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**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

**DELORES SCOTT AND RYAN BOHLIM,
 INDIVIDUALLY AND ON BEHALF OF
 ALL OTHERS SIMILARLY SITUATED,**

PLAINTIFFS,

v.

MGM RESORTS INTERNATIONAL,

DEFENDANT

CASE NO.

CLASS ACTION

**COMPLAINT FOR DAMAGES,
 EQUITABLE, DECLARATORY AND
 INJUNCTIVE RELIEF**

JURY DEMAND

1 Plaintiffs Delores Scott and Ryan Bohlim, individually and on behalf of all others similarly
2 situated, bring this action against MGM Resorts International for damages and equitable,
3 declaratory, and injunctive relief. Plaintiffs allege as follows:

4
5 **INTRODUCTION**

6 1. In summer 2019, MGM discovered that its computer networks had been
7 hacked and records on millions of its customers had been stolen. Instead of coming clean,
8 however, it buried the news, hoping the MGM Data Breach and its inadequate cybersecurity
9 controls would fly under the radar.

10
11 2. In September 2019, MGM privately notified some of the affected guests that
12 their information had been stolen, while giving them false assurances that the situation was
13 contained and that their personal information had *not* been widely disseminated.

14
15 3. Despite MGM's assurances, in February 2020, security researchers at *ZDNet*
16 discovered a set of data on a well-known online hackers' forum containing the personal
17 details of more than 10.6 million MGM guests.

18
19 4. When *ZDNet* discovered this data set, it immediately reached out to MGM. The
20 hotel chain confirmed that the data came from a security incident that had occurred the prior
21 year, which it had chosen not to publicly disclose.

22
23 5. MGM still has not acknowledged the full scope of the data breach. It has
24 confirmed, however, that breach exposed over 10 million of its customers' Personally
25 Identifying Information ("PII"), including data such as their names, addresses, driver's
26 license numbers, passport numbers, military identification numbers, phone numbers, email
27 addresses, and dates of birth.

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1 this District, MGM intentionally avails itself of the markets within this District such that the
2 exercise of jurisdiction by this Court is just and proper.

3 11. Venue is proper under 28 U.S.C. § 1391(b)(1) because MGM resides in Nevada.
4 Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or
5 omissions giving rise to this action occurred in this District; MGM is based in this District,
6 maintains customer PII in the District and has caused harm to Plaintiffs and Class Members
7 residing in this District.
8

9 **PARTIES**

10 12. Plaintiff Delores Scott is a resident and citizen of Wisconsin. She stayed at the
11 MGM Grand Hotel numerous times during the relevant time period and provided her PII to
12 MGM in connection with those stays. In 2019, she received a data breach notification from
13 MGM informing her that she had been impacted by the MGM Data Breach. As a consequence
14 of the MGM Data Breach, Ms. Scott has been forced to invest significant time carefully
15 monitoring her accounts on a daily basis to detect and reduce the consequences of likely
16 identity fraud.
17

18 13. Plaintiff Ryan Bohlim is a resident and citizen of California. He has stayed at
19 MGM properties, often several times a year, for decades. He provided his PII to MGM in
20 connection with those stays. In 2019, he received a data breach notification from MGM
21 informing him that he was impacted by the MGM Data Breach. As a consequence of the MGM
22 Data Breach, Mr. Bohlim spends time monitoring his accounts and he uses an identity
23 protection service to reduce the consequences of likely identity fraud.
24

25 14. Plaintiffs' PII was stolen as a result of the MGM Data Breach, causing actual
26 injury to Plaintiffs including, but not limited to: (a) paying monies to MGM for its goods and
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1 services, which Plaintiffs would not have done had MGM disclosed that it lacked data security
2 practices adequate to safeguard consumers' PII from theft; (b) damages to and diminution
3 in the value of Plaintiffs' PII—a form of intangible property that Plaintiffs entrusted to MGM
4 as a condition of receiving its services; (c) loss of their privacy; and (d) injury arising from
5 the increased risk of fraud and identity theft, including the cost of taking reasonable identity
6 theft protections measures, which will continue for years.

8 15. Defendant MGM Resorts International is a Delaware corporation
9 headquartered at 3600 Las Vegas Boulevard, South Las Vegas, Nevada 89109. MGM is a
10 global hospitality conglomerate that owns and operates resorts around the world. It is, of
11 course, most well-known for its casinos and other gambling and luxury properties in Las
12 Vegas, including: MGM Grand Las Vegas, Bellagio, ARIA, Vdara, Mandalay Bay, Delano Las
13 Vegas, Park MGM, the Mirage, New York New York, the Luxor, and Excalibur.

14 **STATEMENT OF FACTS**

15 **I. The Data Breach**

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17
18 16. On or about July 7, 2019, hackers who gained unauthorized access to MGM's
19 computer networks successfully exfiltrated PII of millions of MGM customers.

