

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FERNANDO ARELLANO, on behalf of)
himself and all others similarly)
situated,)

PLAINTIFF)

CASE NO. 5:11-cv-884-FB

v.)

SAIC, INC.,)

DEFENDANT)

FIRST AMENDED CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiffs Fernando Arellano, Michael Bacon, Michael Erickson, Joshua Gorrell, Theodore Martin, Brian McUumber, Benny Miller, Alfred Newman, Amandah Peting, Jennifer Pineirovigo, Kyle Roe, Matthew Walters, Henry Warner and Dorothy Yarde (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated, complain of the actions of Defendant SAIC, Inc. (“SAIC”), and respectfully shows the following:

NATURE OF THE CASE

1. This is a consumer class action lawsuit brought by Plaintiffs, individually and on behalf of all other similarly situated persons (*i.e.*, the Class Members) whose personally identifiable information and/or private health information (collectively, “Private Health Information”) was contained on backup data tapes transported by a low level SAIC employee in an unsecure manner. The data tapes were stolen from the SAIC employee’s personal vehicle parked in downtown San Antonio, Texas and left unattended for over eight hours. The theft occurred on September 12, 2011.

2. SAIC, a United States Department of Defense subcontractor, was entrusted with, among other things, safeguarding Plaintiffs' and Class Members' Private Health Information. In violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et. seq.* ("FCRA"), SAIC failed to adopt and maintain adequate procedures to protect such information and limit its dissemination only for the permissible purposes set forth in FCRA. In further violation of FCRA, SAIC failed to protect and wrongfully disseminated Plaintiffs' and Class Members' Private Health Information, which is "medical information" specifically defined in, and protected by, FCRA. As a direct and/or proximate result of SAIC's willful, reckless and/or grossly negligent violations of FCRA, an unauthorized third party obtained Plaintiffs' and Class Members' Private Health Information for no permissible purpose under FCRA.

3. SAIC's wrongful actions and/or inaction also violated the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), and constitute common law invasion of privacy by the public disclosure of private facts and common law negligence.

4. Plaintiffs, on behalf of themselves and the Class Members, seek (i) actual damages, economic damages, mental anguish damages, statutory treble damages and/or nominal damages, (ii) exemplary damages, (iii) injunctive relief, and (iv) attorneys' fees, litigation expenses and costs of suit.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over Plaintiffs' FCRA claims pursuant to (i) 28 U.S.C. § 1331 (federal question), and (ii) 28 § 1332(d) (CAFA) because (a) there are 100 or more Class Members, (b) at least one Class Member is a citizen of a state that is diverse from SAIC's citizenship, and (c) the matter in controversy exceeds \$5,000,000 USD exclusive of interest and costs. This Court also has subject matter jurisdiction over Plaintiffs' state law claims

pursuant to 28 U.S.C. § 1367. This Court has personal jurisdiction over SAIC because at all relevant times, SAIC conducted (and continues to conduct) substantial business in the Western District of Texas.

6. Venue is proper in the Western District of Texas pursuant to 28 U.S.C. §1391(b) and (c) because a substantial part, if not all, of the events giving rise to this action occurred in the Western District of Texas and SAIC resides, is located, can be found and/or conducts substantial business in the Western District of Texas.

PARTIES

7. Plaintiff Fernando Arellano is a resident of Leander, Williamson County, Texas. Plaintiff Arellano received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

8. Plaintiff Michael Bacon is a resident of Lompoc, Santa Barbara County, California. Plaintiff Bacon received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

9. Plaintiff Michael Erickson is a resident of Alexandria, Arlington County, Virginia. Plaintiff Erickson received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

10. Plaintiff Joshua Gorrell is a resident of Fort Campbell, Christian County, Kentucky. Plaintiff Gorrell received a letter from SAIC confirming that his Private Health

Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

11. Plaintiff Theodore Martin is a resident of Lyman, Spartanburg County, South Carolina. Plaintiff Martin received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

12. Plaintiff Brian McUmbler is a resident of Pleasant View, Cheatham County, Tennessee. Plaintiff McUmbler received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

