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8 *individually and on behalf of himself*
9 *and all others similarly situated*

7 **THE UNITED STATES DISTRICT COURT**
8
9 **FOR THE DISTRICT OF ARIZONA**

10 NATHAN DICK, individually and on behalf
11 of himself and all other similarly situated,

12 Plaintiff,

13 vs.

14 VANTAGE RETIREMENT PLANS LLC,
15 an Arizona limited liability company; and
16 DOES 1-20, inclusive.

17 Defendants.

Case No.:

CLASS COMPLAINT

- 1. **Violation of the Stored Communications Act [18 U.S.C. §§ 2702, 2707]**
- 2. **Public Disclosure of Private Facts**
- 3. **Negligence**
- 4. **Breach of Contract**
- 5. **Injunctive Relief**

DEMAND FOR JURY TRIAL

19 **COMPLAINT**

20
21 1. Plaintiff Nathan Dick brings this putative class action, on behalf of himself
22 and a putative class comprised of approximately 400 customers of Vantage Retirement
23 Plans, LLC (Vantage), a self-directed retirement plans company.
24
25
26

1 2. This putative class action is based on Vantage’s willful and intentional
2 violations of the Stored Communications Act, 18 U.S.C. §§ 2702, 2707, in addition to
3 other violations of State law.
4

5 3. On February 16, 2018, Vantage sent its customers an email regarding an
6 annual valuation required for one of its IRA accounts. In this email, Vantage publicly
7 revealed the email addresses of about 400 customers, violating their privacy rights and its
8 own policies.
9

10 4. Instead of safeguarding the identities of its customers, Vantage carelessly
11 provided the emails of 400 customers to the public, violating the trust placed in them.

12 **JURISDICTION AND VENUE**

13 5. This Court has federal question jurisdiction over this class action pursuant
14 to 28 U.S.C. § 1331 because the matter includes a federal claim for violation of the Stored
15 Communications Act, 18 U.S.C. § 2702, 2707.
16

17 6. In addition, this Court has supplemental jurisdiction over Plaintiff’s state
18 statutory and common law claims under 28 U.S.C. § 1367 because those claims derive
19 from a common nucleus of operative facts.
20

21 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a
22 substantial portion of the events giving rise to Plaintiff and Class and/or Collective Action
23 Members’ claims occurred in the District of Arizona as Defendant: (a) is licensed and
24 authorized to conduct business in this District and has intentionally availed itself to the
25 laws and markets within this District through the promotion, marketing, and performance
26

1 of services in this District: (b) is an Arizona limited liability corporation; (c) currently
2 does substantial business in this District; and (d) is subject to personal jurisdiction in this
3 District.
4

5 **PARTIES**

6 8. At all relevant times Nathan Dick was a resident of Maricopa County,
7 Arizona, and a citizen of Arizona. Plaintiff, on behalf of himself and the putative National
8 class, and Arizona sub-class, (the “Class Members”) brings this action against Vantage.
9

10 9. Defendant Vantage is an Arizona limited liability company with its
11 principal place of business in Phoenix, Arizona.

12 10. Each of the DOES 1-20 is the agent, servant, partner, joint-venturer, co-
13 venturer, media partner, principal, director, officer, manager, employee, or shareholder of
14 one or more of its co-defendant(s) who aided, abetted, controlled, and directed or
15 conspired with and acted in furtherance of said conspiracy with one or more of its co-
16 defendant(s) in said co-defendant(s) performance of the acts and omissions described
17 below. Plaintiff sues each of these Doe Defendants by these fictitious names because
18 Plaintiff does not know these Defendants’ true names and capacities. Despite reasonable
19 efforts, Plaintiff has not been able to ascertain the identity of DOES 1-20.
20
21

22 11. Plaintiff further alleges that each Defendant is directly liable and/or
23 vicariously, jointly and severally liable for the violations complained of herein.
24
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1 12. Upon information and belief, Vantage’s conduct has directly affected
2 approximately 400 of its customers, to whom Vantage owes a legal duty of care and to
3 whom Vantage is directly responsible for damages for the violation of their privacy.
4

5 **FACTUAL ALLEGATIONS**

6 14. Vantage is a retirement plan administration company that specializes in self-
7 directed IRAs. It provides its customers the ability to invest retirement funds outside of
8 the stock market.
9

10 15. Vantage works with individuals and small business owners who wish to
11 include non-traditional assets such as private companies, real estate, precious metals and
12 private lending as part of their retirement diversification strategy. Vantage serves more
13 than 6,500 clients while administering over \$600 million in retirement assets.
14

15 16. Vantage collects non-public information about its customers. On a page
16 called “Privacy Policies” on its website, Vantage declares that “the non-public personal
17 information includes name, postal address, e-mail address, social security number, assets,
18 income, account balances, and account histories.
19

20 17. Vantage’s website also states:

21 We may disclose some of the information described above, such as your
22 name and address, to companies that perform marketing and other services
23 on our behalf (e.g., to companies that assist us with mailings).