20
21 17. Those hackers later disclosed a subset of that data. Since then, hackers have
22 been sharing Plaintiffs' and other MGM guests' PII in underground hacking forums. The
23 hackers who then publicly released this information are believed to be associated with
24 GnosticPlayers, a hacking group that publicly released more than one billion user records in
25 2019 alone.

26
27 18. According to the ZDNet article that broke the story, this data consisted of a
28

1 “treasure trove”¹ of MGM customer PII, including customers’ names, addresses, driver’s
2 license numbers, passport numbers, military identification numbers, phone numbers, email
3 addresses and dates of birth.

4 19. In mid-February 2020, the PII of more than 10.6 million MGM guests was
5 published on a very popular and openly-accessible hacking forum.

6 20. According to internet security experts, affected MGM customers will now “face
7 a higher risk of receiving spear-phishing emails, and being SIM swapped.”² “[A]s with many
8 breaches, malicious actors sometime wait months or years to tip their hand,” and “the value
9 of their particular dataset continues to have appeal, despite its age and the potential
10 staleness in certain spots.”³

11 21. Customers are harmed for long periods of time as a result of data breaches like
12 the one experienced by MGM customers. Once PII is stolen, fraudulent use of that
13 information and damage to victims may continue for years. And consumer victims of data
14 breaches are more likely to become victims of identity fraud.

15 **II. MGM’s Privacy Promises**

16 22. MGM’s Privacy Policy applies to guests at its “resorts, casinos and properties.”
17 In it, MGM says it “respects your privacy.” Noting that MGM often collects “sensitive
18 information” about guests (including driver’s license numbers, passport numbers, and other
19 information), MGM states that it “takes the privacy of our guests very seriously.”

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24 ¹ Catalin Cimpanu, *Exclusive: Details of 10.6 Million MGM Hotel Guests Posted on a Hacking
25 Forum*, ZDNet (Feb. 19, 2020), [https://www.zdnet.com/article/exclusive-details-of-10-6-
million-of-mgm-hotel-guests-posted-on-a-hacking-forum/](https://www.zdnet.com/article/exclusive-details-of-10-6-million-of-mgm-hotel-guests-posted-on-a-hacking-forum/).

26 ² See *id.*

27 ³ Doug Olenick, *MGM Admits to 2019 Data Breach Affecting 10.6 Million Customers*, SC
28 Magazine (Feb. 20, 2020), [https://www.scmagazine.com/home/security-news/data-
breach/mgm-admits-to-2019-data-breach-affecting-10-6-million-customers/](https://www.scmagazine.com/home/security-news/data-breach/mgm-admits-to-2019-data-breach-affecting-10-6-million-customers/).

1 types of data) MGM says this information is “stored on secure servers, which are protected
2 by firewalls and other industry standard security measures.” MGM says it has security
3 controls in place that are “designed to detect potential data breaches” and “contain and
4 minimize the loss of data.”

5
6 23. MGM further assures its guests that “[i]n situations where your personal
7 information is collected by third parties under contract with us for performance of their
8 contractual duties and other purposes, we require such third parties to exercise reasonable
9 care to protect that information.”

10 24. MGM claims that it implements “industry standard security measures.”

11
12 25. Despite the above assurances, MGM failed to maintain the necessary security
13 measures, practices, and other safeguards that would have prevented the MGM Data Breach.

14 **III. MGM Knew It Was A Prime Target For Hackers**

15 26. Data breaches have been a recurring phenomenon for large companies like
16 MGM. There were more than 1,000 data breaches in the United States in 2016, representing
17 a greater than 40% increase from 2015.⁴ In 2017 there were even more data breaches than
18 in 2016, a total of 1,579; this represented yet another greater-than-40% increase in data
19 breaches for the second year in a row.⁵ In 2019, there were 1,473 data breaches reported in
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25 ⁴ Identity Theft Resource Center, *Data Breaches Increase 40 Percent in 2016, Finds New*
26 *Report From Identity Theft Resource Center and CyberScout*,
<https://www.idtheftcenter.org/data-breaches-increase-40-percent-in-2016-finds-new-report-from-identity-theft-resource-center-and-cyberscout/>.

27 ⁵ Identity Theft Resource Center, *2017 Annual Data Breach Year-End Review*,
28 <https://www.idtheftcenter.org/2017-data-breaches/>.

1 the United States, a 17% increase since 2018.⁶

2 27. Hotel and hospitality companies are particularly susceptible to data breaches.
3 Trustwave's *2018 Global Security Report* lists hospitality as one of the top three industries
4 most vulnerable to payment card breaches; others estimate that hotels are the subject of
5 about 20% of all cyberattacks.⁷ "Such unfortunate trends should not come as much of a
6 surprise since hotels are hotbeds of sensitive information."⁸

7
8 28. "The hospitality industry is a common target for cyber criminals because of
9 the massive amount of data hotels hold."⁹ "In late November [2018], Marriott International
10 revealed that a massive cyberattack compromised personal information for up to half a
11 billion individual guests of its properties. . . . Other major organizations in the hospitality
12 industry, including Hilton and Hyatt, have reported similar attacks. In 2017, for example,
13 Holiday Inn parent company InterContinental Hotels discovered a breach lasting three
14 months and affecting 1,200 properties."¹⁰

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17 29. Not only was MGM at great risk, it should have known that it was especially
18 vulnerable.