13. Plaintiff Benny Miller is a resident of Fort Leonard Wood, Pulaski County, Missouri. Plaintiff Miller received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

14. Plaintiff Alfred Newman is a resident of Germantown, Montgomery County, Maryland. Plaintiff Newman received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

15. Plaintiff Amandah Peting is a resident of Winston-Salem, Forsyth County, North Carolina. Plaintiff Peting received a letter from SAIC confirming that her Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

16. Plaintiff Jennifer Pineirovigo is a resident of Gulfport, Harrison County, Mississippi. Plaintiff Pineirovigo received a letter from SAIC confirming that her Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

17. Plaintiff Kyle Roe is a resident of Redmond, Deschutes County, Oregon. Plaintiff Roe received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

18. Plaintiff Matthew Walters is a resident of Brooksville, Hernando County, Florida. Plaintiff Walters received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

19. Plaintiff Henry Warner is a resident of White Lake, Oakland County, Michigan. Plaintiff Warner received a letter from SAIC confirming that his Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

20. Plaintiff Dorothy Yarde is a resident of Evans, Columbia County, Georgia. Plaintiff Yarde received a letter from SAIC confirming that her Private Health Information was contained on the unprotected data tapes stolen from the SAIC employee's unattended personal vehicle in downtown San Antonio, Texas, on or about September 12, 2011.

21. Defendant SAIC (also known as Science Applications International Corporation) is a Delaware corporation with its principal place of business in McLean, Virginia. SAIC is a government contractor. SAIC provides scientific, engineering, systems integration and technical

solutions in the areas of defense, health, energy, infrastructure, intelligence, surveillance, reconnaissance and cyber security to, *inter alia*, the United States Department of Defense and its other agencies—such as TRICARE, the health care program serving uniformed service members, retirees and their families worldwide. At all relevant times, SAIC provided one or more of these services to TRICARE at various San Antonio area military treatment facilities at which Plaintiffs and Class Members received medical treatment and/or medical services during the Class Period. SAIC has been served with Summons and a copy of the Original Class Action Complaint and Jury Demand.

BACKGROUND FACTS

22. TRICARE is the comprehensive health care program of the United States government, serving active duty and retired uniformed service members and their families worldwide by providing medical and health services, pharmacy benefits, dental options and other special programs.

23. At all relevant times, TRICARE was (and continues to be) in a business and contractual relationship with SAIC, pursuant to which SAIC is required to store, secure and protect the Private Health Information of TRICARE participants, including Plaintiffs and Class Members.

24. On Sept. 14, 2011, SAIC reported to TRICARE the theft of backup tapes containing electronic health care records used in the military health system to capture patient data from 1992 through Sept. 7, 2011, in San Antonio area military treatment facilities, including filling pharmacy prescriptions and other patients whose laboratory workups were processed in these same facilities even if the patients were receiving treatment elsewhere.

25. Two weeks later, on September 28, 2011, TRICARE publicly announced that the Private Health Information of approximately 4.9 million individuals (*i.e.*, Plaintiffs and Class Members) had been stolen and compromised.

26. The unprotected data tapes were stolen from the personal vehicle of an SAIC employee (a 2003 Honda Civic) while it was parked on a downtown street in San Antonio and left unattended for over eight hours. The SAIC employee allegedly was transporting the data tapes containing Plaintiffs' and Class Members' Private Health Information from one federal facility to another.

27. The Private Health Information contained on the stolen data tapes includes, *inter alia*, Plaintiffs' and Class Members' Social Security numbers, addresses, telephone numbers, medical diagnoses, medical treatment information, health care provider names and locations, clinical notes, lab test results, prescription information and other highly confidential and personal medical information.

28. Only a portion of the Private Health Information on the data tapes was encrypted, and even then, the level of encryption failed to comply with government standards for strength of cryptographic modules.

29. At the time of the theft, SAIC did not have a policy mandating that Private Health Information contained on backup data tapes be encrypted in accordance with federal standards.

30. This is not the first instance where SAIC has failed to properly secure the Private Health Information of TRICARE participants entrusted to SAIC. In 2007, a military taskforce reported that certain employees of SAIC illegally published the unencrypted Private Health Information of approximately 867,000 U.S. service members and their families across the

internet through an unsecure server. The wrongfully transmitted information included names, addresses, Social Security numbers, birth dates and other personal health information.