24 We may disclose information about you, your accounts, and your
25 transactions: (a) where it is necessary or helpful to effect, process, or confirm
26 your transactions; (b) to verify the existence, history, and condition of your
account for credit reporting agencies; (c) to comply with legal process, such
as subpoenas and court orders; (d) to law enforcement authorities if we

1 believe a crime has been committed; (e) if you give us your consent; and (f)
2 as otherwise permitted by law.

3 **We do not disclose nonpublic personal information about our current or**
4 **former customers to others, except as set forth in this policy.** If you
5 decide to close your account(s) or become an inactive customer, we will
6 adhere to the privacy policies and practices as described in this notice.

7 18. On February 16, 2018, Vantage sent an email (the “February 16 Email”) out
8 to its customers regarding an annual valuation required for one of its IRA accounts.

9 19. Instead of blindly copying the email recipients of the February 16 Email,
10 Vantage exposed the email addresses of nearly 400 customers. Each email recipient was
11 able to see the email address of all the other recipients and know that they are one of
12 Vantage’s customers.

13 CLASS ACTION ALLEGATIONS

14 20. Plaintiff brings this class action on behalf of himself and all others similarly
15 situated as Class Members pursuant to Rule 23 or the Federal Rules of Civil Procedure.

16 21. The proposed class that Plaintiff seeks to represent for the class action is
17 composed of: Individuals who are customers of Vantage and whose identities were
18 revealed by Vantage’s February 16 Email.

19 22. Plaintiff also seeks to represent a proposed subclass (the “Arizona
20 Subclass”) that is composed of: Individuals residing in Arizona who are customers of
21 Vantage and whose identities were revealed by Vantage’s February 16 Email.
22

23 23. Plaintiff is a member of the putative class that he seeks to represent.
24 Plaintiff is a United States resident, also residing in Arizona, and is a customer of Vantage.
25
26

1 24. The definition of the putative classes is narrowly tailored so as to include
2 only those identifiable members whose emails were revealed in Vantage's February 16
3 Email.
4

5 25. The proposed classes are so numerous that the individual joinder of all its
6 members, in this or any action, is impracticable. The exact number or identification of
7 the members of the putative classes are presently unknown to Plaintiff, but it is believed
8 to compromise approximately 400 individuals worldwide, thereby making joinder
9 impractical.
10

11 26. Common questions of fact and law exist as to all Class Members and
12 predominate over questions affecting only individual members. These include, but are
13 not limited to, the following:
14

- 15 a. Whether Vantage owed a duty to keep the email addresses of its customers
16 private.
- 17 b. Whether Vantage knowingly revealed the email addresses of its members
18 in its February 16 Email.
- 19 c. Whether Vantage negligently revealed the email addresses of its members
20 in its February 16 Email.
- 21 d. Whether Vantage violated its own guidelines when it revealed the email
22 addresses of its members in the February 16 Email.
23
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1 e. Whether Vantage agreed to keep the identifying information of its members
2 confidential as inducement for the members to enter into a contract with
3 Vantage for services.
4

5 f. Whether Plaintiff and the class members are entitled to an injunction,
6 damages, restitution, equitable relief and other relief deemed appropriate
7 and the amount and nature of such relief.
8

9 27. Plaintiff's claims are typical of the claims of the putative class members.

10 Plaintiff and all putative class members had their personal email addresses publicly
11 disclosed without their consent, subjecting them a loss of privacy relating to their personal
12 retirement and financial accounts.

