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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 DAVID BERRY and BONNIE GAYLE NG,
12 individually and on behalf of others similarly
13 situated,

14 Plaintiffs,

15 vs.

16 PENSION BENEFIT INFORMATION, LLC
17 (doing business as PBI RESEARCH
18 SERVICES); THE BERWYN GROUP, INC.;
19 and DOES 1 through 100,

20 Defendants.

Case No.: 4:23-cv-3297

CLASS ACTION COMPLAINT FOR
DAMAGES AND DEMAND FOR JURY
TRIAL

Complaint for:

1. Negligence;
2. Violation of the California Consumer Privacy Act (Cal. Civ. Code § 1798.150);
3. Violation of the Customer Records Act (“CRA”) (Cal. Civ. Code § 1798.82);
4. Violation of the California Right to Privacy (Cal. Const., art. I, § 1);
5. Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

1 Plaintiffs DAVID BERRY and BONNIE GAYLE NG (“Plaintiffs”), on behalf of
2 themselves and others similarly situated (“the Class”), bring this action against Defendants
3 PENSION BENEFIT INFORMATION, LLC (doing business as PBI RESEARCH SERVICES);
4 THE BERWYN GROUP, INC.; and DOES 1 through 100 (collectively “Defendants” or “PBI”)
5 for actual damages suffered by Plaintiffs and the Class, for injunctive relief, and for other
6 recovery specified herein, and allege upon information and belief, except as to their own actions,
7 the investigation of their counsel, and the facts that are a matter of public record, as follows:

8 **INTRODUCTION**

9 1. Pensions funds are of critical of importance both to the 10 million individuals who
10 depend on them for their income and for the economy at large. In aggregate, these funds carry
11 approximately \$4 trillion in assets and their payments to beneficiaries account for 1.5 percent of
12 gross domestic product.

13 2. With over \$430 billion in its portfolio, the California Public Employees’ Retirement
14 System, or “CalPERS,” is the largest public pension funds in the United States. Its sister fund,
15 the California State Teachers’ Retirement System, or “CalSTRS,” controls an additional \$309
16 billion.

17 3. These funds rely on private, third-party contractors for many of their critical
18 infrastructure needs. Defendants PBI and TBGI jointly offer pension plan management services,
19 finding pensioners and confirming they are still alive and able to deposit funds they receive from
20 their pension accounts. These companies hold themselves out as data security fortresses,
21 claiming, “protecting and securing your information is our highest priority.”

22 4. But in May 2023, they allowed an unauthorized user from a ransomware group to exploit
23 an undetected security flaw in a file transfer system. The total number of pensioners who were
24 affected is still unknown, but over 1 million CalPERS and CalSTRS pensioners personal
25 information was exfiltrated.

26 5. Rather than disclose the attack immediately, the Defendants waited several days to
27 inform the funds. When they finally did disclose the disaster, they failed to provide enough
28

1 information for the funds to know who or how many pensioners were affected. It took several
2 more weeks for the funds to obtain even enough information to notify the affected pensioners.

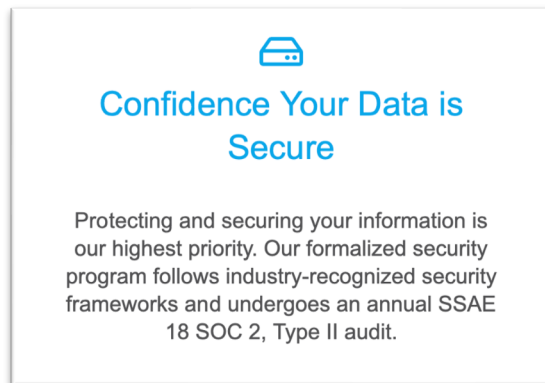
3 **FACTUAL ALLEGATIONS**

4 6. CalPERS and CalSTRS (“the Funds”) pay hundreds of thousands of retirees and related
5 beneficiaries monthly payouts, often referred to as “annuities.” In order to properly handle the
6 annuity payments, the Funds must ensure the accuracy of their recipients’ information. This
7 requires confirmation that the funds are being sent in the right format, to the right place, in the
8 correct amount, and that living retirees and beneficiaries will receive the payments for deposit.