31. Identity theft occurs when a person's personally identifying information, such as that person's name, Social Security number, or credit card number is used without his/her permission to commit fraud or other crimes. *See* Federal Trade Commission, *Fighting Back Against Identity Theft*, available at <http://www.ftc.gov/bcp/edu/microsites/idtheft/consumers/about-identity-theft.html> (last visited Oct. 19, 2011).

32. The Federal Trade Commission estimates that the identities of as many as 9 million Americans are stolen each year. *Id.*

33. According to the Federal Trade Commission, "Identity theft is serious. While some identity theft victims can resolve their problems quickly, others spend hundreds of dollars and many days repairing damage to their good name and credit record. Some consumers victimized by identity theft may lose out on job opportunities, or be denied loans for education, housing or cars because of negative information on their credit reports. In rare cases, they may even be arrested for crimes they did not commit."

34. Medical identity theft occurs when a person's personal information is used without authorization to obtain, or receive payment for, medical treatment, services, or goods. *See* www.ftc.gov/bcp/edu/microsites/idtheft/consumers/resolving-specific-id-theft-problems.html (last visited October 19, 2011). "Victims of medical identity theft may find that their medical records are inaccurate, which can have a serious impact on their ability to obtain proper medical care and insurance benefits." *Id.*

35. Identity theft crimes often involve more than just crimes of financial loss, such as various types of government fraud (such as obtaining a driver's license or official identification

card in the victim's name but with their picture), using the victim's name and Social Security number to obtain government benefits and/or filing a fraudulent tax return using the victim's information. Identity thieves also obtain jobs using stolen Social Security numbers, rent houses and apartments and/or obtain medical services in the victim's name. Identity thieves also have been known to give a victim's personal information to police during an arrest, resulting in the issuance of an arrest warrant in the victim's name and an unwarranted criminal record.

36. The unauthorized disclosure of a person's Social Security number can be particularly damaging since Social Security numbers cannot be easily replaced like a credit card. In order to obtain a new Social Security number, a person must show evidence that someone is using the number fraudulently or is being disadvantaged by the misuse. *See* Identity Theft and Your Social Security Number, SSA Publication No. 05-10064, October 2007, ICN 46327 (<http://www.ssa.gov/pubs/10064.html>). Thus, a person whose personal information has been stolen cannot obtain a new Social Security number until the damage has already been done.

37. Obtaining a new Social Security number is not an absolute prevention against identity theft. Government agencies, private businesses and credit reporting companies likely still have the person's records under the old number, so using a new number will not guarantee a fresh start. For some victims of identity theft, a new number may actually create new problems. Because prior positive credit information is not associated with the new Social Security number, it is more difficult to obtain credit due to the absence of a credit history.

38. On October 14, 2011, the Department of Defense and two other government agencies issued a Proposed Rule designed to ensure that government contractors provide adequate privacy training to their staff members. The Proposed Rule would amend the Federal Acquisition Regulation "to require contractors to complete training that addresses the protection

of privacy, in accordance with the Privacy Act of 1974, and the handling and safeguarding of personally identifiable information.”

39. Upon information and belief, the Proposed Rule was the result of SAIC’s failure to adopt and maintain adequate procedures to safeguard and protect Plaintiff’s and Class Members’ Private Health Information.

40. SAIC’s wrongful actions and/or inaction here directly and/or proximately caused the “double Holy Grail of data breaches”—the theft and dissemination into the public domain of Plaintiffs’ and Class Members’ Private Health Information and Social Security numbers without their knowledge, authorization and/or consent. As a further direct and/or proximate result of SAIC’s wrongful actions and/or inaction, Plaintiffs and Class Members have suffered, and will continue to suffer, damages including, without limitation, expenses for credit monitoring and identity theft insurance, out of pocket expenses, anxiety, emotional distress, loss of privacy and other economic and non-economic harm.