13 28. The factual bases of Defendant's misconduct are common to the putative
14 class members and represent a common failure to safeguard the personal information of
15 members who had been assured of Vantage's privacy policy. Plaintiff is asserting the
16 same rights, making the same claims, and seeking the same relief for himself and all other
17 putative class members. The central question of whether Defendant willfully or
18 negligently, in breach of contract and federal and state law revealed the personal
19 information of its members predominates over all other questions, legal and factual in this
20 litigation.
21
22

23 29. Plaintiff is an adequate representative of the proposed class because he is a
24 putative class member and does not have interests that conflict with those of the other
25 putative class members he seeks to represent. Plaintiff is represented by experienced and
26

1 able counsel, who has litigated numerous lawsuits, and Plaintiff's Counsel intends to
2 prosecute this action vigorously for the benefit of the proposed class. Plaintiff and his
3 Counsel will fairly and adequately protect the interests of the class members.
4

5 30. A class action is the superior available method for the efficient adjudication
6 of this litigation because:

- 7 a. The prosecution of separate actions by individual members of the Class
8 would create a foreseeable risk of inconsistent or varying adjudications
9 which would establish incompatible results and standards for Defendant;
10
- 11 b. Adjudications with respect to individual members of the Class would, as a
12 practical matter, be dispositive of the interests of the other members not
13 parties to the individual adjudications or would substantially impair or
14 impede their ability to protect their own separate interests;
15
- 16 c. Class action treatment avoids the waste and duplication inherent in
17 potentially hundreds of individual actions, and conserves the resources of
18 the courts; and
19
- 20 d. The claims of the individual class members are relatively small compared
21 to the burden and expense it would be required to individually litigate their
22 claims against Defendant, so it would be impracticable for the members of
23 the Class to individually seek redress for Defendant's wrongful conduct.
24 Even if the members of the Class could afford individual litigation, the court
25 system could not. Individualized litigation creates a potential for
26

1 inconsistent or contradictory judgments and increases the delay and expense
2 to all parties and the court system. By contrast, the class action device
3 presents far fewer management difficulties, and provides the benefits of
4 single adjudication, economy of scale, and comprehensive supervision by a
5 single court.
6

7 31. A class action for injunctive and equitable relief pursuant to Rule 23(b)(2)
8 of the Federal Rules of Civil Procedure is also appropriate. Defendant acted or refused to
9 act on grounds generally applicable to the Class thereby making appropriate final
10 injunctive and equitable relief with respect to the Class as a whole. Defendant's actions
11 are generally applicable to the Class as a whole, and Plaintiff, on behalf of the Class, seeks
12 damages and injunctive relief described herein. Moreover, Defendant's policy and
13 practices make declaratory relief with respect to the Class as a whole appropriate.
14
15

16 **FIRST CAUSE OF ACTION**

17 **Violation of the Federal Stored Communications Act, 18 U.S.C. §§ 2702, 2707**

18 **(On Behalf of the National Class or, alternatively, the Arizona Putative Subclass)**

19 32. Plaintiff, individually, and on behalf of all others similarly situated, restates
20 each and every paragraph of this Complaint as if fully rewritten herein.
21

22 33. The Stored Communications Act ("SCA") contains provisions that provide
23 consumers with redress if a company mishandles their electronically stored information.
24 The SCA is meant to protect individuals' privacy interests in personal and proprietary
25 information.
26

1 34. Section 2702(a)(1) of the SCA provides that “a person or entity providing
2 an electronic communication service to the public shall not knowingly divulge to any
3 person or entity the contents of a communication while in electronic storage by that
4 service.” 18 U.S.C. § 2702(a)(1).

5
6 35. The SCA states that “electronic communication service” means “any
7 service which provides to users thereof the ability to send or receive wire or electronic
8 communications.” 18 U.S.C. § 2510(15).

9
10 36. Defendant provides an electronic communication service because it
11 communicates with its customers by sending and receiving electronic communications
12 regarding Defendant’s services.

13 37. By failing to take commercially reasonable steps to safeguard sensitive
14 personal contact information, Defendant has knowingly divulged private information that
15 was communicated to Defendant on condition that the information be kept strictly
16 confidential.

17
18 38. By revealing Plaintiff’s personal contact information Defendant has
19 violated Plaintiff’s right to privacy and knowingly divulged the contents of Plaintiff’s
20 communications.

21
22 39. Specifically, by revealing Plaintiff’s identifying information, Defendant has
23 publicly announced him as a customer of Vantage without his consent.