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20
21 ⁶ Identity Theft Resource Center, *Data Breach Report Reveals 17 Percent Increase in Breaches*
22 *Over 2018*, <https://www.idtheftcenter.org/identity-theft-resource-centers-annual-end-of-year-data-breach-report-reveals-17-percent-increase-in-breaches-over-2018/>.

23 ⁷ Hotel management, *Why Cybersecurity Matters*,
24 <https://www.hotelmanagement.net/tech/why-cybersecurity-matters>.

25 ⁸ *Id.*

26 ⁹ Open Data Security, *Cybersecurity in the Hotel Industry: Lessons from Marriott Data Breach*,
27 <https://opendatasecurity.io/cybersecurity-in-the-hotel-industry-lessons-from-marriott-data-breach/>.

28 ¹⁰ Megan Berkowitz, *Meeting the Threat in 2019: Cybersecurity for the Hospitality Sector*,
Hospitality Technology (Jan. 23, 2019), <https://hospitalitytech.com/meeting-threat-2019-cybersecurity-hospitality-sector>.

1 30. As recently as March 2020—six months *after* MGM discovered the data
2 breach, the MGM Resorts website was still insecure. According to UpGuard, a company that
3 publishes information security ratings, the MGM Resorts website is “at risk of being
4 hijacked,” “[v]ulnerable to cross-site scripting,” and “[s]usceptible to man-in-the-middle
5 attacks.”

6
7 31. MGM even markets itself to hackers. It routinely hosts conferences for an
8 organization called “Black Hat.” The term “black hat” refers to hackers who attack
9 companies’ systems for nefarious purposes, in contrast to “white hat” hackers, who use their
10 hacking skills to help companies improve their security. At “Black Hat” conferences,
11 attendees have been known to hijack wireless connections of the hotels and hack hotel
12 billing systems.

13
14 **IV. The MGM Data Breach Harmed Individuals, And Additional Fraud Will**
15 **Result**

16 32. Consumers who have been victims of data breaches are much more likely to
17 become victims of identity fraud than those who have not. Further, each additional data
18 breach an individual is involved in increases his or her risk of identity fraud.

19
20 33. The Federal Trade Commission defines identity theft as “a fraud committed or
21 attempted using the identifying information of another person without authority.” 17 C.F.R.
22 § 248.201(9).

23
24 34. As the FTC explains, “[o]nce identity thieves have your personal information,
25 they can drain your bank account, run up charges on your credit cards, open new utility
26 accounts, or get medical treatment on your health insurance.” As such, PII is a highly valuable
27 asset to ill-intending identity thieves.
28

1 35. The Bureau of Justice Statistics has reported that, even if data thieves have not
2 caused financial harm, data breach victims “reported spending an average of about 7 hours
3 clearing up the issues.”

4 36. Identity thieves often hold onto personal information obtained to commit
5 fraud years after free credit monitoring programs expire. Even so-called State-sponsored
6 hacking groups, after providing the stolen information to their government client, quickly
7 repackage and sell the same stolen information to identity thieves.
8

9 37. In fact, the harms here are likely to be more severe because Defendant
10 announced the breach well after it occurred. According to a 2017 study by performed New
11 Javelin Strategy, “The quicker a financial institution, credit card issuer, wireless carrier or
12 other service provider is notified that fraud has occurred on an account, the sooner these
13 organizations can act to limit the damage. Early notification can also help limit the liability
14 of a victim in some cases, as well as allow more time for law enforcement to catch the
15 fraudsters in the act.”
16

17 38. Given the categories of information taken in the MGM breach, impacted
18 individuals are at particular risk of having their mobile phone numbers commandeered by a
19 fraudster, through a “SIM swapping” scheme, where the fraudster uses breached information
20 to convince the mobile phone carrier to port-over the person’s mobile phone number to a
21 phone that the hacker controls.
22

23 39. A hacker can then use the hijacked mobile phone number to take over all
24 manner of online accounts, as prominent cybersecurity journalist and author Brian Krebs
25 explains: “Phone numbers stink for security and authentication. They stink because most of
26 us have so much invested in these digits that they’ve become de facto identities. At the same
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1 time, when you lose control over a phone number ... whoever inherits that number can then
2 be you in a lot of places online. As Krebs notes, we have gotten to the "point where a single,
3 semi-public and occasionally transient data point like a phone number can unlock access to
4 such a large part of our online experience."