CLASS ACTION ALLEGATIONS

41. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this class action as a national class action on behalf of themselves and the following Class of similarly situated individuals:

All persons whose Social Security numbers, addresses, telephone numbers, medical diagnoses, medical treatment information, health care provider names and locations, clinical notes, lab test results, prescription information, and other highly confidential and private personal medical and identifying information was contained on the backup data tapes stolen from an SAIC employee’s car on or about September 12, 2011, in San Antonio, Texas.

42. The Class does not include SAIC, its officers, directors, agents, or employees, the Court and Court personnel.

43. The putative Class is comprised of approximately 4.9 million persons, making joinder impracticable. Disposition of this matter as a class action will provide substantial benefits and efficiencies to the Parties and the Court.

44. The rights of each Class Member were violated in a virtually identical manner as a result of SAIC's willful, reckless and/or negligent actions and/or inaction.

45. Questions of law and fact common to all Class Members exist and predominate over any questions affecting only individual Class Members including, *inter alia*:

- a) Whether SAIC violated FCRA by failing to properly secure and transport Plaintiffs' and Class Members' Private Health Information;
- b) Whether SAIC violated FCRA by failing to encrypt Plaintiffs' and Class Members' Private Health Information in accordance with federal standards;
- c) Whether SAIC willfully, recklessly and/or negligently failed to maintain and/or execute reasonable procedures designed to prevent unauthorized access to Plaintiffs' and Class Members' Private Health Information;
- d) Whether SAIC was negligent in storing and transporting Plaintiffs' and Class Members' Private Health Information;
- e) Whether SAIC owed a duty to Plaintiffs and Class Members to exercise reasonable care in protecting and securing their Private Health Information;
- f) Whether SAIC breached its duty to exercise reasonable care in protecting and securing Plaintiffs' and Class Members' Private Health Information;
- g) Whether SAIC was negligent in failing to secure Plaintiffs' and Class Members' Private Health Information;
- h) Whether by publicly disclosing Plaintiffs' and Class Members' Private Health Information without authorization, SAIC invaded Plaintiffs' and Class Members' privacy;
- i) Whether SAIC's actions and/or inaction were unconscionable in violation of the Texas Deceptive Trade Practices-Consumer Protection Act;
- j) Whether Plaintiffs and Class Members sustained damages as a result of SAIC's failure to secure and protect their Private Health Information; and

- k) Whether SAIC violated federal and/or state laws by failing to timely notify Plaintiffs and Class Members on an individual basis about the theft and dissemination of their Private Health Information.

46. Plaintiffs and their counsel will fairly and adequately represent the interests of Class Members. Plaintiffs have no interests antagonistic to, or in conflict with, Class Members' interests. Plaintiffs' lawyers are highly experienced in the prosecution of consumer class action and data breach cases.

47. Plaintiffs' claims are typical of Class Members' claims in that Plaintiffs' claims and Class Members' claims all arise from SAIC's failure to properly secure and protect their Private Health Information.

48. A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiffs' and Class Members' claims. Plaintiffs and Class Members have been irreparably harmed as a result of SAIC's wrongful actions and/or inaction. Litigating this case as a class action will reduce the possibility of repetitious litigation relating to SAIC's failure to secure and protect Plaintiffs' and Class Members' Private Health Information.

49. Class certification, therefore, is appropriate pursuant to FED. R. CIV. P. 23(b)(3) because the above common questions of law or fact predominate over any questions affecting individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

50. The expense and burden of litigation would substantially impair the ability of Class Members to pursue individual lawsuits in order to vindicate their rights. Absent a class action, SAIC will retain the benefits of its wrongdoing despite its serious violations of the law.

CLAIMS FOR RELIEF/CAUSES OF ACTION

COUNT I

WILLFUL VIOLATION OF THE FAIR CREDIT REPORTING ACT

51. The preceding factual statements and allegations are incorporated herein by reference.

52. FCRA requires consumer reporting agencies to adopt and maintain procedures for meeting the needs of commerce for consumer credit, personnel, insurance and other information in a manner fair and equitable to consumers while maintaining the confidentiality, accuracy, relevancy and proper utilization of such information. 15 U.S.C. § 1681(b).