24 40. Plaintiff and the putative class members have suffered general and special
25 damages including but not limited to harm to their interest of privacy, mental distress in
26

1 the form of severe anxiety and fear for the security of their personal finances and personal
2 information, and attorneys' fees and the costs of bringing this suit. Those injuries were
3 caused by Defendant's February 16, 2018 public announcement of Plaintiff and the
4 putative class members.
5

6 **SECOND CAUSE OF ACTION**

7 **Public Disclosure of Private Facts**

8 **(On Behalf of the National Class or, alternatively, the Arizona Putative Subclass)**
9

10 41. Plaintiff, individually, and on behalf of all others similarly situated, restates
11 each and every paragraph of this Complaint as if fully rewritten herein.

12 42. By sending the February 16 Email, Defendant knowingly revealed the
13 personal identifying information of 400 of its customers, effectively outing them as
14 customers of Vantage and depriving them of their right to financial privacy.
15

16 43. Plaintiff and the putative class members' email addresses are confidential
17 and private, as stated in Defendant's privacy policy. By revealing the foregoing
18 Defendant violated Plaintiff's and the putative class members' right to privacy and
19 exposed them to potential security issues relating to their non-public personal information.
20

21 44. Plaintiff and the putative class members' email addresses and the fact of
22 their relationship with Defendant are not legitimate public concerns.

23 45. Plaintiff and the putative class members have suffered general and special
24 damages including but not limited to harm to their interest of privacy, mental distress in
25 the form of severe anxiety and fear for the security of their personal finances and personal
26

1 information, and attorneys' fees and the costs of bringing this suit. Those injuries were
2 caused by Defendant's February 16, 2018 public announcement of Plaintiff and the
3 putative class members.
4

5 **THIRD CAUSE OF ACTION**

6 **Negligence**

7 **(On Behalf of the National Class, or alternatively, the Arizona Putative Subclass)**

8 46. Plaintiff, individually, and on behalf of all others similarly situated, restates
9 each and every paragraph of this Complaint as if fully rewritten herein.
10

11 47. By sharing Plaintiff and the putative class members as customers of Vantage,
12 Defendant breached the duty of care it owed them. Defendant knew or should have known
13 that by making Plaintiff's contact information public, it was opening them up to privacy
14 issues in violation of federal law, state law, and its own terms of use. However, Defendant
15 failed to put systems in place to prevent the public from determining the identity of its
16 customers. Instead, Defendant knowingly emailed 400 customers with each person's
17 email address in plain view.
18

19 48. The foregoing conduct by Defendant, both in failing to institute reasonable
20 safeguards to protect the anonymity of its members and in sending the February 16 Email
21 identifying 400 members, breached Defendant's duty of care. Defendant's actions
22 evidenced such a slight degree of care that they can only be described as grossly negligent.
23

24 49. Plaintiff and the putative class members have suffered general and special
25 damages including but not limited to harm to their interest of privacy, mental distress in
26

1 the form of severe anxiety and fear for the security of their personal finances and personal
2 information, and attorneys' fees and the costs of bringing this suit. Those injuries were
3 caused by Defendant's February 16, 2018 public announcement of Plaintiff and the
4 putative class members.
5

6 **FOURTH CAUSE OF ACTION**

7 **Breach of Contract**

8 **(On Behalf of the National Class, or alternatively, the Arizona Putative Subclass)**
9

10 50. Plaintiff, individually, and on behalf of all others similarly situated, restates
11 each and every paragraph of this Complaint as if fully rewritten herein.

12 51. Plaintiff and the putative class members entered into contracts with
13 Defendant, whereby Defendant promised to provide a level of privacy of Plaintiff's and
14 the putative class members' non-public information and promised not to disclose that
15 information except as described in Defendant's privacy policy.
16

17 52. These contract terms were clear to the parties such that they understood their
18 respective obligations under the contract.
19

20 53. Plaintiff and the putative class members performed their obligations under
21 the contracts.

22 54. Defendant breached the contracts by disclosing to its customers the email
23 addresses of Plaintiff and the putative class members, thereby failing to keep their non-
24 public information private, in violation of Defendant's privacy policy.
25
26

1 55. Plaintiff and the putative class members have suffered general and special
2 damages including but not limited to harm to their interest of privacy, mental distress in
3 the form of severe anxiety and fear for the security of their personal finances and personal
4 information, and attorneys' fees and the costs of bringing this suit. Those injuries were
5 caused by Defendant's February 16, 2018 public announcement of Plaintiff and the
6 putative class members.
7

8 **FIFTH CAUSE OF ACTION**

9 **Injunctive Relief**

10 **(On Behalf of the National Class, or alternatively, the Arizona Putative Subclass)**

