

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

LYNN MCGLENN, on behalf of herself)	
and all others similarly situated,)	
)	
Plaintiff,)	Civil Action No.: 2:18-cv-02097-SEM-TSH
)	
v.)	
)	
)	
DRIVELINE RETAIL)	
MERCHANDISING, INC.,)	
)	
Defendant.)	

PLAINTIFF’S RENWED MOTION FOR CLASS CERTIFICATION

COMES NOW the Plaintiff, Lynn McGlenn, by and through her attorneys, and respectfully submits the following Renewed Motion for Class Certification.

1. Plaintiff Lynn McGlenn is an employee at Driveline whose social security number, name, address, and wage information, along with that of over 15,800 other employees, was released by her employer to an unknown third party. On or about February 14, 2017, Defendant notified its current and former employees that their 2016 W-2 tax form information had been subjected to “a data breach.” The “data breach” was, in reality, a disclosure by Driveline of their most private and sensitive information. The disclosure occurred when an inadequately trained payroll manager of Driveline responded to an email “that *appeared* to be sent from Driveline management.” In response to the email, that employee provided “a file containing the 2016 W-2s of Driveline employees.” The file was not encrypted or password-protected.

2. As a result, over 15,800 W-2s, containing employees’ social security numbers, names, home addresses and wage information were released by Driveline to an unknown entity.

That confidential and private employee information, referred to as “Personally Identifiable Information” or “PII,” had been entrusted to Driveline as a part of those more than 15,800 employees’ agreement to provide services for Driveline so that Driveline could profit from those services. Driveline admits that the PII released, can never be retrieved, and can be forever be used against its employees to their personal and financial detriment.

3. This class action is brought by Ms. McGlenn on her own behalf and as representative of the class of Driveline employees that were subject to the Driveline Employee W-2 Disclosure. The class of persons harmed by the actions of Defendant includes:

All current and former Driveline employees whose PII was compromised as a result of the Data Disclosure.

Excluded from the Class are the officers, directors and legal representatives of Driveline and the judges and court personnel to whom this case may be assigned and any members of their immediate families.

4. Plaintiff seeks to have the claims of class members managed as a class action pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(2), Fed. R. Civ. P. 23(b)(3) and in the alternative Fed. R. Civ. P. 23(c)(4). All class members bring claims for liability against Driveline based on the same theories of liability: negligence, invasion of privacy, breach of implied contract, breach of fiduciary duty, violation of the Illinois Personal Information Protection Act (“IPIPA”), and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”). All class members’ claims for liability are based on the same conduct: Defendant’s disclosure of their social security number, name, home address and wage information in one single email which was caused by uniform inadequate training and procedures to prevent such a disclosure, and the harms that would result.

5. Plaintiff and Class members have suffered and will continue to suffer damages, including monetary losses, lost time, annoyance and interference. Plaintiff and Class members have each suffered the harm of the loss of possession and control of their social security numbers and other PII information, and the loss of the opportunity to control how their PII is used. Plaintiff and Class members have each suffered the harm of the annoyance and interference of learning about their employer's disclosure of their private information. Plaintiff and Class members have each suffered the harm of the diminution in value of their PII. Plaintiff and Class members have each suffered the harm of the disruption and inconvenience of out-of-the-ordinary monitoring on their accounts knowing that their social security numbers are available for use for fraud. Each class member has suffered the loss of time and the reasonable need for remedial costs that will be expended to prevent, detect, contest, remediate and repair the impact of the Driveline Employee W-2 Disclosure for the remainder of the lives, including expenses associated with procuring robust identity protection and restoration services.

6. Each class member has suffered the increased risk of misuse of their social security numbers and other PII. This increased risk is not speculative or hypothetical as Ms. McGlenn and other class members have already suffered the impacts of that use. Each class member suffers the continued risk to their PII, which remains in the possession of Driveline and is subject to further breaches so long as Driveline fails to undertake appropriate measures to protect the PII in their possession.

7. The claims of the proposed class satisfy the requirements for management under Rule 23. The class members' claims meet the requirements of Rule 23(a) for (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. In addition, the class members' claims satisfy the requirements for management as a class under Rule 23(b)(2) as the Defendant

has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. The class members' claims also satisfy the requirements for management as a class under Rule 23(b)(3) as common issues of law and fact predominate over individual issues and because class treatment of Plaintiffs' and class members' claims is superior to other available methods of adjudication. In the alternative, Plaintiffs seek that certain issues for class treatment under Rule 23(c)(4).