9 7. Defendants Pension Benefit Information, LLC, and The Berwyn Group, Inc. jointly¹
10 contract with public pension funds, including CalPERS, CalSTRS, and dozens of other groups,
11 to perform the crucial fiduciary duty of identifying any pensioners who have died. This prevents
12 overpayments and other errors and allows the funds to find the pensioners beneficiaries, where
13 continued payments are appropriate.

14 8. Because of the volume of money circulating through the Funds, and the highly sensitive
15 nature of the data involved in the pensioners’ accounts, data security is imperative for these
16 contractors.

17 9. PBI’s website heavily advertises itself as a secure host of personal information, claiming,
18 “protecting and securing your information is our highest priority.”



27
28 ¹ Based on information and belief, Defendants were engaged a joint enterprise. Reference
throughout this Complaint to “PBI” refers to both Defendants.

1 10. Beyond general statements of data security policy, PBI makes numerous other promises
2 regarding the importance of security and the tools they use to protect pensioner data. PBI's
3 Privacy Policy states:

4 Data security is a company imperative. PBI strives to protect the personally
5 identifiable information that we collect, maintain or disseminate, including by using
appropriate administrative, physical, and technical safeguards.

6 11. Additionally, PBI's Data Security policy states:

7 Protecting and securing the information of our clients and our company is of critical
8 importance to PBI. We recognize that all relationships with current and prospective
9 clients are based upon integrity and trust, and we take our role as custodians of
confidential information very seriously.

10 The policy goes on to state the company uses "a multi-layered approach to protect data securely"
11 that includes annual training for IT professionals, real time scanning of code changes for
12 vulnerabilities, web application firewalls, n-tier application architecture, security awareness
13 training program for all employees at onboarding and on a regular basis, data loss prevention
14 tools to alert and block transfers of sensitive data, a system to correlate alerts and events across
15 various platforms, dozens of reviews of quarterly audit checks, annual audits by an independent
16 third-party for controls over data confidentiality and security, regular third party tests and audits
17 of security controls, monthly and quarterly vulnerability assessments and penetration tests of
18 internal and external network and application security, annual application penetration tests,
19 critical event and failure alerts, regular system and software patching, firewalls with intrusion
20 prevention and intrusion detection software, anti-virus scanning, a dedicated security event
21 management system with 24/7 alerting, a policy that limits access based on employees job
22 function, multi-factor authentication, quarterly audits of user accounts and permissions, and
23 encryption tools for data at-rest stored in its databases that are tested on a quarterly basis.

24 12. PBI's Privacy Principles statement reads:

25 Data security is a company imperative. PBI strives to protect the personally
26 identifiable information that we collect, maintain or disseminate, including by using
appropriate administrative, physical, and technical safeguards.

27 ...

28 PBI strives to prevent the acquisition of information from our products and services
for improper purposes, such as identity theft. PBI believes in the importance of

1 notifying individuals who may have had their sensitive personally identifiable
2 information acquired by an unauthorized individual, as appropriate.

3 13. In addition to these blanket privacy policies, PBI uses a unique Privacy Notice for
4 California Residents that “supplements the information contained in PBI’s Privacy Policy and
5 applies solely to individuals who reside in the State of California.” The California-specific policy
6 confirms that PBI collects an abundance of personal information from California residents.
7 Examples include their name, driver’s license number, passport number, age, race, color,
8 ancestry, national origin, citizenship, religion or creed, marital status, medical condition,
9 physical or mental disability, sex, gender, gender identity, gender expression, pregnancy or
10 childbirth and related medical conditions, sexual orientation, health insurance information,
11 veteran or military status, insurance policy number, education, employment, employment
12 history, bank account number, credit card number, debit card number, other financial
13 information, browsing history, search history, history of interactions with a websites or web
14 application, and “sensory data” (defined to include “audio, electronic, visual, thermal, olfactory,
15 or similar information”). It collects this information from sources that include government
16 sources, such as state, local and federal government entities. Its stated purpose for collecting this
17 information is “preventing fraud or avoiding overpayment of benefits to deceased individuals.”
18 The reason for this California-only policy is “to comply with the California Consumer Privacy
19 Act of 2018.”