11 56. Plaintiff, individually, and on behalf of all others similarly situated, restates
12 each and every paragraph of this Complaint as if fully rewritten herein.
13

14 57. Defendant has refused to act on grounds generally applicable to the
15 injunctive relief sought by Plaintiffs and other members of the putative class and subclass,
16 thereby making final injunctive relief appropriate.
17

18 58. Defendant's conduct as set forth herein, both in the past and through the
19 present, has demonstrated a willful disregard for the privacy of its customers.
20

21 59. If Defendant is allowed to continue with these practices, customers
22 including the Plaintiff and the putative class members will be irreparably harmed in that
23 they do not have a plain, adequate, speedy or complete remedy at law to address all of the
24 wrongs alleged in this Complaint, unless injunctive relief is granted to stop Defendant's
25 improper conduct.
26

1 60. Plaintiff and the putative class are therefore, entitled to an injunction
2 requiring Defendant to develop a more secure system for safeguarding the privacy of its
3 customers.
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the putative representative Plaintiff, on behalf of himself and the
7 putative class members defined herein prays for judgment against Defendant as follows:
8

9 A. For an order certifying this action and/or common issues raised herein as a
10 “Class Action” under the appropriate provision of Federal Rule of Civil Procedure 23(a),
11 23(b) and 23(c); designating Class Representatives; and appointing the undersigned to
12 serve as class counsel;

13 B. For notice of class certification and of any relief to be disseminated to all
14 Class Members and for such other further notices as this Court deems appropriate under
15 Fed. R. Civ. P. 23(d)(2);
16

17 C. For an order requiring complete and immediate disclosure of all studies,
18 reports, analyses, data, compilations, and other similar information within the possession,
19 custody, or control of Defendant concerning, relating to, or involving the protection of
20 customer privacy;
21

22 D. For an order barring Defendant from destroying or removing any computer
23 or similar records which record evidence related to Vantage’s customer records;
24
25
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1 E. For an order barring Defendant from attempting, on its own or through its
2 agents, to induce any putative Class Members to sign any documents which in any way
3 releases any of the claims of any Putative Class Members;
4

5 F. For an award of compensatory damages in the amount to be determined for
6 all injuries and damages described herein;

7 G. For an award of statutory damages;

8 H. For an award of punitive damages to the extent allowable by law, in an
9 amount to be proven at trial;
10

11 I. Awarding declaratory and injunctive relief as permitted by law or equity,
12 including: enjoining Defendant from continuing the unlawful practices as set forth herein,
13 and directing Defendant to identify, with Court supervision, victims of its conduct and
14 pay them, restitution and disgorgement of all monies acquired by Defendant by means of
15 any act or practice declared by the Court to be wrongful;
16

17 J. Awarding attorneys' fees and costs; and

18 K. Providing such other relief as may be just and proper.
19

20 DATED: March 6, 2018

21
22 TONDEVOLD LAW, PLC

23 /s/ Taylor W. Tondevold

24 TAYLOR W. TONDEVOLD

25 *Attorney for Plaintiff Nathan Dick,*
26 *individually and on behalf of himself and*
all others similarly situated

DEMAND FOR JURY TRIAL

1
2 Plaintiff, individually, and on behalf of all others similarly situated hereby
3 demands a trial by jury.
4

5
6 DATED: March 6, 2018
7

8 TONDEVOLD LAW, PLC

9 /s/ Taylor W. Tondevold

10 TAYLOR W. TONDEVOLD

11 *Attorney for Plaintiff Nathan Dick,*
12 *individually and on behalf of himself and*
13 *all others similarly situated*
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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

**NATHAN DICK, individually and on
Plaintiff(s): behalf of himself and all others
similarly situated**

**VANTAGE RETIREMENT PLANS
Defendant(s): LLC, an Arizona limited liability
company; and DOES 1-20, inclusive**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Taylor Tondevoid
Tondevoid Law PLC
1635 N. Greenfield Road Suite 138
Mesa, Arizona 85205
4804475357**

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **365 Personal Injury - Product Liability**

VI. Cause of Action: **Violations of the Stored Communications Act, [18 U.S.C. 2702, 2707],
Public Disclosure of Private Facts, Negligence, Breach of Contract, and
Injunctive Relief.**

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: Taylor W. Tondevold

Date: 03/05/2018

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Vantage Retirement Plans Sued After Allegedly Revealing Customers' Email Addresses](#)
