

STATE OF SOUTH CAROLINA	)	<b>IN THE COURT OF COMMON PLEAS</b>
	)	
COUNTY OF SPARTANBURG	)	<b>FOR THE SEVENTH JUDICIAL CIRCUIT</b>
	)	
Daniel Lee Davis, individual and on behalf of all those similarly situated,	)	Case No.: 2017-CP-42-03283
	)	
Plaintiff,	)	
	)	<b>AMENDED COMPLAINT</b>
vs.	)	(Jury Trial Demanded)
	)	
ISCO Industries, Inc.,	)	
	)	
Defendant.	)	

The Plaintiff, Daniel Lee Davis, individually and on behalf of all those similarly situated, by and through his undersigned counsel will respectfully show unto this Honorable Court:

**PARTIES**

1. Plaintiff Daniel Lee Davis is, and was at all times material to this action, a resident of the County of Spartanburg, State of South Carolina.
2. Upon information and belief, Defendant ISCO Industries, Inc. is a foreign corporation with its principal place of business in Kentucky. Defendant is, and was at all time material to this action, doing business within the County of Spartanburg, State of South Carolina and carrying on in the ordinary course of business the sale and maintenance of custom piping solutions.

**JURISDICTION AND VENUE**

3. Plaintiff incorporates herein by reference each and every allegation set forth hereinabove as if repeated verbatim.
4. The most substantial part of the acts or omissions giving rise to the causes of action stated herein occurred in Spartanburg County, South Carolina.

5. The jurisdiction of this Court is founded upon S.C. Const. Ann. art. V, § 11, which grants the Circuit Court general jurisdiction over civil actions.

6. Venue is appropriate under South Carolina Code Ann. § 15-7-30.

### **GENERAL ALLEGATIONS AND FACTUAL BACKGROUND**

7. Plaintiff incorporates herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

8. Plaintiff has been married since June 2015 and has two children, one aged 19 and one aged 16.

9. Plaintiff began working for Defendant as a mechanic and fusion technician on or about March 2007.

10. As a requirement of his employment, Plaintiff was required to provide Defendant with personal identifying information ("PII"), such as his name, address, and social security number, for, *inter alia*, administrative, bookkeeping, and tax purposes.

11. Plaintiff's employment with Defendant ended on or about March 2015.

12. Although Plaintiff allegedly had an arbitration clause in his initial hiring agreement, his claim at bar does not bear a substantial relationship to the employment agreement or arbitration clause.

13. "On March 2, 2016, an employee in [Defendant's] human resources department received an email from someone posing as a senior executive at ISCO asking for ISCO's 2015 IRS Form W-2 data." (*See* Notice of Data Breach, attached as Ex. A).

14. "Because the email appeared to come from within ISCO, the employee gathered the requested W-2 data in electronic format and transmitted the information by return email." (Ex. A).

15. These Form W-2s included sensitive PII, including, names, addresses, salaries, and social security numbers.
16. A short time later, upon information and belief, someone in Defendant's employ realized that "an outside third party had fraudulently disguised his email address as that of an ISCO senior executive," and the PII of many employees, including Plaintiff, was sent to an outside third party ("the Data Breach"). (Ex. A).
17. "The compromised information include[d] employee social security numbers, addresses, and 2015 compensation and tax withholding information." (Ex. A).
18. Upon information and belief, on March 4, 2016, Defendant sent a Notice of Data Breach to affected employees, alerting them to Defendant's release of their PII to an outside third party. (*See* Ex. A).
19. Upon information and belief, Defendant retained LifeLock, Inc. to provide one year of identity theft protection services.
20. However, upon information and belief, the LifeLock service Defendant purchased was "passive" and merely alerted individuals when it determined that someone was opening a credit card in the individual's name.
21. Upon information and belief, almost immediately after the Data Breach, cybercriminals began to exploit the employees' PII by engaging in identity theft.
22. These cybercriminals can pair the PII with other available information to, *inter alia*, obtain employment, obtain a loan, apply for credit cards or spending money, file false tax returns, obtain medical care, steal Social Security and other government benefits, and apply for a driver's license or other government documents.

23. Additionally, cybercriminals can pair the PII with other available information about an employees' family in order to commit identity theft that affects the employees' family.

24. For the rest of their lives, Plaintiff and the class members will bear an immediate and heightened risk of all manners of identity theft.