53. FCRA defines a “consumer reporting agency” as:

Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

15 U.S.C. § 1681a(f).

54. FCRA defines a “consumer report” as:

[A]ny written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of establishing the consumer’s eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes, or any other purpose authorized under [15 U.S.C. §] 1681(b).

15 U.S.C. § 1681a(d)(1).

55. FCRA defines “medical information” as:

[I]nformation or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that

relates to--(A) the past, present, or future physical, mental, or behavioral health or condition of an individual; (B) the provision of health care to an individual; or (C) the payment for the provision of health care to an individual.

15 U.S.C. § 1681a(i). FCRA specifically protects medical information, restricting its dissemination to limited instances. *See, e.g.*, 15 U.S.C. §§ 1681a(d)(3); 1681b(g); 1681c(a)(6).

56. SAIC is a Consumer Reporting Agency as defined under FCRA because on a cooperative nonprofit basis and/or for monetary fees, SAIC regularly engages, in whole or in part, in the practice of assembling information on consumers for the purpose of furnishing Consumer Reports to third parties and/or uses interstate commerce for the purpose of preparing and/or furnishing Consumer Reports.

57. As a Consumer Reporting Agency, SAIC was (and continues to be) required to adopt and maintain procedures designed to protect and limit the dissemination of consumer credit, personnel, insurance and other information (such as Plaintiffs' and Class Members' Private Health Information) in a manner fair and equitable to consumers while maintaining the confidentiality, accuracy, relevancy and proper utilization of such information. SAIC, however, violated FCRA by failing to adopt and maintain such protective procedures which, in turn, directly and/or proximately resulted in the theft of the data tapes and wrongful dissemination of Plaintiffs' and Class Members' Private Health Information into the public domain.

58. Plaintiffs' and Class Members' Private Health Information, in whole or in part, constitutes medical information as defined under FCRA. SAIC violated FCRA by failing to specifically protect and limit the dissemination of Plaintiffs' and Class Members' Private Health Information (*i.e.*, their medical information) into the public domain.

59. SAIC's repeated violations of FCRA, as set forth above, were willful or, at the very least, reckless.

60. As a direct and/or proximate result of SAIC's willful and/or reckless violations of FCRA, as described above, Plaintiffs' and Class Members' Private Health Information was stolen and made accessible to unauthorized third parties in the public domain.

61. As a further direct and/or proximate result of SAIC's willful and/or reckless violations of FCRA, as described above, Plaintiffs and Class Members were (and continue to be) damaged in the form of, without limitation, expenses for credit monitoring and identity theft insurance, out of pocket expenses, anxiety, emotional distress, loss of privacy and other economic and non-economic harm. SAIC's wrongful actions and/or inaction violated FCRA.

62. Plaintiffs and Class Members, therefore, are entitled to compensation for their actual damages including, *inter alia*, expenses for credit monitoring and identity theft insurance, out of pocket expenses, and other economic and non-economic harm, or statutory damages of not less than \$100, and not more than \$1000, each, as well as attorneys' fees, litigation expenses and costs, pursuant to 15 U.S.C. §1681n(a).

COUNT II

NEGLIGENT VIOLATION OF THE FAIR CREDIT REPORTING ACT

63. The preceding factual statements and allegations are incorporated herein by reference.

64. In the alternative, and as described above, SAIC negligently violated FCRA by failing to adopt and maintain procedures designed to protect and limit the dissemination of Plaintiffs' and Class Members' Private Health Information for the permissible purposes outlined by FCRA which, in turn, directly and/or proximately resulted in the theft of the data tapes and wrongful dissemination of Plaintiffs' and Class Members' Private Health Information into the public domain.

65. It was reasonably foreseeable that SAIC's failure to maintain procedures to protect and secure Plaintiffs' and Class Members' Private Health Information would result in an unauthorized third party gaining access to their Private Health Information for no permissible purpose under FCRA.

66. As a direct and/or proximate result of SAIC's negligent violations of FCRA, as described above, Plaintiffs' and Class Members' Private Health Information was stolen and made accessible to unauthorized third parties in the public domain.

