 66. Plaintiff suffered the damages alleged above as a direct result of PNI's delay in
14 providing timely and accurate notice of the data breach.

15 67. Had PNI provided timely and accurate notice of the data breach, Plaintiff and
16 Class (or suitable Subclass) members would have been able to avoid and/or attempt to ameliorate
17 or mitigate the damages and harm resulting in the unreasonable delay by PNI in providing notice.

18 68. PNI's failure to provide timely and accurate notice of the data breach violated the
19 Hawaii and Washington data breach statutes.

20 69. Plaintiff and members of the Class seek all remedies available under the
21 Washington data breach statute.
22
23
24
25
26

1 **COUNT VI – UNJUST ENRICHMENT**

2 70. Plaintiff incorporates by reference those paragraphs set out above as if fully set
3 forth herein.

4 71. This count is brought in the alternative to Plaintiff’s breach of contract counts. If
5 claims for breach of contract are ultimately successful, this count will be dismissed.

6 72. Plaintiff and Class members conferred a benefit on PNI by way of customers’
7 paying PNI to maintain Plaintiff and Class members’ personal information.

8 73. The monies paid to PNI were supposed to be used by PNI, in part, to pay for the
9 administrative and other costs of providing reasonable data security and protection to Plaintiff
10 and Class members.

11 74. PNI failed to provide reasonable security, safeguards, and protections to the
12 personal information of Plaintiff and Class members, and as a result PNI was overpaid.

13 75. Under principles of equity and good conscience, PNI should not be permitted to
14 retain the money because PNI failed to provide adequate safeguards and security measures to
15 protect Plaintiff’s and Class members’ personal information that they paid for but did not
16 receive.

17 76. PNI wrongfully accepted and retained these benefits to the detriment of Plaintiff
18 and Class members.

19 77. PNI’s enrichment at the expense of Plaintiff and Class members is and was unjust.

20 78. As a result of PNI’s wrongful conduct, as alleged above, Plaintiff and the Class
21 are entitled to restitution and disgorgement of profits, benefits, and other compensation obtained
22 by PNI, plus attorneys’ fees, costs, and interest thereon.
23
24
25
26

1 **RELIEF REQUESTED**

2 Plaintiff, on behalf of herself and all others similarly situated, requests that the Court
3 enter judgment against PNI, as follows:

- 4 1. Certifying this case as a class action pursuant to Federal Rules 23(a) and (b)(3),
5 and, pursuant to Federal Rule 23(g), appointing the named Plaintiff to be a Class
6 representative and her undersigned counsel to be Class counsel;
7
8 2. Requiring Defendant to pay for notifying the Class of the pendency of this action;
9
10 3. Requiring Defendant to make whole any losses suffered by Plaintiff and Class
11 members;
12
13 4. Awarding to Plaintiff and the Class of compensatory, direct, consequential,
14 statutory, and incidental damages;
15
16 5. Awarding attorneys' fees, costs, and expenses, as provided by law, or equity, or as
17 otherwise available;
18
19 6. Awarding pre-judgment and post-judgment interest, as provided by law or equity;
20 and
21
22 7. Such other or further relief as may be appropriate under the circumstances.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff demands a trial by jury of any and all issues so triable.
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 14th day of October, 2015.

**PETERSON | WAMPOLD
ROSATO | LUNA | KNOPP**

/s/Felix Gavi Luna
Felix Gavi Luna, WSBA No. 27087
1501 4th Avenue, Suite 2800
Seattle, WA 98101
Ph. (206) 624-6800
luna@pwrlk.com

and

TYCKO & ZAVAREEI LLP

/s/Jonathan K. Tycko
/s/Jeffrey Kaliel
Jonathan K. Tycko
TYCKO & ZAVAREEI LLP
2000 L Street, N.W., Suite 808
Washington, D.C. 20036
Tel: (202) 973-0900
jtycko@tzlegal.com
jkaliel@tzlegal.com

Attorneys for Plaintiffs