8. Rule 23(a)(1) requires that class membership be so numerous that joinder of all members is impractical. Fed. R. Civ. P. 23(a)(1); *Mullen v. GLV, Inc.*, Case No. 18-C-1465, 2019 U.S. Dist. LEXIS 9034, at *4 (N.D. Ill. Jan. 18, 2019). Defendant has admitted that the Employee W-2 Disclosure included 15,878 individuals who were employed by Driveline between January 1, 2016 and December 31, 2016. Thus, class membership is so numerous that joinder is impracticable. Plaintiffs clearly meet numerosity requirements of Fed. R. Civ. P. 23(a)(1).

9. Further, the definition of the class is defined based on objective criteria. *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659 (7th Cir. 2015). All class members are easily identified through Defendant's records of the employees who were subject to the Data Disclosure and who were sent the February 14 notification letter. Driveline maintains a file of all the W-2s that it released in the Employee W-2 Disclosure. Thus, Plaintiffs' class definition sets out a clearly ascertainable class of members who can also be identified through objective standards.

10. Rule 23(a)(2) requires that there be questions of law or fact common to the class. Plaintiffs can meet the requirement by showing a common contention that is capable of class-wide resolution such that determination of its truth or falsity will resolve an issue that is central to the validity of each claim. *Bell v. PNC Bank N.A.*, 800 F.3d 360, 374 (7th Cir. 2015). Here, issues of liability and damage, and the common law or statutes that are the basis for them, are common to

each class member. There is no issue relating to Defendant's liability which is not common to all members of the Class. All claims arise from a common nucleus of operative facts: Driveline's disclosure of Employees' W-2s and the failures in training and security that led up to that disclosure. The commonality is evidenced by the fact that if each named Plaintiff and each individual class member were to bring an individual action, each would prove the same acts of Defendant in failing to use reasonable care in the protection, use, transmission and safeguarding of their PII. Thus, Plaintiff satisfies the requirements of Fed. R. Civ. P. 23(a)(2), commonality.

11. Rule 23(a)(3) requires that the claims or defenses of the class representative parties be typical of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). Typicality is met if the named representative's claims class arise from the same events or course of conduct that gives rise to the putative class members' claims. *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1026 (7th Cir. 2018). Ms. McGlenn was one of the over 15,800 Driveline employees whose social security number, name, home address and wage information was given away by Driveline. She received the same notification of the Disclosure as the other more than 15,800 Driveline Employees received. Her claims clearly arise from the same events or course of conduct that gives rise to the putative class members' claims. Thus, Plaintiff satisfies the requirements of Fed. R. Civ. P. 23(a)(3), typicality.

12. Rule 23(a)(4) requires that the class representative will fairly and adequately protect the interest of the class. Fed. R. Civ. P. 23(a)(4). To meet this requirement, a representative must be part of the class and possess the same interest and suffer the same injury as the class members. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 596 (1997). Plaintiff will adequately represent the interests of all employees and former employees whose PII was disclosed by Defendant in the same W-2 Disclosure to which she was subjected. Ms. McGlenn fully

understands and accepts the charge as class representative of staying informed about the progress of the case and of conferring with Class Counsel regarding developments, including court filings and discovery. She also fully understands and accepts his charge as class representative of bringing suit on behalf of other current and former employees of Driveline whose PII was disclosed by Driveline in the same W-2 Disclosure to which she was subjected. *Id.* Her interest as a Class Representative is coincident with, and not antagonistic to, the claims of other class members, as she seeks the same determination of liability and the same remedies as all members of the class. Further proposed class counsel is qualified, experienced, and able to conduct the litigation. *Shaver v. Trauner*, Case No. 97-1309, 1998 U.S. Dist. LEXIS 19648, at *16 (C.D. Ill. July 31, 1998). Plaintiff is represented by experienced counsel who have litigated, tried, and administered class action lawsuits, including data and privacy breach cases involving the same legal theories and damage claims in this case.

13. Rule 23(b)(2) allows class certification whether a defendant has "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2); *Heritage Operations Grp., LLC v. Norwood*, 322 F.R.D. 321, 324 (N.D. Ill. 2017). Defendant's failure to adequately safeguard, secure and protect Plaintiff's and class members PII applies to each class member, necessitating the same remedies for all class members. Final injunctive relief is needed to remediate Driveline's inadequate data security.

14. Rule 23(b)(3) requires the Court find that the questions of law or fact common to class members predominate over any questions affecting only individual members. The Rule requires merely that common issues predominate, not that all issues be common to the class. *Chi. Teachers Union, Local No. 1 v. Bd. Of Educ. Of Chi.*, 797 F.3d 426, 444 (7th Cir. 2015). Since

there are numerous factual and legal questions common to Plaintiff's claims, the predominance requirement of Rule 23(b)(3) is easily satisfied.