67. As a further direct and/or proximate result of SAIC's negligent violations of FCRA, as described above, Plaintiffs and the Class Members were (and continue to be) damaged in the form of, without limitation, expenses for credit monitoring and identity theft insurance, out of pocket expenses, anxiety, emotional distress, loss of privacy, and other economic and non-economic harm. SAIC's wrongful actions and/or inaction violated FCRA.

68. Plaintiffs and Class Members, therefore, are entitled to compensation for their actual damages, including, *inter alia*, expenses for credit monitoring and identity theft insurance, out of pocket expenses, and other economic and non-economic harm, as well as attorneys' fees, litigation expenses and costs, pursuant to 15 U.S.C. §1681o(a).

COUNT III

NEGLIGENCE

69. The preceding factual statements and allegations are incorporated herein by reference.

70. SAIC had a duty to exercise reasonable care in safeguarding and protecting Plaintiffs' and Class Members' Private Health Information.

71. SAIC violated its duty by failing to exercise reasonable care and safeguard and protect Plaintiffs' and Class Members' Private Health Information.

72. It was reasonably foreseeable that SAIC's failure to exercise reasonable care in safeguarding and protecting Plaintiffs' and Class Members' Private Health Information would result in an unauthorized third party gaining access to such information for no lawful purpose.

73. Plaintiffs and the Class Members were (and continue to be) damaged as a direct and/or proximate result of SAIC's failure to secure and protect their Private Health Information in the form of, *inter alia*, expenses for credit monitoring and identity theft insurance, out of pocket expenses, anxiety, emotional distress, loss of privacy, and other economic and non-economic harm—for which they are entitled to compensation.

74. SAIC's wrongful actions and/or inaction (as described above) constituted (and continue to constitute) negligence at common law.

COUNT IV

INVASION OF PRIVACY BY PUBLIC DISCLOSURE OF PRIVATE FACTS

75. The preceding factual statements and allegations are incorporated herein by reference.

76. SAIC's failure to secure and protect Plaintiffs' and Class Members' Private Health Information directly resulted in the public disclosure of such private information.

77. Dissemination of Plaintiffs' and Class Members' Private Health Information is not of a legitimate public concern; publicity of their Private Health Information would be, is and will continue to be offensive to reasonable people.

78. Plaintiffs and the Class Members were (and continue to be) damaged as a direct and/or proximate result of Defendant's invasion of their privacy by publicly disclosing their

private facts (*i.e.*, their Private Health Information) in the form of, *inter alia*, expenses for credit monitoring and identity theft insurance, out of pocket expenses, anxiety, emotional distress, loss of privacy, and other economic and non-economic harm—for which they are entitled to compensation. At the very least, Plaintiffs and the Class Members are entitled to nominal damages.

79. SAIC's wrongful actions and/or inaction (as described above) constituted (and continue to constitute) an invasion of Plaintiffs' and Class Members' privacy by publicly disclosing their private facts (*i.e.*, their Private Health Information)..

COUNT V

VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT

80. The preceding factual statements and allegations are incorporated herein by reference.

81. Plaintiffs and Class Members are consumers under the DTPA. TEX. BUS & COM. CODE § 17.45(4).

82. SAIC's, *inter alia*, (i) history of failing to properly secure and protect the Private Health Information of TRICARE participants entrusted to it, (ii) failure to properly secure, protect and transport the Private Health Information of Plaintiffs and the 4.9 million Class Members at issue in this case entrusted to SAIC, (iii) failure to encrypt all of Plaintiffs' and Class Members' Private Health Information on the stolen data tapes, and (iv) failure to implement and execute a policy mandating that Private Health Information contained on data tapes be encrypted in accordance with federal standards collectively were (and continue to be) glaringly noticeable, flagrant, complete and unmitigated.

83. SAIC's above-described wrongful actions and/or inaction were (and continue to be) the direct, proximate, producing and/or "but for" cause of the damages Plaintiffs and Class Members have suffered (and continue to suffer) including, *inter alia*, expenses for credit monitoring and identity theft insurance, out of pocket expenses, anxiety, emotional distress, loss of privacy, and other economic and non-economic harm—for which Plaintiffs and Class Members are entitled to compensation.

