

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION  
CASE NO. 4:15-cv-00033-HLM**

ERIN BISHOP, HOLLIE DAVIS, ASHLEY	)	
OWENS, CHARLSIE BROOME, AMANDA	)	
ALBERTSON, KASEY GREEN,	)	
ELIZABETH CLARK, TYLER WILLIAMS,	)	
BRANDON DYER, CHELSEA	)	
BREWINGTON, and JOSEPH HINCHMAN,	)	
Individually and on Behalf of All Others	)	
Similarly Situated	)	PLAINTIFFS
	)	
v.	)	
	)	
	)	
SHORTER UNIVERSITY, INC.	)	DEFENDANT
	)	
	)	
	)	

\* \* \* \* \*

**FIRST AMENDED CLASS ACTION COMPLAINT**

Plaintiffs Erin Bishop, Hollie Davis, Ashley Owens, Charlsie Broome, Amanda Albertson, Kasey Green, Elizabeth Clark, Tyler Williams, Brandon Dyer, Chelsea Brewington, and Joseph Hinchman (collectively, “Plaintiffs”), by Counsel, individually and on behalf of all others similarly situated, bring this First Amended Class Action Complaint against Defendant Shorter University, Inc., (hereinafter “Shorter” or “Defendant”). In support thereof, Plaintiffs allege as follows:

**INTRODUCTION**

1. Plaintiffs, former students at Shorter, bring this class action individually and on behalf of all other persons similarly situated against Defendant for its failure to safeguard and secure personally identifiable information, including names, dates of birth, Social Security

numbers (“SSN”), billing information, and other types of highly confidential information (collectively “Personally Identifiable Information” or “PII”) and personal health related information (collectively “Personal Health Information” or “PHI”) of Plaintiffs and Class Members.

2. Plaintiffs seek redress for Defendant’s preventable and admitted failure to adequately safeguard records and files with PII and/or PHI obtained from and about Plaintiffs and the Class. Defendant kept medical records and files containing PII and PHI in an unlocked filing cabinet in an unlocked room. As a direct result, files containing PII and/or PHI of Plaintiffs and the Class were stolen from Defendant’s possession in or around September 2014 and the PII and PHI of Plaintiffs and the Class were compromised

3. As a direct result of Defendant’s acts and omissions, Plaintiffs PII and PHI was actually stolen and used by third parties for fraudulent transactions, including filing tax returns in Plaintiffs’ names and obtaining Plaintiffs’ tax refunds, and also affecting students’ Federal Student Aid (FAFSA) account information, leading to the possible theft of students’ financial aid. Plaintiffs were further damaged by spending money on credit monitoring and protection, and they will continue to have to spend money to protect and monitor their identities and credit in the future. Plaintiffs also suffered harm from not receiving their tax refunds in a timely manner.

4. All eleven Plaintiffs suffered fraudulent tax returns, and each member of the Class is at imminent risk of the same following their actual identity theft. The fraud resulting from Defendant’s data breach will continue to cause Plaintiffs significant economic hardship in the months and years to come. Along with the constant threat of identity theft and the negative impact on their credit, each of the Plaintiffs now faces financial hardship after having their tax

refunds put on hold:

a. Plaintiff Erin Bishop, a former Shorter cheerleader, and her husband, a Lance Corporal and Electrical Engineer with the United States Marine Corps, intended to file their tax return jointly and use their tax refund towards mortgage payments, student loan payments, and their daughter's college fund. Now, their refund will be delayed months, if not years, and Plaintiff Bishop has had to spend additional money to obtain credit monitoring and identity protection services.

b. Plaintiff Hollie Davis, a former Shorter cheerleader, also had her tax refund earmarked for important expenses, as she is in the process of selling her home and needed her refund to go towards a down payment on a new house, with the remainder going towards her student loan payments. Like Plaintiff Bishop and her husband, Plaintiff Davis will not receive her tax refund until the Internal Revenue Service ("IRS") investigation has concluded, which will take months and potentially up to two years.