15. Here there is a common Defendant whose action in sending out the personal and private social security number and other financial information was common to each and every of the over 15,800 employees who lost the privacy and possession of that information at the hands of Driveline. Driveline's inactions in failing to train its employees of the safe and secure handling and transmission of employees' personal and private social security number and other financial information and implement proper security measures to protect the confidential information employees entrusted to Driveline was common to each and every of the over 15,800 employees who lost the privacy of that information at the hands of Driveline. Driveline chose to act, or failed to act, in a uniform way to all members of the class; the Defendant did not treat any class member differently. Thus, the elements of Plaintiff's liability claims are common for all members of each class.

16. Not only are all significant liability issues common to the Class, the cause of the damages by the Data Disclosure and the nature of damages claimed by the Class are common issues which clearly predominate over any that vary among the individual members. Plaintiff and class members have each suffered the harm of the loss of possession and control of their social security numbers and other PII information, and the loss of the opportunity to control how their PII is used. Plaintiff and class members have each suffered the harm of the annoyance and interference of learning about their employer's disclosure of their private information which they had entrusted to Driveline. Plaintiff and class members have each suffered the harm of the diminution in value of their PII. Plaintiff and class members have each suffered the harm of the disruption and inconvenience of out-of-the-ordinary monitoring on their accounts knowing that

their social security numbers are available for use for fraud. Each class member has suffered the loss of time and the reasonable need for remedial costs that will be expended to prevent, detect, contest, remediate and repair the impact of the Driveline Employee W-2 Disclosure for the remainder of the lives, including expenses associated with procuring robust identity protection and restoration services. Each class member has suffered the increased risk of misuse of their social security numbers and other PII. This increased risk is not speculative or hypothetical as Shirley Lavender and other class members have already suffered the impacts of the unauthorized use of that information.

17. Fed. R. Civ. P. 23(b)(3) also requires the Court to determine whether a class action is superior to other methods of case management. Rule 23(b)(3) provides four non-exhaustive factors relevant to the superiority inquiry: (A) the class members' interests in individually controlling the prosecution of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties in managing a class action. *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 759 (7th Cir. 2014).

18. Class treatment of Plaintiff's and class members' claims is the superior method of adjudicating Plaintiff's claims. Resolving predominant, common issues of Defendant's liability and Plaintiff's and class members' damages in the present case will result in substantial savings of judicial resources and minimize the overall expense of the litigation. Class treatment will eliminate repetition of court resources and expense in trying the same claims against the same defendant for the same conduct resulting in the unauthorized disclosure of Plaintiff's and class members' PII to an unknown third party. The same evidence would have to be presented and the same witnesses'

testimony heard hundreds of times on the same issues. As such, managing this action as a class achieves the desirable goal of concentrating the litigation of these claims in the Central District of Illinois where Driveline principal place of business is located. Class treatment of Plaintiff's and class members' claims is superior to any alternative methods of adjudication.

19. In the alternative, Plaintiff seeks to have certain issues certified for class treatment pursuant to Fed. R. Civ. P. 23(c)(4). Rule 23(c)(4) issue certification permits a court to retain a case's class character where common questions predominate within certain issues and where class treatment of those issues is the superior method of resolution. If the Court finds that Plaintiff has not met the requirements of 23(b)(2) or 23(b)(3), the Plaintiffs moves to certify certain issues as listed in Plaintiff's Memorandum in Support of their Motion for Class Certification.

20. Plaintiff's arguments and background evidence in support of her Motion for Class Certification are more fully set forth in her Memorandum in Support of her Motion for Class Certification, along with the appendices attached thereto, incorporated herein by reference.

21. For the reasons set forth in more detail in Plaintiff's Memorandum of Law, Plaintiff respectfully requests that her claims and the claims of class members be managed as a class action under Fed. R. Civ. P. 23(a) and 23(b)(2), 23(b)(3) or in the alternative Fed. R. Civ. P. 23(c)(4).

WHEREFORE, Plaintiff prays for an Order:

- (1) Certifying this action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) or in the alternative Fed. R. Civ. P. 23(c)(4).; and
- (2) For such other and further relief which may be just and proper.

Date: January 21, 2020

/s/ Jean Sutton Martin
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** Pro Hac Vice Admission*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 21, 2020, a true and correct copy of the foregoing was served via the Court's CM/ECF system, which will automatically send notice of such filing to all attorneys of record.

/s/ Jean S. Martin