84. SAIC's wrongful actions and/or inaction (as described above) constitute (and continue to constitute) unconscionable conduct in violation of the Texas Deceptive Trade Practices-Consumer Protection Act; to wit, ongoing and continuous violations of TEX. BUS & COM. CODE § 17.50(a)(3). All conditions precedent to Plaintiffs' and Class Members' DTPA claim have been performed and/or occurred.

RELIEF REQUESTED

85. The preceding factual statements and allegations are incorporated herein by reference.

86. **DAMAGES.** As a direct and/or proximate result of SAIC's wrongful actions and/or inaction (as described above), Plaintiffs and Class Members suffered (and continue to suffer) damages in the form of, *inter alia*, expenses for credit monitoring and identity theft insurance, out of pocket expenses, anxiety, emotional distress, loss of privacy, and other economic and non-economic harm—for which they are entitled to compensation. Plaintiffs and Class Members also are entitled to recover statutory damages and/or nominal damages. Plaintiffs' and Class Members' damages were foreseeable by SAIC and exceed the minimum jurisdictional limits of this Court. All conditions precedent to Plaintiffs' and Class Members' claims have been performed and/or occurred.

87. **TREBLE DAMAGES.** Plaintiffs and Class Members also are entitled to treble damages for SAIC's knowing, intentional, unconscionable and deceptive acts and practices, pursuant to TEX. BUS & COM. CODE § 17.50(b)(1). All conditions precedent to Plaintiffs' and Class Members' claims for relief have been performed and/or occurred.

88. **EXEMPLARY DAMAGES.** Plaintiffs and Class Members also are entitled to exemplary damages as punishment and to deter such wrongful conduct in the future. All conditions precedent to Plaintiffs' and Class Members' claims have been performed and/or occurred.

89. **INJUNCTIVE RELIEF.** Plaintiffs and Class Members also are entitled to injunctive relief in the form of, without limitation, (i) credit monitoring, (ii) identity theft insurance, and (iii) requiring SAIC to submit to periodic compliance audits by a third party regarding the security of consumers' Private Health Information in its possession, custody and control. All conditions precedent to Plaintiffs' and Class Members' claims for relief have been performed and/or occurred.

90. **ATTORNEYS' FEES, LITIGATION EXPENSES AND COSTS.** Plaintiffs and Class Members also are entitled to recover their attorneys' fees, litigation expenses and court costs in prosecuting this action pursuant to, *inter alia*, 15 U.S.C. §§ 1681n(a); o(a) and TEX. BUS & COM. CODE § 17.50(d). All conditions precedent to Plaintiffs' and Class Members' claims for relief have been performed and/or occurred.

WHEREFORE, Plaintiffs, on behalf of themselves and Class Members, respectfully requests that (i) SAIC be cited to appear and answer this lawsuit, (ii) this action be certified as a class action, (iii) Plaintiffs be designated the Class Representatives, and (iv) Plaintiffs' counsel be appointed as Class Counsel. Plaintiffs, on behalf of themselves and Class Members, further request

that upon final trial or hearing, judgment be awarded against SAIC, in favor of Plaintiffs and the Class Members, for:

- (i) actual damages, consequential damages, FCRA statutory damages and/or nominal damages (as described above) in an amount to be determined by the trier of fact;
- (ii) statutory treble damages pursuant to TEX. BUS & COM. CODE § 17.50(b)(1);
- (iii) exemplary damages;
- (iv) injunctive relief as set forth above;
- (v) pre- and post-judgment interest at the highest applicable legal rates;
- (vi) attorneys' fees and litigation expenses incurred through trial and any appeals;
- (iv) costs of suit; and
- (v) such other and further relief that this Court deems just and proper.

JURY DEMAND

Plaintiffs, on behalf of themselves and Class Members, respectfully demand a trial by jury on all of their claims and causes of action so triable.

Respectfully submitted,

By: s/ Richard L. Coffman

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiffs' First Amended Class Action Complaint and Jury Demand was served on the following counsel, via United States mail, facsimile, electronic mail and/or via the Court's ECF system, on December 13, 2011.

/s/ Richard L. Coffman
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