c. Plaintiff Ashley Owens, a former Shorter cheerleader, and her husband, a former Corporal in the United States Marine Corps medically retired after injuries sustained in Afghanistan, also were unable to file their joint tax return, which has severely impacted their financial security. Plaintiff Owens and her husband had their tax refund earmarked to pay for their homeowners association's annual dues, as well as helping to pay for his enrollment in the police academy and her student loan payments. Like the other Plaintiffs, they will have to await the IRS investigation to receive their tax refund. In addition, this fraudulent activity has already lowered Plaintiff Owens' credit score by at least 300 points, and her recent job application for a computer engineering position with a government contracting company is in jeopardy due to the company's thorough credit checks for all applicants.

d. Plaintiff Charlsie Broome, a former Shorter softball player, faces a similar dilemma, as she will have to wait for the conclusion of an IRS investigation to receive her tax refund. Plaintiff Broome's plans to purchase a new car and rent a new apartment have now been put on hold for months, if not years.

e. Plaintiff Amanda Albertson, a former Shorter softball player, had her tax refund earmarked to pay her mortgage. The IRS informed Plaintiff Albertson that their investigation would likely affect her tax return and refund in 2016 as well.

f. Plaintiff Kasey Green, a former Shorter cheerleader, recently had a baby boy and purchased a home, and she was relying on prompt receipt of her tax refund to make mortgage payments and purchase clothing and other baby items for her son. Like the other Plaintiffs, Plaintiff Green now must wait for the IRS investigation to conclude before she will receive her tax refund.

g. Plaintiff Elizabeth Clark, a former Shorter softball player, is facing similar delays in receiving her tax refund, which she was relying on to help pay off credit bills associated with Christmas gift purchases. Plaintiff Clark also had to cancel vacation plans due to the tax refund delay.

h. Plaintiff Tyler Williams, a former Shorter baseball player, was informed that the IRS investigation into his fraudulent tax return would take at least six months. The approximately \$2,000 Plaintiff Williams expected to receive as a tax refund was earmarked towards a down payment on a house. Plaintiff Williams was also informed that he would need to get an ID number from the IRS to file tax returns for the rest of his life, a requirement that may affect all eleven Plaintiffs after these IRS investigations have concluded.

i. Plaintiff Brandon Dyer, a former Shorter wrestler, planned to use his tax

refund to pay his student loans, and he is very concerned that the effect of this breach on his credit and PII will affect his ability to obtain student loans for graduate school.

j. Plaintiff Chelsea Brewington, a former Shorter softball player, had a fraudulent tax return filed under her maiden name. Like the other Plaintiffs, Plaintiff Brewington and her husband will not receive her tax refund until the IRS investigation has concluded at an undetermined future date. The IRS informed Plaintiff Brewington that, going forward, she and her husband would no longer be able to file her tax returns electronically and would need to hire a tax professional to assist with all future filings. Plaintiff Brewington and her husband had their tax refund earmarked to pay her mortgage, childcare, student loans, credit card debt, and outstanding medical bills for her son.

k. Plaintiff Joseph Hinchman, a former Shorter wrestler, is on a low, fixed income that forces him to rely on his annual tax refund to pay for his rent in advance. The delay in receiving his refund as he awaits the IRS investigation will cause financial hardship for Plaintiff Hinchman, and plans to pay for a trip using the remaining balance of his tax refund have been scrapped.

5. Plaintiffs and Class Members experiencing these fraudulent tax returns likely face a life-long alteration of their tax filing requirements, in which they will now be given ID or “PIN” numbers in advance of every filing period and be prohibited from electronic filing, instead required to file their tax returns by mail.