20 14. While long on promises, PBI fell tragically short of expectations in practice. In May
21 2023, PBI used a file transfer software called MOVEit, made by Progress Software. The system
22 had a “zero-day” flaw, meaning there was a vulnerability that had never been identified or
23 detected and the security system had zero days to prepare an effective response. The defect
24 allowed attackers unauthorized access to pensioners’ unencrypted data.

25 15. If PBI had been using the countless penetration tests, audits, firewalls, third-party stress
26 tests, and encryption tools it advertised, it would have detected and eliminated the flaw. Instead,
27 on or before May 29, 2023, an unauthorized user gained access to the PBI MOVEit platform and
28 accessed files of at least 148 organizations, including CalPERS and CalSTRS.

1 16. In total, 769,000 CalPERS pensioners' full names, social security numbers, and dates of
2 birth were exfiltrated; while 415,000 CalSTRS full names, social security numbers, dates of
3 birth, and zip codes were exfiltrated. In some cases, the names of former or current employers,
4 spouses or domestic partners, and children of pensioners was also exfiltrated.

5 17. Rather than notify the Funds immediately, PBI waited days. On June 4, 2023, PBI
6 revealed to CalPERS that there had been a data security incident. On June 6, 2023, PBI
7 representatives informed CalPERS of the breach.

8 18. But the information provided was scant and inadequate to provide the affected pensioners
9 with notice. According to CalPERS, "PBI's initial communication with CalPERS on June 6,
10 2023, did not provide sufficient detail as to the scope of the data that was impacted and the
11 individuals to which that data belonged ... We recognize the need for timely, accurate
12 communication and we share the frustrations this third-party vendor breach has created for
13 CalPERS members and their families."

14 19. CalPERS did not have sufficient information to notify affected pensioners until June 22,
15 2023, when it began to send letters and notified the State Attorney General. CalPERS has
16 terminated its relationship with PBI. CalSTRS has still not sent notice to affected pensioners.

17 20. Other than providing the scant information to the Funds, PBI has done nothing to notify
18 Plaintiffs or the Class of the breach. It has not sent notice to them directly, published publicly
19 available information for them to access via the internet, or provided notice directly to the
20 California Attorney General.

21 21. A substantial majority of the Funds' pensioners are fixed-income seniors. They are now
22 prime targets cyber threats. Their personal information is exposed in the dark corners of the
23 internet because of PBI's lax security.

24 22. Upon receiving news of the breach, pensioners were panicked. Many immediately
25 attempted to contact the Funds to determine the source of the breach or request confirmation of
26 the safety of their pensions. The nature of this incident has caused and will continue to cause
27 them stress, anger, and fear for the safety of their identity and income.

1 23. The pensioners have also incurred and will continue to incur expenses trying to mitigate
2 their harm. Identity theft protection and credit monitoring services cost consumers as much as
3 \$30 per month. Tracking down and containing hacked personal information is even more costly,
4 requiring the use of private investigators and data security professionals. Studies by the National
5 Institute of Standards and Technology show hackers often steal data and then hold it for future
6 use years, or even decades later. Thus, the victims of the PBI data breach will require ongoing
7 protections.

8 24. In addition, pensioners have spent and will spend substantial amounts of their time
9 attempting to remedy the losses and securing their information and assets from further attack
10 consequent to the breach.

11 **JURISDICTION AND VENUE**

12 25. This action is brought as a class action for common law negligence and under the
13 California Consumer Privacy Act (“CCPA”) (Cal. Civ. Code § 1798.150), Customer Records
14 Act (“CRA”) (Cal. Civ. Code § 1798.82), the California Constitution’s right to privacy (Cal.
15 Const., art. I, § 1), and the Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code §§ 17200,
16 *et seq.*) for monetary and equitable relief due to Defendants’ negligent, unlawful, and unfair
17 conduct. This court also has original jurisdiction pursuant to 28 U.S.C. § 1332 based on the
18 diversity of the Parties’ citizenship and pursuant to 28 U.S.C. § 1332(d) as amended by the Class
19 Action Fairness Act of 2005 (“CAFA”).

