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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

14 MICHAEL MEANS, individually and on behalf
of all others similarly situated,

15 Plaintiffs,

16 v.

17 RENOVATE AMERICA, INC., an unknown
corporation; and DOES 1 through 50,
18 inclusive,

19 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Tamara Parra, Deputy Clerk

Case No.: 37-2017-00005317-CU-BC-CTL

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF,
AND DECLARATORY RELIEF FOR:**

(1) NEGLIGENCE;

(2) BREACH OF IMPLIED CONTRACT

**(3) BUSINESS AND PROFESSIONS
CODE SECTION 17200 et seq.; AND**

(4) DECLARATORY JUDGMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Michael Means ("Plaintiff") hereby submits his Class Action Complaint for
2 Damages, Injunctive Relief, and Declaratory Relief, against Defendant Renovate America, Inc.
3 and DOES 1 through 50, inclusive (collectively, "Defendants"), on behalf of himself and the
4 Class of other similarly situated current and former employees of Defendants as follows:

5 **INTRODUCTION**

6 1. On or about January 20, 2017, an employee of Defendants responded to an
7 Internet "phishing" scam by forwarding to unknown cybercriminals the 2016 Form W-2 data
8 for Defendants' current and former employees. The Form W-2 data contained sensitive
9 personally identifiable information ("PII"), including names, addresses, salaries and, most
10 importantly, Social Security numbers.

11 2. The cybercriminals obtained the employees' and information through a typical
12 "phishing" scam. Defendants have admitted that the cybercriminals sent bogus emails to
13 employees of Defendants asking for copies of all of its 2016 Form W-2 data. Due to the lack
14 of training, procedures and controls in place, at least one employee complied with the
15 cybercriminals' request and forwarded copies of employees' Form W-2 data to the
16 cybercriminals.

17 3. Defendant was not without warning of the phishing scam. In or about 2014,
18 Defendants were subject to a data breach and paid a hacker in Bitcoin to return the stolen data.
19 Management informed employees of this prior attack in a new hire group orientation meeting.

20 4. The cybercriminals who obtained the employees' PII, and may continue to
21 exploit the data themselves and/or sell the data in the so-called "dark markets." Having
22 obtained the employees' names, addresses and Social Security numbers, cybercriminals can
23 pair the data with other available information to commit a broad range of fraud in an
24 Employee's name, including but not limited to:

- 25 a. filing false tax returns;
- 26 b. obtaining employment;
- 27 c. obtaining a loan;
- 28 d. applying for credit cards or spending money;

- e. obtaining medical care;
- f. stealing Social Security and other government benefits; and
- g. applying for a driver's license, birth certificate or other public document.

5. In addition, if an employee's Social Security number is used to create a false identification for someone who commits a crime, the employee may become entangled in the criminal justice system, impairing the employee's ability to gain employment or obtain a loan.

6. Many employees have already suffered out-of-pocket costs engaging services to monitor and protect their identity and credit. Some employees are already dealing with the false tax returns. Employees and will continue to suffer out-of-pocket costs in the future to protect and, if necessary, repair their credit and identity. By this action, Plaintiffs seek to hold Defendants responsible for the harm caused by its negligence.

7. Defendants have failed to provide adequate compensation for the employees due to their negligence. Defendants have offered employees just two years of identity theft protection through the Experian ProtectMyID service. Even if an employee accepts the ProtectMyID service, it will not provide employees any compensation for the costs and burdens associated with the fraudulent tax returns that were filed prior to an employee signing up for ProtectMyID. Further, Defendants have not offered to reimburse employees for the costs – current and future – incurred as a result of falsely filed tax returns.

8. The offered ProtectMyID service is inadequate to protect the employees from the threats they face. It does nothing to protect against identity theft. Instead, it only provides a measure of assistance after identity theft has been discovered. For example, ProtectMyID only monitors employees' credit reports – but fraudulent activity, such as the filing of a false tax return, may not appear at all on a credit report. ProtectMyID *does not* provide real time monitoring of employees' credit cards and bank account statements. Employees must pay extra for that service.

JURISDICTION AND VENUE

9. This class action is brought pursuant to California Code of Civil Procedure § 382. The monetary damages sought by Plaintiff exceed the minimal jurisdictional limits of the

1 Superior Court and will be established according to proof at trial.

2 10. This Court has jurisdiction over this action pursuant to California Constitution,
3 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes
4 except those given by statute to other courts. The statutes under which this action is brought
5 do not specify any other basis for jurisdiction.

6 11. This Court has jurisdiction over all Defendants because, upon information and
7 belief, each party has sufficient minimum contacts in California, or otherwise intentionally
8 avails itself of California law so as to render the exercise of jurisdiction over it by the
9 California courts consistent with traditional notions of fair play and substantial justice.