5
6 **CLASS ACTION ALLEGATIONS**

7 40. Plaintiffs seek relief individually and as a representative of all others similarly
8 situated. Pursuant to Fed. R. Civ. P. Rule 23(a), (b)(1), (b)(2), (b)(3) and (c)(4), Plaintiffs
9 seeks certification of a Nationwide class defined as follows:

10 All persons in the United States whose personal information was compromised in
11 the data breach publicly announced by MGM in February 2020.

12 Plaintiff Bohlim also seeks certification of a California Subclass, defined as follows:

13 All California residents whose personal information was compromised in the data
14 breach publicly announced by MGM in February 2020.

15 41. Excluded from the Class and Subclass are Defendant, any entity in which
16 Defendant has a controlling interest, and Defendant's officers, directors, legal
17 representatives, successors, subsidiaries, and assigns. Also excluded are any judge, justice,
18 or judicial officer presiding over this matter and the members of their immediate families
19 and judicial staff.

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21
22 42. **Numerosity:** Federal Rule of Civil Procedure 23(a)(1). The Class Members are
23 so numerous and geographically dispersed that individual joinder of all Class Members is
24 impracticable. Plaintiffs are informed and believe that there are at least 10.6 million class
25 members. Given the overall class size and the proximity of MGM properties to California, it
26 is certain that there are at least several hundred thousand Subclass Members. The
27 individuals' names and addresses are available from Defendant's records.
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43. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3). The action involves common questions of law and fact, which predominate over any questions affecting individual class members, including:

- a. Whether Defendant knew or should have known that its systems were vulnerable to unauthorized access;
- b. Whether Defendant failed to take adequate and reasonable measures to ensure its data systems were protected;
- c. Whether Defendant failed to take available steps to prevent and stop the breach from happening; and
- d. Whether Defendant breached any duty to protect the personal information of Plaintiffs, Class Members, and Subclass Members by failing to provide adequate data security; and
- e. The amount of damages suffered by Plaintiffs, Class Members, and Subclass Members.

44. Typicality: Federal Rule of Civil Procedure 23(a)(3), Plaintiffs' claims are typical of other Class and Subclass Members' claims because Plaintiffs, Class, and Subclass Members were subjected to the same allegedly unlawful conduct and damaged in the same way.

45. Adequacy of Representation: Federal Rule of Civil Procedure 23(a)(4). Plaintiffs are adequate class representatives because their interests do not conflict with the interests of the Class and Subclass Members they seek to represent, Plaintiffs have retained counsel competent and experienced in complex class action litigation and data breach

1 litigation, and Plaintiffs intend to prosecute this action vigorously. The Class and Subclass
2 Members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

3 46. **Declaratory and Injunctive Relief:** Federal Rule of Civil Procedure 23(b)(2).
4 The prosecution of separate actions by individual Class and Subclass Members would create
5 a risk of inconsistent or varying adjudications with respect to individual Class and Subclass
6 Members that would establish incompatible standards of conduct for Defendant. Such
7 individual actions would create a risk of adjudications that would be dispositive of the
8 interests of other Class and Subclass Members and impair their interests. Defendant has
9 acted and/or refused to act on grounds generally applicable to the Class and Subclass,
10 making final injunctive relief or corresponding declaratory relief appropriate.

11 47. **Superiority:** Federal Rule of Civil Procedure 23(b)(3). A class action is
12 superior to any other available means for the fair and efficient adjudicating of this
13 controversy, and no unusual difficulties are likely to be encountered in the management of
14 this case. Relative to the burden and expense that would be required to individually litigate
15 the claims, the damages suffered by Plaintiffs, Class, and Subclass Members are
16 comparatively small, so it would be impracticable for them to individually seek redress for
17 Defendant's wrongful conduct. Even if Class and Subclass Members could afford individual
18 litigation, the court system could not. Individualized litigation creates a potential for
19 inconsistent or contradictory judgments and increases the delay and expense to all parties
20 and the court system. By contrast, the class action device presents far fewer management
21 difficulties and provides the benefits of single adjudication, economies of scale, and
22 comprehensive supervision by a single court.

23 48. MGM has physical and email addresses for Class and Subclass Members who
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1 therefore may be notified of the pendency of this action by recognized, Court-approved
2 notice dissemination methods, which may include U.S. mail, electronic mail, internet
3 postings, and/or published notice.

4 49. Particular issues under Rule 23(c)(4), including those listed in Paragraph 43,
5 are appropriate for certification because such claims present only particular, common
6 issues, the resolution of which would advance the disposition of this matter and the parties'
7 interests therein.
8

9
10 **COUNT I**
11 **VIOLATION OF NEVADA'S CONSUMER FRAUD ACT**
12 **Nevada Revised Statutes § 41.6000**
13 **(asserted by all Plaintiffs on behalf of the Class)**

14 50. Plaintiffs restate and reallege Paragraphs 1 through 48 as if fully set forth
15 herein.