20 26. This Court has personal jurisdiction over Defendants because Defendants and their
21 affiliates do business in the state of California and the claims asserted herein arise from conduct
22 occurring in California. Defendants avail themselves to the jurisdiction of this Court by servicing
23 California government entities, including CalPERS and CalSTRS, which are Defendants’ largest
24 clients, and by virtue of the fact that the majority of the pensioners whose personal information
25 data Defendants possess is personal information data belonging to California residents.

26 27. Venue is proper in this Court because, *inter alia*, Defendants engage and perform
27 business activities in and throughout this judicial district. Many of the acts committed by
28 Defendants complained of herein occurred in this judicial district.

THE PARTIES

1
2 28. Plaintiff David Berry is, and at all relevant times was, a resident of the state of California.
3 He presently resides in Sacramento County, California. He is a retired public employee and a
4 CalPERS pensioner. Based on information and belief, his personal information, including his
5 name, date of birth, and social security number were released in unredacted or unencrypted form
6 in the May 2023 PBI data breach incident.

7 29. Plaintiff Bonnie Gayle Ng is, and at all relevant times was, a resident of the state of
8 California. She presently resides in Contra Costa County, California. She is a retired public
9 employee and a CalPERS pensioner. Based on information and belief, her personal information,
10 including her name, date of birth, and social security number were released in unredacted or
11 unencrypted form in the May 2023 PBI data breach incident.

12 30. Defendant Pension Benefit Information, LLC, doing business as PBI Research Services,
13 is a corporation in the business of pension plan management services with its principal place of
14 business located at 333 South Seventh Street, Suite 2400, in Minneapolis, Minnesota.

15 31. Defendant The Berwyn Group, Inc. is a corporation in the business of pension plan
16 management services with its principal place of business located at 2 Summit Park Drive, Suite
17 610, in Independence, Ohio.

18 32. Plaintiffs are informed and believe that at all relevant times Defendants Pension Benefit
19 Information, LLC and The Berwyn Group, Inc. were engaged in a joint enterprise with one
20 another in servicing the Funds. Acts of one Defendant described in this Complaint are attributed
21 to both and each is legally responsible for the acts of itself and of the other.

22 33. DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue such Defendants by
23 use of such fictitious names. Plaintiffs will amend this complaint to add the true names when
24 they are ascertained. Plaintiffs are informed and believe and thereon allege that each of the
25 fictitiously named Defendants is legally responsible for the occurrences herein alleged, and that
26 Plaintiffs' damages as herein alleged were proximately caused by their conduct.

1 34. At all relevant times, all Defendants were and are legally responsible for all of the
2 unlawful conduct, policies, practices, acts, and omissions as described in each and all of the
3 foregoing paragraphs, unless otherwise indicated.

4 35. At all relevant times, the unlawful conduct against Plaintiffs and class members as
5 described in each and all of the foregoing paragraphs was actuated, in whole or in part, by a
6 purpose to serve Defendants. At all relevant times, upon information and belief, the unlawful
7 conduct described in each and all of the foregoing paragraphs was reasonably foreseeable by
8 Defendants and committed under actual or apparent authority granted by Defendants such that all
9 of the aforementioned unlawful conduct is legally attributable to Defendants.

10 **CLASS ALLEGATIONS**

11 36. Plaintiffs bring this action to seek equitable non-monetary and monetary relief as a class
12 action pursuant to Federal Rules of Civil Procedure, Rule 23, on behalf of themselves and the
13 following Class:

14 All California residents whose personal information was exfiltrated in the 2023 PBI
15 data security incident, described herein.

16 37. Plaintiffs reserve the right to amend the Class definition if discovery or further
17 investigation demonstrate that it should be expanded or otherwise modified.

18 38. The members of the Class are so numerous, counting over 1 million, that joinder of all
19 members would be impracticable.

20 39. There are questions of law and fact common to the members of the Class that
21 predominate over any questions affecting only individual members, including:

- 22 a. Whether Defendants' substandard security practices resulted in a breach of their duty
23 to implement and maintain reasonable security procedures and practices appropriate
24 to the nature of the sensitive personal information so as to protect that information;
- 25 b. Whether Defendants failed to provide notice to affected persons, including Plaintiffs
26 and the Class, of release of their personal information;
- 27 c. Whether Defendants' conduct violated California's consumer protection and privacy
28 laws; and

1 d. Whether, as a result of Defendants' misconduct, Plaintiffs and the Class are entitled
2 to compensatory damages, restitution, penalties, and equitable relief, and, if so, the
3 amount and nature of such relief;

4 40. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs have no interests
5 antagonistic to those of the Class and are not subject to any unique defenses.