6. Defendant made a wholly inadequate attempt to notify Plaintiffs and Class Members of this data breach in September 2014, and Plaintiffs and Class Members did not find out about it until months later. As a result of Defendant’s failure to take steps to notify and allow Plaintiffs and Class Members to mitigate their losses, Plaintiffs and Class Members have

suffered damages. At this time, at least 900 people may have had their PII and/or PHI stolen due to Defendant's acts and omissions.

**PARTIES**

7. Plaintiff Erin Bishop is a citizen of the State of North Carolina, residing in Richland, Onslow County, North Carolina. Plaintiff Bishop attended Shorter University and was a member of the Shorter University cheerleading team during the 2008-2009 school year.

8. Plaintiff Hollie Davis is a citizen of the State of Georgia, residing in Rome, Floyd County, Georgia. Plaintiff Davis attended Shorter University and was a member of the Shorter University cheerleading team from 2008 through 2010.

9. Plaintiff Ashley Owens is a citizen of the state of Georgia, residing in Dallas, Paulding County, Georgia. Plaintiff Owens attended Shorter University and was a member of the Shorter University cheerleading team from 2008 through 2011.

10. Plaintiff Charlsie Broome is a citizen of the state of Georgia, residing in Taylorsville, Bartow County, Georgia. Plaintiff Broome attended Shorter University and was a member of the Shorter University softball team from 2008 through 2012.

11. Plaintiff Amanda Albertson is a citizen of the state of Georgia, residing in Woodstock, Cherokee County, Georgia. Plaintiff Albertson attended Shorter University and was a member of the Shorter University softball team from 2007 through 2011.

12. Plaintiff Kasey Green is a citizen of the state of Georgia, residing in Rome, Floyd County, Georgia. Plaintiff Green attended Shorter University and was a member of the Shorter University cheerleading team during the 2008-2009 school year.

13. Plaintiff Elizabeth Clark is a citizen of the state of Georgia, residing in Marietta, Cobb County, Georgia. Plaintiff Clark attended Shorter University and was a member of the

Shorter University softball team from 2006 through 2010.

14. Plaintiff Tyler Williams is a citizen of the state of Georgia, residing in Silver Creek, Floyd County, Georgia. Plaintiff Williams attended Shorter University and was a member of the baseball team from 2009 through 2011.

15. Plaintiff Brandon Dyer is a citizen of the state of Georgia, residing in Flower Branch, Hall County, Georgia. Plaintiff Dyer attended Shorter University and was a member of the wrestling team from 2010 through 2014.

16. Plaintiff Chelsea Brewington is a citizen of the state of Florida, residing in Lake City, Columbia County, Florida. Plaintiff Brewington attended Shorter University and was a member of the softball team from 2007 through 2011.

17. Plaintiff Joseph Hinchman is a citizen of the state of Georgia, residing in Rome, Floyd County, Georgia. Plaintiff Hinchman attends Shorter University and was a member of the wrestling team from 2010 through 2014.

18. Defendant Shorter University, Inc., is a non-profit corporation licensed to do business and actually doing business in the State of Georgia, in Rome, Georgia, by and through operation of Shorter University.

#### **JURISDICTION AND VENUE**

19. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) as the parties are citizens of different States, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

20. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, exclusive of interest and costs, exceeds the sum value of \$5,000,000.00 and is a class action in which Members of the Class are citizens of a state

different from Defendants.

21. Defendant has conducted substantial and continuous business in the State of Georgia and has offices and agents in Georgia. Thus, this Court has personal jurisdiction over Defendant.

22. Defendant, as stated above, is subject to personal jurisdiction in the Northern District of Georgia, and a substantial part of the events or omissions giving rise to this claim occurred in the Northern District of Georgia. Venue is therefore proper herein pursuant to 28 U.S.C. § 1391.