16 51. MGM engaged in unfair and unlawful acts and practices by failing to maintain
17 adequate procedures to avoid a data breach, and permitting access to consumer reports by
18 data thieves, for whom MGM had no reasonable grounds to believe would be used for a
19 proper purpose. Plaintiffs and Class Members relied on MGM's implied promise of data
20 security when providing their PII to MGM.

21 52. MGM is subject to the Nevada Consumer Fraud Act, Nev. Rev. Stat. § 41.6000
22 because it is headquartered in and does business in Nevada.

23 53. Under § 41.6000(2)(e), MGM engaged in a deceptive trade practice as defined
24 in §§ 598.0915–598.0925. MGM's interactions with Plaintiffs and the Class wherein MGM
25 made statements and omissions suggesting that it would adequately protect customers' PII
26 when, in fact, it did not. In particular, and without limitation, MGM "[t]ender[ed] a lease of
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1 goods advertised for sale or a sale of goods advertised for lease or tendering terms of sale or
2 lease less favorable than the terms advertised” under § 598.0917(7). MGM also “[k]nowingly
3 ma[de a] false representation in a transaction.”

4 54. MGM also engaged in a deceptive trade practice by “[v]iolat[ing] a state or
5 federal statute or regulation relating to the sale or lease of goods or services” under §
6 598.0923, and engaged in “consumer fraud” as provided in § 41.600(1). Among other
7 statutes and regulations, MGM violated the Federal Trade Commission Act, 15 U.S.C. § 45,
8 and its implementing regulations, which require companies to adequately and reasonably
9 protect consumer data from compromise.

10 55. MGM violated § 603A.210, requiring that “A data collector that maintains
11 records which contain personal information of a resident of this State shall implement and
12 maintain reasonable security measures to protect those records from unauthorized access,
13 acquisition, destruction, use, modification or disclosure.” MGM failed to take the required
14 reasonable security measures.

15 56. MGM also breached its duty under Nev. Rev. Stat. § 603A.215(1), requiring any
16 data collector doing business in Nevada who accept payment cards in connection with a sale
17 of goods or services to “comply with the current version of the . . . PCI Security Standards
18 Council . . . with respect to those transactions.” MGM failed to adhere to PCI standards.

19 57. As a direct and proximate result of the foregoing, Plaintiffs and Class Members
20 have suffered injuries including, but not limited to, actual damages, and in being denied a
21 statutory benefit conferred on them by the Nevada legislature.

22 58. As a result of these violations, Plaintiffs and Class Members are entitled to
23 damages and other remedies as set forth below.
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COUNT II
VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW
Cal. Bus. & Prof. Code § 17200, et seq.
(asserted by Plaintiff Bohlim on behalf of the California Subclass)

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4 59. Plaintiff restate and realleges Paragraphs 1 through 58 as if fully set forth
5 herein.

6 60. MGM violated Cal. Bus. and Prof. Code §17200, et seq., by engaging in unlawful,
7 unfair or fraudulent business acts and practices and unfair, deceptive, untrue or misleading
8 advertising that constitute acts of "unfair competition" as defined in Cal. Bus. Prof. Code §
9 17200 with respect to the services provided.
10

11 61. MGM engaged in unfair and unlawful acts and practices by establishing sub-
12 standard security practices and procedures as described herein; by failing to maintain
13 adequate procedures to avoid a data breach; by soliciting and collecting Plaintiff's and
14 Subclass Members' PII with knowledge that the information would not be adequately
15 protected; by omitting the fact of its inadequate data security in its communications with
16 and representations to Plaintiff and Subclass Members; and by permitting access to
17 consumer information by data thieves. These unfair acts and practices were immoral,
18 unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to
19 Plaintiff and Subclass Members. MGM's acts and practices were likely to deceive the public
20 into believing their PII was securely stored, when it was not. The harm these practices
21 caused to Plaintiff and the Subclass Members outweighed their utility, if any.
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25 62. MGM engaged in unfair acts and practices with respect to the provision of
26 services by failing to take proper action following the data breach to enact adequate privacy
27 and security measures and protect Plaintiff and the Subclass Members' PII from further
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1 unauthorized disclosure, release, data breaches, and theft. These unfair acts and practices
2 were immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially
3 injurious to Plaintiff and Subclass Members.

4 63. MGM also engaged in unlawful practices by storing Plaintiff and Subclass
5 Members' PII in an unsecure electronic environment in violation of California's data breach
6 statutes, Cal. Civ. Code § 1798.81.5 and § 1798.150, which require businesses to take
7 reasonable steps to safeguard the PII of Plaintiff and Subclass Members, and in violation
8 Section 5 of the FTC Act, as described below in paragraphs 107-08.

9
10 64. In addition, MGM engaged in unlawful acts and practices by failing to disclose
11 the data breach to Plaintiff and Subclass Members in a timely and accurate manner, contrary
12 to the duties imposed by Cal. Civ. Code § 1798.82. To date, MGM has still not provided
13 adequate information.