6 41. Plaintiffs will fairly and adequately protect the interests of the Class and have retained
7 attorneys experienced in class action and complex litigation.

8 42. A class action is superior to all other available methods for the fair and efficient
9 adjudication of this controversy for, inter alia, the following reasons:

10 a. It is economically impractical for members of the Class to prosecute individual
11 actions;

12 b. The Class is readily ascertainable and definable;

13 c. Prosecution as a class action will eliminate the possibility of repetitious litigation.

14 d. A class action will enable claims to be handled in an orderly and expeditious manner,
15 will save time and expense, and will ensure uniformity of decisions.

16 43. Plaintiffs do not anticipate any difficulty in the management of this litigation.

17 **CAUSES OF ACTION**

18 **First Cause of Action**

19 **Negligence**

20 44. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
21 herein.

22 45. That at said time and place, as aforesaid, the Defendants owed a duty of reasonable care
23 toward Plaintiffs and the Class based upon Defendants' relationship to them and the data in
24 Defendants' possession. Said duty is based upon Defendants' contractual obligations, custom
25 and practice, right to control information in its possession, exercise of control over the
26 information in its possession, authority to control the information in its possession, and the
27 commission of affirmative acts that resulted in said harms and losses. Additionally, said duty is
28 based on the requirements of California Civil Code section 1714 requiring all "persons,"

1 including Defendants, to act in a reasonable manner toward others. Additionally, said duty is
2 based on the specific statutory duties imposed on Defendants under California Civil Code
3 sections 1798.80, *et seq.*, as businesses operating in the State of California that own or license
4 computerized data and maintain their customers' personal information. Said duty is further based
5 on the specific statutory duties imposed on Defendants under California Civil Code sections
6 1798.100, *et seq.*, as businesses operating in the State of California that either have annual
7 operating revenue above \$25 million, collect the personal information of 50,000 or more
8 California residents annually, or derive at least 50 percent of their annual revenue from the sale
9 of personal information of California residents.

10 46. Defendants breached said duty by negligently, carelessly, and recklessly collecting,
11 maintaining, and controlling their customers' sensitive personal information and engineering,
12 designing, maintaining, and controlling systems that exposed their customers' sensitive personal
13 information of which Defendants had control and possession to the risk of exposure to
14 unauthorized persons.

15 47. Defendants further committed *per se* breaches of said duty by negligently violating the
16 dictates of California Civil Code sections 1798.82, *et seq.*, and 1798.100, *et seq.*, and the
17 provisions of the California Constitution enshrining the right to privacy, by failing to inform
18 Plaintiffs and the Class of the access to their sensitive personal information by unauthorized
19 persons expeditiously and without delay and failing to adequately safeguard this information
20 from unauthorized access. The provisions of the California Civil Code and the California
21 Constitution that Defendants violated were enacted to protect the class of Plaintiffs here involved
22 from the type of injury here incurred, namely their right to privacy and the protection of their
23 personal data. At said time and place, Plaintiffs and the Class were within the class of persons
24 and consumers who were intended to be protected by California Civil Code sections 1798.82, *et*
25 *seq.*; 1798.100, *et seq.*; and the California Constitution.

26 48. As a direct consequence of the actions as identified above, and the breaches of duties
27 indicated thereby, unauthorized users gained access to, exfiltrated, stole, and gained disclosure of
28 the sensitive personal information of Plaintiffs and the Class, causing them harms and losses

1 including but not limited to the loss of control over the use of their identity, harm to their
2 constitutional right to privacy, lost time dedicated to the investigation of and attempt to recover
3 the loss of funds and cure harm to their privacy, the need for future expenses and time dedicated
4 to the recovery and protection of further loss, privacy injuries associated with having their
5 sensitive personal information disclosed, stress, anger, anxiety, and other special and general
6 damages.