10 12. Venue is proper in this Court because, upon information and belief, the named
11 Defendants transact business and/or have offices in this county, and the acts and omissions
12 alleged herein took place in this county.

13 **PARTIES**

14 13. Plaintiff is an individual residing in the State of California. Plaintiff is a former
15 employee of Defendants whose 2016 Form W-2 data was disclosed by Defendants.

16 14. Defendants are unknown business entities licensed to do business and actually
17 doing business in the State of California.

18 15. Plaintiff does not know the true names or capacities, whether individual, partner
19 or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
20 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend
21 this complaint when the true names and capacities are known. Plaintiff is informed and
22 believes and thereon alleges that each of Defendants designated as a DOE was responsible in
23 some way for the matters alleged herein and proximately caused Plaintiff and members of the
24 general public and the Class to be subject to the illegal employment practices, wrongs and
25 injuries complained of herein.

26 16. At all times herein mentioned, Defendants, and each of them, were agents,
27 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
28 conspirators and assigns, each of the other, and at all times relevant hereto were acting within

1 the course and scope of their authority as such agents, partners, joint venturers, representatives,
2 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions
3 alleged herein were duly committed with ratification, knowledge, permission, encouragement,
4 authorization and consent of each Defendant designated herein.

5 **CLASS ACTION ALLEGATIONS**

6 17. **Definition:** Plaintiff seeks class certification pursuant to California Code of
7 Civil Procedure § 382 of a Class of all current and former employees of Defendants whose PII
8 was disclosed as a result of the data breach on or about January 20, 2017.

9 18. **Numerosity:** The members of the Class are so numerous that joinder of all
10 members would be impractical, if not impossible. The identities of the members of the Class
11 are readily ascertainable by review of Defendants' records.

12 19. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
13 steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's
14 attorneys are ready, willing and able to fully and adequately represent the Class and Plaintiff.
15 Plaintiff's attorneys have prosecuted and settled class actions in the past and currently have a
16 number of class actions pending in California courts.

17 20. **Common Question of Law and Fact:** There are predominant common
18 questions of law and fact and a community of interest amongst Plaintiff and the claims of the
19 Class, including the following:

- 20 a. Whether and to what extent Defendants had a duty to protect class
21 members' PII;
- 22 b. Whether Defendants breached their duty to protect the class members'
23 PII;
- 24 c. Whether Defendants disclosed PII of the Class;
- 25 d. Whether class members are entitled to actual damages and/or statutory
26 damages;
- 27 e. Whether class members are entitled to injunctive relief.

28 21. **Typicality:** Plaintiff's claims are typical of the claims of members of the

1 proposed Class because, among other things, Plaintiff and class members sustained similar
2 injuries as a result of Defendants' uniform wrongful conduct; Defendants owed the same duty
3 to each class member; and their legal claims arise from the same conduct by Defendants.

4 22. **Predominance:** The common questions of law and fact predominate over any
5 questions affecting only individual class members and a class action is superior to individual
6 litigation. The amount of damages available to individual class members is insufficient to make
7 litigation addressing Defendants' conduct economically feasible in the absence of the class
8 action procedure. Individualized litigation also presents a potential for inconsistent or
9 contradictory judgments, and increases the delay and expense to all parties and the court
10 system presented by the legal and factual issues of the case. By contrast, the class action
11 device presents far fewer management difficulties and provides the benefits of a single
12 adjudication, economy of scale, and comprehensive supervision by a single court.

13 **FIRST CAUSE OF ACTION**

14 **FOR NEGLIGENCE**

15 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**
16 **ALL CLASS MEMBERS)**

17 23. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 22 as
18 though fully set forth herein.

19 24. Class members are or were employed by Defendants and were issued a 2016
20 Form W-2 from Defendants. As a condition of their employment, class members were
21 obligated to provide Defendants with certain PII, including their names, addresses, and Social
22 Security numbers.

23 25. Defendants had full knowledge of the sensitivity of the PII and the types of
24 harm that Plaintiff and class members could and would suffer if the information were
25 wrongfully disclosed. Defendants had a duty to Plaintiff and each class member to exercise
26 reasonable care in holding, safeguarding and protecting that information. Plaintiffs and the
27 class members were the foreseeable victims of any inadequate safety and security practices.
28 Plaintiffs and the other class members had no ability to protect their data that was in

1 Defendants' possession.

2 26. Defendants' duty to the Plaintiff and other class members included, *inter alia*,
3 establishing processes and procedures to protect the PII from wrongful disclosure and training
4 employees who had access to the PII as to those processes and procedures. Defendants are all
5 well aware of the risks associated with the wrongful disclosure of PII and the threats to such
6 information posed by hackers, scammers, and other cybercriminals.