14
15 65. As a direct and proximate result of the foregoing, Plaintiff and Subclass
16 Members have suffered injuries including but not limited to actual damages, and in being
17 denied a statutory benefit conferred on them by the California legislature.

18
19 66. MGM knew or should have known that its computer systems and data security
20 practices were inadequate to safeguard Plaintiff and Subclass Members' PII and that the risk
21 of a data breach or theft was highly likely. MGM's actions in engaging in the above-named
22 unlawful practices and acts were negligent, knowing and willful, and/or wanton and reckless
23 with respect to the rights of Plaintiff and Subclass Members.

24
25 67. MGM engaged in an unfair practice by engaging in conduct that is contrary to
26 public policy, unscrupulous, and caused injury to Plaintiff and Subclass Members.
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1 adequately secured and employees with information security-related responsibilities were
2 adequately trained.

3 75. MGM's conduct created a foreseeable risk of harm to Plaintiff and the Subclass
4 Members. MGM's misconduct included, but was not limited to, its failure to take the steps
5 and opportunities to prevent the MGM Data Breach as set forth herein. MGM's misconduct
6 also included its decision not to comply with applicable cybersecurity standards, and its
7 failure to timely notify consumers and other relevant parties after the MGM Data Breach.
8

9 76. MGM knew or should have known that its computer systems and information
10 security controls were inadequate to safeguard Plaintiff and Class Members' PII and that
11 unauthorized access and exfiltration, theft, or disclosures, was highly likely as a result.
12 MGM's actions in engaging in the above-named unlawful practices and acts were negligent,
13 knowing, and willful, and/or wanton and reckless with respect to the rights of Plaintiff and
14 Subclass Members.
15

16 77. As a direct and proximate result of the foregoing, Plaintiff and the Subclass
17 Members have suffered injuries including but not limited to actual damages, and in being
18 denied a statutory benefit conferred on them by the California legislature.
19

20 78. As a result of these violations, Plaintiff and the Subclass Members are entitled
21 to actual pecuniary damages, injunctive or declaratory relief, and any other relief that the
22 Court deems proper. Plaintiff reserves the right to amend this Complaint to seek statutory
23 damages under the CCPA on behalf of himself and the Subclass after providing MGM with the
24 written notice required by Cal. Civ. Code § 1798.150(b).
25

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**COUNT III
NEGLIGENCE**

(asserted by all Plaintiffs on behalf of the Class)

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3 79. Plaintiffs restate and reallege Paragraphs 1 through 58 as if fully set forth
4 herein.

5
6 80. Plaintiffs and Class Members were required to provide their PII, including
7 their names, addresses, dates of birth, telephone numbers, email addresses, and various
8 forms of identification to MGM as a condition of their use of MGM's services.

9
10 81. Plaintiffs and Class Members paid money to MGM in exchange for services,
11 along with MGM's promise to protect their PII from unauthorized disclosure.

12
13 82. Plaintiffs and the Class Members entrusted their PII to MGM with the
14 understanding that MGM would safeguard that information and especially PII.

15
16 83. In their written privacy policies, MGM expressly promised Plaintiffs and Class
17 Members that it would only disclose PII under certain circumstances, none of which relate
18 to the MGM Data Breach. In addition, MGM promised to comply with industry standards and
19 to make sure that Plaintiffs' and Class Members' PII would remain protected.

20
21 84. MGM had full knowledge of the sensitivity of the PII and the types of harm that
22 Plaintiffs and Class Members could and would suffer if the PII were wrongfully disclosed.

23
24 85. MGM had a duty to exercise reasonable care in safeguarding, securing and
25 protecting such information from being compromised, lost, stolen, misused, and/or
26 disclosed to unauthorized parties. This duty includes, among other things, designing,
27 maintaining and testing the MGM's security protocols to ensure that PII in its possession was
28 adequately secured and protected and that employees tasked with maintaining such
information were adequately training on cyber security measures regarding the security of

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1 such information.

2 86. Plaintiffs and the Class Members were the foreseeable and probable victims of
3 any inadequate security practices and procedures. MGM knew of or should have known of
4 the inherent risks in collecting and storing the PII of Plaintiffs and the Class, the critical
5 importance of providing adequate security of that PII, the current cyber scams being
6 perpetrated and that it had inadequate employee training and education and IT security
7 protocols in place to secure the PII of Plaintiffs and the Class.
8

9 87. MGM's own conduct created a foreseeable risk of harm to Plaintiffs and Class
10 Members. MGM's misconduct included, but was not limited to, its failure to take the steps
11 and opportunities to prevent the MGM Data Breach as set forth herein. MGM's misconduct
12 also included its decision not to comply with industry standards for the safekeeping and
13 encrypted authorized disclosure of the PII of Plaintiffs and Class Members.
14

15 88. Plaintiffs and the Class Members had no ability to protect their PII that was in
16 MGM's possession.
17

18 89. MGM was in a position to protect against the harm suffered by Plaintiffs and
19 Class Members as a result of the MGM Data Breach.
20

21 90. MGM had a duty to put proper and adequate procedures in place in order to
22 prevent the unauthorized dissemination of Plaintiffs' and Class Members' PII.