7 **Second Cause of Action**

8 **Violation of the California Consumer Privacy Act**

9 **(Cal. Civ. Code § 1798.150 (“CCPA”))**

10 49. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
11 herein.

12 50. At all relevant times, Defendants were “businesses” under the terms of the CCPA as sole
13 proprietorships, partnerships, limited liability companies, corporations, associations, or other
14 legal entities operating in the State of California that collect consumers’ personal information,
15 and that either have annual operating revenue above \$25 million, collect the personal information
16 of 50,000 or more California residents annually, or derive at least 50 percent of their annual
17 revenue from the sale of personal information of California residents.

18 51. At all relevant times, Plaintiffs and the Class were “consumers” under the terms of the
19 CCPA as natural persons as defined in Section 17014 of Title 18 of the California Code of
20 Regulations.

21 52. By the acts described above, Defendants violated the CCPA by negligently, carelessly,
22 and recklessly collecting, maintaining, and controlling their customers’ sensitive personal
23 information and by engineering, designing, maintaining, and controlling systems that exposed
24 their customers’ sensitive personal information of which Defendants had control and possession
25 to the risk of exposure to unauthorized persons, thereby violating their duty to implement and
26 maintain reasonable security procedures and practices appropriate to the nature of the
27 information to protect the personal information. Defendants allowed unauthorized users to view,
28

1 use, manipulate, exfiltrate, and steal the nonencrypted and nonredacted personal information of
2 Plaintiffs and other pensioners, including their personal information.

3 53. Plaintiffs have complied with the requirements of California Civil Code section
4 1798.150(b) and attach herewith as Exhibit 5 a true and correct copy of the letter of January 8,
5 2021, providing Defendants with written notice of the specific provisions of the CCPA Plaintiffs
6 allege have been violated via certified mail.²

7 54. As a result of Defendants' violations, Plaintiffs and the Class are entitled to all actual and
8 compensatory damages according to proof or statutory damages allowable under the CCPA,
9 whichever are higher, and to such other and further relief as this Court may deem just and
10 proper.

11 **Third Cause of Action**
12 **Violation of the Customer Records Act**
13 **(Cal. Civ. Code § 1798.82 ("CRA"))**

14 55. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
15 herein.

16 56. At all relevant times, Defendants were "businesses" under the terms of the CRA as sole
17 proprietorships, partnerships, corporations, associations, financial institutions, or other groups,
18 operating in the State of California that owned or licensed computerized data that included the
19 personal information of Plaintiffs and the Class.

20 57. At all relevant times, Plaintiffs and the Class were "customers" under the terms of the
21 CRA as natural persons who provided personal information to Defendants for the purpose of
22 purchasing or leasing a product or obtaining a service.

23 58. By the acts described above, Defendants violated the CRA by allowing unauthorized
24 access to customers' personal information and then failing to inform them when the unauthorized
25

26 _____
27 ² Plaintiff presently seeks only individual relief under the CCPA and, upon the expiration of time
28 prescribed by Civil Code section 1798.150(b), will amend this complaint to confirm the
Defendants have declined or failed to cure the noticed violations.

1 use occurred for weeks or months, thereby failing in their duty to inform their customers of
2 unauthorized access expeditiously and without delay.

3 59. As a direct consequence of the actions as identified above, Plaintiffs and the Class
4 incurred additional losses and suffered further harm to their privacy, including but not limited to
5 the loss of control over the use of their identity, harm to their constitutional right to privacy, lost
6 time dedicated to the investigation of and attempt to recover the loss of funds and cure harm to
7 their privacy, the need for future expenses and time dedicated to the recovery and protection of
8 further loss, and privacy injuries associated with having their sensitive personal information
9 disclosed, that they would not have otherwise lost had Defendants immediately informed them of
10 the unauthorized use.

11 60. As a result of Defendants' violations, Plaintiffs and the Class are entitled to all actual and
12 compensatory damages according to proof, to non-economic injunctive relief allowable under the
13 CRA, and to such other and further relief as this Court may deem just and proper.

14 **Fourth Cause of Action**

15 **Violation of the California Constitution's Right to Privacy**

16 **(Cal. Const., art I, § 1)**

17 61. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
18 herein.