7 27. Defendants admitted that Plaintiff's and the other class members' PII was
8 wrongfully disclosed as a result of the data breach on or about January 20, 2017.

9 28. As a result of Defendants' negligence, Plaintiff and the Class have suffered and
10 will continue to suffer damages and injury including, but not necessarily limited to:

- 11 a. out-of-pocket costs associated with addressing false tax returns filed
12 with the IRS and state tax agencies;
- 13 b. increased future out of pocket costs in connection with preparing and
14 filing tax returns;
- 15 c. out-of-pocket costs associated with procuring identity protection and
16 restoration services;
- 17 d. in the event of future identity theft, out-of-pocket costs associated with
18 repairing credit, reversing fraudulent charges, and other harms; and
- 19 e. lost productivity and enjoyment as a result of time spent monitoring,
20 addressing and correcting future consequences of the data breach.

21 29. Defendants breached their duty to Plaintiff and the Class by failing to maintain
22 proper security measures, policies and procedures, and training. Plaintiff and the Class have
23 been harmed as a direct and proximate result of Defendants' negligence. Plaintiff and the Class
24 will continue to be harmed as a direct and proximate result of Defendants' negligence.

25 30. Plaintiffs and the class members are entitled to money damages for all out-of-
26 pocket costs caused by Defendants' negligence. Plaintiff also seeks reasonable attorneys' fees
27 and costs under the applicable law, including Code of Civil Procedure § 1021.5.

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SECOND CAUSE OF ACTION
FOR BREACH OF IMPLIED CONTRACT
(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF
ALL CLASS MEMBERS)

31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as though fully set for herein.

32. Plaintiff and class members provided their PII in connection with their employment with Defendants in order to verify their identity, receive compensation and in order for Defendants to have complete employee records for tax purposes, amongst other things.

33. Plaintiff and class members provided various forms of PII to Defendants as a condition precedent to their employment with Defendants.

34. Understanding the sensitive nature of the information, Defendants implicitly promised Plaintiff and the Class that it would take adequate measures to protect their PII. Indeed, a material term of this contract is a covenant by Defendants that it will take reasonable efforts to safeguard employees' PII.

35. Plaintiff and the Class relied upon this covenant and would not have disclosed their PII without assurances that it would be properly safeguarded. Moreover, the covenant to adequately safeguard the PII is an implied term, to the extent it is not an express term.

36. Plaintiff and the Class fulfilled their obligations under the contract by providing their PII to Defendants. Defendants, however, failed to safeguard and protect the information. Defendants' breach of their obligations under the contract between the parties directly caused Plaintiffs and the Class to suffer injuries.

37. Plaintiffs on behalf of themselves and the Class, respectfully request this Court award all relevant damages for Defendants' breach of contract.

1 **THIRD CAUSE OF ACTION**

2 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 *et seq.***

3 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

4 **ALL CLASS MEMBERS)**

5 38. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 37 as
6 though fully set for herein.

7 39. Defendants engaged in unfair, unlawful and fraudulent business practices in
8 violation of the California Business and Professions Code § 17200 *et seq.* (the Unfair
9 Competition Law (“UCL”)) by failing to take reasonable measures in protecting Plaintiff’s and
10 class members’ PII.

11 40. As a direct and proximate result of Defendants’ unlawful, unfair, and fraudulent
12 business practices as alleged herein, Plaintiff and class members have suffered injury in fact.
13 Plaintiff and the Class have been injured in that their personal and financial personal
14 indentifying information has been compromised, subject to identity theft, identity fraud, and/or
15 is at risk for future identity theft and fraudulent activity on their financial accounts. Class
16 members have also lost money and property that would not have been lost but for Defendants’
17 unlawful and unfair conduct.

18 41. As a result of Defendants’ violations of the UCL, Plaintiff and class members
19 are entitled to injunctive relief, including, but not limited to an order that Defendants: (1)
20 engage third party security auditors/penetration testers as well as internal security personnel to
21 conduct testing consistent with prudent industry practices, including simulated attacks,
22 penetration tests, and audits on Defendants’ systems on a periodic basis; (2) engage third party
23 security auditors and internal personnel to run automated security monitoring consistent with
24 prudent industry practices; (3) audit, test, and train its security personnel regarding any new or
25 modified procedures; (4) purge, delete and destroy, in a secure manner, employee data not
26 necessary for its business operations; (5) conduct regular database scanning and security
27 checks consistent with prudent industry practices; (6) periodically conduct internal training and
28 education to inform internal security personnel how to identify and contain a breach when it

1 occurs and what to do in response to a breach consistent with prudent industry practices; (7)
2 receive periodic compliance audits by a third party regarding the security of the computer
3 systems Defendants use to store the PII of their current and former employees; (8)
4 meaningfully educate its current and former employees about the threats they face as a result of
5 the loss of their PII to third parties, as well as the steps they must take to protect themselves;
6 and (9) provide ongoing identity theft protection, monitoring, and recovery services to Plaintiff
7 and class members.