23 91. MGM has admitted that Plaintiffs' and Class Members' PII was wrongfully
24 disclosed to unauthorized third persons as a result of the MGM Data Breach.

25 92. MGM, through its actions and/or omissions, unlawfully breached its duty to
26 Plaintiffs and Class Members by failing to exercise reasonable care in protecting and
27 safeguarding the Plaintiffs' and Class Members' PII while it was within the MGM's possession
28

1 or control.

2 93. MGM improperly and inadequately safeguarded Plaintiffs' and Class Members'
3 PII in deviation of standard industry rules, regulations and practices at the time of the MGM
4 Data Breach.

5
6 94. MGM, through its actions and/or omissions, unlawfully breached its duty to
7 Plaintiffs and Class Members by failing to have appropriate procedures in place to detect and
8 prevent dissemination of its customers' PII.

9
10 95. MGM, through its actions and/or omissions, unlawfully breached its duty to
11 adequately disclose to Plaintiffs and Class Members the existence, and scope of the MGM
12 Data Breach.

13 96. But for MGM's wrongful and negligent breach of duties owed to Plaintiffs and
14 Class Members, Plaintiffs' and Class Members' PII would not have been compromised.

15
16 97. There is a temporal and close causal connection between MGM's failure to
17 implement security measures to protect the PII and the harm suffered, or risk of imminent
18 harm suffered by Plaintiffs and the Class.

19
20 98. As a result of these violations, Plaintiffs and Class Members are entitled to
21 damages and other remedies as set forth below.

22 **COUNT IV**
NEGLIGENCE PER SE

23 99. Plaintiffs restate and reallege Paragraphs 1 through 58 as if fully set forth
24 herein.

25
26 100. Section 5 of the FTC Act prohibits "unfair . . . practices in or affecting
27 commerce," including, as interpreted and enforced by the FTC, the unfair act or practice by
28 businesses, such as MGM, of failing to use reasonable measures to protect PII. The FTC

1 publications and orders described above also form part of the basis of MGM's duty in this
2 regard.

3 101. MGM violated Section 5 of the FTC Act by failing to use reasonable measures
4 to protect customer PII and not complying with applicable industry standards, as described
5 in detail herein. MGM's conduct was particularly unreasonable given the nature and amount
6 of PII it obtained and stored, and the foreseeable consequences of a data breach including,
7 specifically, the damages that would result to Plaintiffs and Class Members.
8

9 102. In addition, as described above, MGM also violated Nevada state consumer
10 protection and unfair competition laws.
11

12 103. MGM's violation of Section 5 of the FTC Act, along with California and Nevada
13 state law, constitutes negligence per se. MGM's violation of these laws establishes the duty
14 and breach elements of negligence.
15

16 104. Plaintiffs and Class Members are within the class of persons that these laws
17 were intended to protect.

18 105. The harm that occurred as a result of the MGM Data Breach is the type of harm
19 these laws were intended to guard against. For example, the FTC and the Nevada Attorney
20 General have pursued enforcement actions against businesses, which, as a result of their
21 failure to employ reasonable data security measures and avoid unfair and deceptive
22 practices, caused the same harm as that suffered by Plaintiffs and the Class.
23

24 106. As a direct and proximate result of MGM's negligence per se, Plaintiffs and the
25 Class have suffered, and continue to suffer, injuries and damages arising from the MGM Data
26 Breach including, but not limited to: damages from lost time and effort to mitigate the actual
27 and potential impact of the MGM Data Breach on their lives, including by placing "freezes"
28

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1 and “alerts” with credit reporting agencies, contacting their financial institutions, closing or
2 modifying financial and medical accounts, closely reviewing and monitoring their credit
3 reports and various accounts for unauthorized activity, and filing police reports, and
4 damages from identity theft, which may take months if not years to discover and detect.

5
6 107. As a result of these violations, Plaintiffs and Class Members are entitled to
7 damages and other remedies as set forth below.

8 **COUNT V**
9 **BREACH OF IMPLIED CONTRACTUAL TERM**

10 108. Plaintiffs restate and reallege Paragraphs 1 through 58 as if fully set forth
11 herein.

12 109. Plaintiffs and Class Members contracted with Defendant to provide them with
13 hotel accommodation and other services.

14 110. Plaintiffs and Class Members met all or substantially all of their contractual
15 obligations under those contracts.

16 111. To obtain the contracted hotel accommodations and other services, Plaintiffs
17 and Class Members were required to provide MGM with PII, such as their names, addresses,
18 dates of birth, telephone numbers, email addresses, and other forms of identification.