19 62. The California Constitution provides:

20 "All people are by nature free and independent and have inalienable rights. Among
21 these are enjoying and defending life and liberty, acquiring, possessing, and
22 protecting property, and pursuing and obtaining safety, happiness, and
23 privacy." (Cal. Const., art. I, § 1.)

24 63. Plaintiffs and the Class had a legally recognized and protected privacy interest in the
25 personal information provided to and obtained by Defendants, including but not limited to an
26 interest in precluding the dissemination or misuse of this sensitive and confidential information
27 and the misuse of this information for malicious purposes such as the theft of funds and property.
28

1 64. Plaintiffs and the Class reasonably expected Defendants would prevent the unauthorized
2 viewing, use, manipulation, exfiltration, theft, and disclosure of their personal information and
3 the unauthorized use of their accounts.

4 65. Defendants' conduct described herein resulted in a serious invasion of the privacy of
5 Plaintiffs and the Class, as the release of personal information, including but not limited to
6 names, social security numbers, dates of birth, and other information could highly offend a
7 reasonable individual.

8 As a direct consequence of the actions as identified above, Plaintiffs and the Class suffered
9 harms and losses including but not limited to the loss of control over the use of their identity,
10 harm to their constitutional right to privacy, lost time dedicated to the investigation of and
11 attempt to recover the loss of funds and cure harm to their privacy, the need for future expenses
and time dedicated to the recovery and protection of further loss, and privacy injuries associated
with having their sensitive personal information disclosed.

12 **Fifth Cause of Action**

13 **Violation of the Unfair Competition Law**

14 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL"))**

15 66. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully
16 herein.

17 67. By engaging in the above-described unfair business acts and practices, Defendants
18 committed and continue to commit one or more acts of unlawful, unfair, and fraudulent conduct
19 within the meaning of the UCL. These acts and practices constitute a continuing and ongoing
20 unlawful business activity defined by the UCL, and justify the issuance of an injunction,
21 restitution, and other equitable relief pursuant to the UCL.

22 68. Defendants' acts and practices constitute a continuing and ongoing unlawful business
23 activity defined by the UCL. Defendants failed and continue to fail to implement and maintain
24 reasonable security procedures and practices appropriate to protect the personal information;
25 failed and continue to fail to inform their customers of unauthorized access expeditiously and
26 without delay; and made and continue to make misrepresentations regarding the nature and
27 quality of their data protection, all in violation of, *inter alia*, the following California laws:

- 28 a. California Civil Code section 1798.150(a);

1 b. California Civil Code section 1798.82(a); and

2 c. California Constitution, article I, section 1.

3 69. Defendants' acts and practices constitute a continuing and ongoing unfair business
4 activity defined by the UCL. Defendants' conduct is contrary to the public welfare as it
5 transgresses civil statutes of the State of California designed to protect individuals' constitutional
6 and statutory right to privacy, violates established public policy, and has been pursued to attain
7 an unjustified monetary advantage for Defendants by creating personal disadvantage and
8 hardship to California pensioners. As such, Defendants' business practices and acts have been
9 immoral, unethical, oppressive and unscrupulous and has caused injury to pensioners far greater
10 than any alleged countervailing benefit.

11 70. As a direct and proximate consequence of the actions as identified above, Plaintiffs and
12 the Class suffered and continue to suffer harms and losses including but not limited to the loss of
13 control over the use of their identity, harm to their constitutional right to privacy, lost time
14 dedicated to the investigation of and attempt to recover the loss of funds and cure harm to their
15 privacy, the need for future expenses and time dedicated to the recovery and protection of further
16 loss, and privacy injuries associated with having their sensitive personal information disclosed.

17 71. Plaintiffs seek an order of this Court awarding restitution and injunctive relief and all
18 other relief allowed under the UCL, including interest and attorneys' fees pursuant to, *inter alia*,
19 Code of Civil Procedure section 1021.5, and to such other and further relief as this Court may
20 deem just and proper.