8 42. Because of Defendants' unlawful, unfair, and fraudulent business practices,
9 Plaintiff and class members are entitled to relief, including attorneys' fees and costs,
10 restitution, declaratory relief, and a permanent injunction enjoining Defendants from their
11 unlawful and unfair practices. Plaintiffs also seek reasonable attorneys' fees and costs under
12 applicable law including Code of Civil Procedure § 1021.5.

13 **FOURTH CAUSE OF ACTION**

14 **FOR DECLARATORY JUDGMENT**

15 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**
16 **ALL CLASS MEMBERS)**

17 43. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 as
18 though fully set for herein.

19 44. As set forth above, Plaintiff and class members have valid claims against
20 Defendants for negligence, breach of implied contract, and violations of the UCL. An actual
21 controversy has arisen in the wake of Defendants' data breach regarding Defendants' current
22 obligations to provide reasonable data security measures to protect the PII of Plaintiff and the
23 Class.

24 45. Plaintiff thus seeks a declaration that to comply with its existing obligations,
25 Defendants must implement specific additional, prudent industry security practices, as outlined
26 below, to provide reasonable protection and security to the PII of Plaintiff and the Class.
27 Specifically, Plaintiff seeks a declaration that (a) Defendants' existing security measures do not
28 comply with its obligations, and (b) that to comply with their obligations, Defendants must

1 implement and maintain reasonable security measures on behalf of Plaintiff and the Class,
2 including, but not limited to: (1) engaging third party security auditors/penetration testers as
3 well as internal security personnel to conduct testing consistent with prudent industry practices,
4 including simulated attacks, penetration tests, and audits on Defendants' systems on a periodic
5 basis; (2) engaging third party security auditors and internal personnel to run automated
6 security monitoring consistent with prudent industry practices; (3) auditing, testing, and
7 training its security personnel regarding any new or modified procedures; (4) purging, deleting
8 and destroying, in a secure manner, employee data not necessary for its business operations;
9 (5) conducting regular database scanning and security checks consistent with prudent industry
10 practices; (6) periodically conducting internal training and education to inform internal security
11 personnel how to identify and contain a breach when it occurs and what to do in response to a
12 breach consistent with prudent industry practices; (7) receiving periodic compliance audits by a
13 third party regarding the security of the computer systems Defendants use to store the personal
14 information of its current and former employees; (8) meaningfully educating their current and
15 former employees about the threats they face as a result of the loss of their PII to third parties,
16 as well as the steps they must take to protect themselves; and (9) providing ongoing identity
17 theft protection, monitoring, and recovery services to Plaintiff and class members.

18 46. Plaintiff and each class member is entitled to a declaration of rights providing
19 that Defendants are obligated, pursuant to terms established by the Court, to reimburse said
20 individuals for any and all future harm caused by the data breach.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose
23 behalf this suit is brought against Defendants, jointly and severally, as follows:

- 24 1. For an order certifying the proposed Class;
- 25 2. For an order appointing Plaintiff as the representative of the Class as described
26 herein;
- 27 3. For an order appointing counsel for Plaintiff as class counsel;
- 28 4. For an order finding Defendants breached their duty to safeguard and protect

1 Plaintiffs' and the class members' PII which was compromised in the data
2 breach;

3 5. For appropriate relief, including actual damages, punitive damages, and
4 statutory damages;

5 6. For equitable, injunctive, declaratory relief as appropriate;

6 7. For all costs, including experts' fees and attorneys' fees, and the costs of
7 prosecuting this action;

8 8. For pre-judgment and post-judgment interest as prescribed by law; and

9 9. Any additional legal or equitable relief as the Court may find just and proper.

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11 Dated: February 10, 2017

YOON LAW, APC

12
13 By: 

Stephanie E. Yasuda

Attorneys for Plaintiff Michael Means

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16 **DEMAND FOR JURY TRIAL**

17 Plaintiff, for himself and the Class, hereby demands a jury trial as provided by
18 California law.

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20 Dated: February 10, 2017

YOON LAW, APC

21
22 By: 

Stephanie E. Yasuda

Attorneys for Plaintiff Michael Means