19 112. Plaintiffs and the Class Members entrusted their PII to MGM with the
20 understanding that MGM would safeguard that information.

21 113. Plaintiffs and Class Members paid money to MGM in exchange for
22 accommodation and other services and MGM promised, among other things, to protect
23 Plaintiffs’ and Class Members’ Personal Information from unauthorized disclosure.

24 114. There is not one integrated contract that spells out MGM’s obligations to
25
26
27
28

1 Plaintiffs and Class Members, but those obligations can be determined by reference to MGM's
2 Privacy Policy.¹¹

3 115. As stated in its Privacy Policy, MGM agreed to store and maintain Plaintiffs'
4 and Class Members' information "on systems protected by industry standard security
5 measures."
6

7 116. In its Privacy Policy, MGM promised that its staff are "required to take
8 reasonable measures to ensure that unauthorized persons cannot view or access your
9 Personal Information."
10

11 117. In its Privacy Policy, MGM promised Plaintiffs' and Class Members that it
12 would only disclose PII under certain circumstances, none of which relate to the MGM Data
13 Breach.
14

15 118. MGM had full knowledge of the sensitivity of the PII and the types of harm that
16 Plaintiffs' and Class Members could and would suffer if the PII were wrongfully disclosed.
17

18 119. This exchange constitutes an implied contractual term between Plaintiffs and
19 Class Members and MGM.
20

21 120. MGM, however, breached these contractual terms with Plaintiffs and Class
22 Members by failing to reasonably safeguard and protect Plaintiffs and Class Members' PII,
23 which was compromised as a result of the MGM Data Breach.
24

25 121. Without such implied contracts, Plaintiffs and Class Members would not have
26 provided their PII to MGM.
27

28 ¹¹ MGM's Privacy Policy applicable at the time of the MGM Data Breach is available at:
<https://web.archive.org/web/20190801141123/https://www.mgmresorts.com/en/privacy-policy.html>.

1 229. MGM acquired the PII through inequitable means in that it failed to disclose
2 the inadequate security practices previously alleged.

3 230. If Plaintiffs and Class Members knew that MGM had not secured their PII, they
4 would not have agreed to MGM's services.

5 231. Plaintiffs and Class Members have no adequate remedy at law.

6 232. As a direct and proximate result of MGM's conduct, Plaintiffs and Class
7 Members have suffered and will suffer injury, including but not limited to: (i) actual identity
8 theft; (ii) the loss of the opportunity how their PII is used; (iii) the compromise, publication,
9 and/or theft of their PII; (iv) out-of-pocket expenses associated with the prevention,
10 detection, and recovery from identity theft, and/or unauthorized use of their PII; (v) lost
11 opportunity costs associated with effort expended and the loss of productivity addressing
12 and attempting to mitigate the actual and future consequences of the MGM Data Breach,
13 including but not limited to efforts spent researching how to prevent, detect, contest, and
14 recover from identity theft; (vi) the continued risk to their PII, which remain in MGM's
15 possession and is subject to further unauthorized disclosures so long as MGM fails to
16 undertake appropriate and adequate measures to protect PII in their continued possession;
17 and (vii) future costs in terms of time, effort, and money that will be expended to prevent,
18 detect, contest, and repair the impact of the PII compromised as a result of the MGM Data
19 Breach for the remainder of the lives of Plaintiffs and Class Members.

20 233. As a direct and proximate result of MGM's conduct, Plaintiffs and Class
21 Members have suffered and will continue to suffer other forms of injury and/or harm.

22 234. As a result of these violations, Plaintiffs and Class Members are entitled to
23 damages and other remedies as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully requests the following relief:

- a. An Order certifying this case as a class action with the class definition provided herein, and appointing Plaintiffs and Plaintiffs' identified counsel to represent the Class and appointing Plaintiff Bohlim and Plaintiffs' identified counsel to represent the California Subclass;
- b. An order enjoining Defendant from engaging in the wrongful conduct alleged herein concerning disclosure and inadequate protection of Plaintiffs' and Class Members' PII;
- c. A mandatory injunction directing the Defendant to hereinafter adequately safeguard the PII of Plaintiffs and the Class by implementing improved security procedures and measures;
- d. Restitution, disgorgement, and other appropriate equitable relief;
- e. An award of compensatory, statutory, and punitive damages, as appropriate, in an amount to be determined;
- f. Declaratory relief stating that MGM failed to meet applicable information security standards, statutory and common law duties, and other obligations regarding Plaintiffs' and the Class Members' PII, and that such failure actually and proximately caused damage to Plaintiffs, the Class, and the Subclass;
- g. An award of costs and litigation expenses;
- h. An award of attorneys' fees; and

1 i. Such other and further relief, injunctive and otherwise, as this Court may deem
2 just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs demands a jury trial as to all issues so triable.
5

6 Dated: March 12, 2020

7 Respectfully submitted,

8 */s/ Robert T. Eglet*

9
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