PRAYER FOR RELIEF

1
2 Plaintiffs, on behalf of themselves and the Class, pray for relief and judgment against Defendants
3 as follows:

4 A. For an order certifying the proposed Class and Subclasses pursuant to Federal Rules of
5 Civil Procedure, Rule 23;

6 B. For an order appointing Plaintiffs and their counsel to represent the Class;

7 C. For an order enjoining Defendants, their affiliates, successors, transferees, assignees, and
8 the officers, directors, partners, agents, and employees thereof, and all other persons acting or
9 claiming to act on their behalf or in concert with them, from continuing to hold, possess, or
10 maintain personal information of Californians;

11 D. For actual and compensatory damages according to proof pursuant to code and all other
12 applicable laws and regulations;

13 E. For restitution to the extent permitted by applicable law;

14 F. For punitive damages pursuant to California Civil Code section 3294(c)(3);

15 G. For pre-judgment and post-judgment interest;

16 H. For an award of attorneys' fees, costs, and expenses as authorized by applicable law; and

17 I. For such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

18
19 Plaintiffs, on behalf of themselves and the Class, demand a trial by jury on all issues so
20 triable.

21 Dated this June 30, 2023.

/s/ Elizabeth A. Kramer

22 ERICKSON KRAMER OSBORNE LLP
23 Julie Erickson
24 Elizabeth Kramer
25 Kevin Osborne
26 Attorneys for Plaintiffs David Berry and Bonnie Gayle
27 Ng
28

Exhibit 1



Mailing address: 44 Tehama St.
San Francisco, California 94105
Email: kevin@eko.law
Phone: 415-635-0631
Fax: 415-599-8088

June 30, 2023

CERTIFIED MAIL
RETURN RECEIPT REQUIRED

Pension Benefit Information, LLC
333 South Seventh Street
Suite 2400
Minneapolis, MN 55402

*RE: David Berry & Bonnie Gayle Ng, Individually and on Behalf of all Others
Similarly Situated*

To the above-listed recipient:

This letter shall constitute notice under California Civil Code section 1798.150 of the California Consumer Privacy Act (“CCPA”) that David Berry & Bonnie Gayle Ng, individually and on behalf of all others similarly situated, demand that you remedy your violations of the CCPA within thirty (30) days from your receipt of this letter.

“All others similarly situated” is defined as follows:

All California residents whose personal information was released in the 2023 PBI data security incident.

It is the contention of Mr. Berry & Ms. Ng that you violated subsection (a)(1) of Civil Code section 1798.150, which reads as follows:

Any consumer whose nonencrypted and nonredacted personal information, as defined in subparagraph (A) of paragraph (1) of subdivision (d) of Section 1798.81.5, is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of the business’s violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information may institute a civil action for any of the following:

- (A) To recover damages in an amount not less than one hundred dollars (\$100) and not greater than seven hundred and fifty (\$750) per consumer per incident or actual damages, whichever is greater.
- (B) Injunctive or declaratory relief.
- (C) Any other relief the court deems proper.


CCPA Notice Letter, Civil Code section 1798.150
June 30, 2023

Mr. Berry & Ms. Ng, whose personal information was disclosed consequent to unauthorized use of your networks, individually and on behalf of all others similarly situated, hereby request full compensation of all lost funds related to breaches of your platform in 2023, for lost time dedicated to the investigation of and attempt to recover the loss of information and cure harm to their privacy, and for the need for future expenses and time dedicated to the recovery and protection of further loss. These sums must be paid in full within thirty (30) days from the date of this correspondence.

Pursuant to the CCPA, if, within thirty (30) days from your receipt of the date of this correspondence, you actually cure the violation noticed herein and provide the Mr. Berry & Ms. Ng, through my firm, with an express written statement that the violations have been cured and that no further violations shall occur, no action for individual statutory damages or class-wide statutory damages may be initiated against you.

We solicit your prompt attention to this matter and thank you in advance for your anticipated cooperation.

Sincerely,



Kevin M. Osborne



Mailing address: 44 Tehama St.
San Francisco, California 94105
Email: kevin@eko.law
Phone: 415-635-0631
Fax: 415-599-8088

June 30, 2023

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RETURN RECEIPT REQUIRED

The Berwyn Group, Inc.
2 Summit Park Drive
Suite 610
Independence, OH 44131

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Kevin M. Osborne