25. On or about August 2016, Plaintiff began receiving notices from LifeLock that someone was attempting to take out loans and open credit cards in his name.

26. For example, on August 17, 2016, a third party opened a Citibank credit card in Plaintiff's name.

27. Plaintiff filed an incident report with the Spartanburg County Sheriff's Department to report this identity theft.

28. After Plaintiff's one year of LifeLock expired, he had to purchase a better credit monitoring service because third parties were still opening credit cards in his name. This service costs approximately \$12 per month.

29. Plaintiff has spent countless hours monitoring his credit report, closing accounts opened by third parties, and ensuring that his credit is not damaged.

### **CLASS ACTION ALLEGATIONS**

30. Plaintiff incorporates herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

31. Plaintiff brings this action on behalf of himself and, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, as named representative of a Class defined as follows:

All current and former ISCO Industries' employees whose PII was released as a result of the Data Breach.

32. Plaintiff reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified.

33. Upon information and belief, the exact number of Class members is unknown and is not available to Plaintiff at this time as this information is within the exclusive control of the Defendant, but Plaintiff believes that the Class likely consists of hundreds or thousands of individuals. The sheer size of the Class makes individual joinder in this case impracticable, if not impossible.

34. In addition to the large number of individuals who are members of the Class, there are several questions of law and fact common to the claims of Plaintiff and members of the Class. Those questions predominate over any questions that may affect individual Class members. Common questions include, but are not limited to, the following:

- a. Whether and to what extent Defendant had a duty to protect the Class members' PII;
- b. Whether Defendant breached its duty to protect the Class members' PII;
- c. Whether Defendant provided sufficient assistance to Class members after the breach; and
- d. Whether Class members are entitled to damages.

35. Plaintiff's claims are typical of the claims of the Class members. All are based on the same legal and factual issues. Plaintiff and each of the Class members entrusted Defendant with their PII, which was later released by Defendant to cybercriminals.

36. Plaintiff, as named representative, has common interests with members of the Class and will vigorously prosecute the interests of the Class through qualified legal counsel, and does not

have any identifiable legal conflicts with any potential Class member, and thus, the Plaintiff will fairly and adequately represent and protect the interests of the whole Class.

37. To the extent damages are sought, the amount in controversy exceeds one hundred dollars for each member of the Class.

38. Plaintiff has retained competent legal counsel who have extensive experience with class action litigation and are experienced attorneys well versed in South Carolina constitutional, statutory, and common law.

39. Class action treatment of the matters in issue in this controversy is superior to the alternatives, if any, for the fair and efficient adjudication of such issues, because such treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would entail. Class action treatment in this case will have the added virtue of permitting the adjudication of relatively small claims by certain members of the Class, for whom it would otherwise not be financially feasible to litigate their claims as individual actions against Defendant.

40. Plaintiff is aware of no difficulty in the management of this action that would preclude it from being maintained as a class action.

**FOR A FIRST CAUSE OF ACTION  
(Negligence)**

41. Plaintiff incorporates herein by reference each and every allegation set forth hereinabove as if repeated verbatim.

42. Plaintiff and Class members were required to provide Defendant with their PII.

43. Defendant had knowledge of the sensitivity of this PII and the types of harm that Plaintiff and Class members would suffer if this PII was wrongfully disclosed.

44. Indeed, Defendant had a duty to Plaintiff and each Class member to exercise reasonable care in holding, securing, and protecting that PII.

45. It was foreseeable that Plaintiff and the Class members would suffer substantial harm if Defendant employed inadequate safety practices for securing PII.

46. As a result of Defendant's negligence, wilfulness, wantonness, carelessness, gross negligence, and recklessness, Plaintiff and the Class members have suffered and will continue to suffer damages and injury, including, but not limited to, out of pocket expenses and the loss of productivity and enjoyment as a result of spending time monitoring and correcting consequences of the Data Breach.

WHEREFORE, Plaintiff and all those similarly situated pray:

- A. That this Court certify the Class;
- B. Judgment against Defendant;
- C. Actual damages;
- D. Punitive damages;
- E. Costs and disbursements of this action
- F. Attorneys' fees; and
- G. That the Court grant such other and further relief as shall be just and proper, including but not limited to prejudgment and postjudgment interest.

**(Signature Page Follows)**

Respectfully Submitted,

**HARRISON, WHITE, SMITH & COGGINS,  
P.C.**

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November 15, 2017