### **FACTUAL ALLEGATIONS**

23. Defendant owns and operates Shorter University in Rome, Georgia.

24. Plaintiff Bishop attended Shorter during the 2008-2009 school year and was a member of the Shorter cheerleading team during that time. In order to participate in cheerleading, Plaintiff Bishop had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter. In addition, Plaintiff Bishop underwent an examination by a physical therapist associated with Shorter for injuries sustained during cheerleading. Plaintiff Bishop also provided records to Shorter for medical treatment off campus, which was partially reimbursed by Plaintiff Bishop's parents' insurance, with the records likely including the PII of Plaintiff Bishop's parents.

25. Plaintiff Davis attended Shorter from 2007 through 2012 and was a member of the Shorter cheerleading team from 2008 through 2010. In order to participate in cheerleading each season, Plaintiff Davis had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter. In addition, Plaintiff Davis underwent an examination by a physical therapist associated with Shorter for an injury sustained



during cheerleading. Plaintiff Davis also provided records to Shorter for medical treatment off campus, which was partially reimbursed by Plaintiff Davis' parents' insurance, with the records likely including the PII of Plaintiff Davis' parents.

26. Plaintiff Owens attended Shorter from 2008 through 2011 and was a member of the Shorter cheerleading team during that time. From 2014 to present, Plaintiff Owens once again has attended Shorter. In order to participate in cheerleading each season, Plaintiff Owens had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter. In addition, Plaintiff Owens underwent an examination by a physical therapist associated with Shorter for injuries sustained during cheerleading. Plaintiff Owens also provided records to Shorter for medical treatment off campus, which was partially reimbursed by Plaintiff Owens' parents' insurance, with the records likely including the PII of Plaintiff Owens' parents.

27. Plaintiff Broome attended Shorter from 2008 through 2012 and was a member of the Shorter softball team during that time. In order to participate in softball each season, Plaintiff Broome had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter. In addition, Plaintiff Broome underwent an examination by a physical therapist associated with Shorter for injuries sustained playing softball. Plaintiff Broome also provided records to Shorter for medical treatment off campus, which was partially reimbursed by Plaintiff Broome's parents' insurance, with the records likely including the PII of Plaintiff Broome's parents.

28. Plaintiff Albertson attended Shorter from 2007 through 2011 and was a member of the Shorter softball team during that time. In order to participate in softball each season, Plaintiff Albertson had to undergo a physical examination by a doctor associated with Shorter

and also had to provide medical records to Shorter. In addition, Plaintiff Albertson provided records to Shorter for medical treatment off campus for injuries sustained while playing softball, which was partially reimbursed by Plaintiff Albertson's parents' insurance, with the records likely including the PII of Plaintiff Albertson's parents.

29. Plaintiff Green attended Shorter during the 2008-2009 school year and was a member of the Shorter cheerleading team during that time. In order to participate in cheerleading, Plaintiff Green had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter.

30. Plaintiff Clark attended Shorter from 2006 through 2010 and was a member of the Shorter softball team during that time. In order to participate in softball each season, Plaintiff Clark had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter. In addition, Plaintiff Clark provided records to Shorter for medical treatment off campus for injuries sustained while playing softball, which was partially reimbursed by Plaintiff Clark's parents' insurance, with the records likely including the PII of Plaintiff Clark's parents.

31. Plaintiff Williams attended Shorter from 2009 through 2011 and was a member of the Shorter baseball team during that time. In order to participate in baseball each season, Plaintiff Clark had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter.

32. Plaintiff Dyer attended Shorter from 2010 through 2014 and was a member of the Shorter wrestling team during that time. In order to participate in wrestling each season, Plaintiff Dyer had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter. Plaintiff Dyer also provided Shorter with

medical records for two off-campus medical visits, which was partially reimbursed by Plaintiff Dyer's parents' insurance, with the records likely including the PII of Plaintiff Dyer's parents.

33. Plaintiff Brewington attended Shorter from 2007 through 2011 and was a member of the Shorter softball team during that time. In order to participate in softball, Plaintiff Brewington had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter. Plaintiff Brewington also provided Shorter with medical records for two off-campus medical visits, which was partially reimbursed by Plaintiff Brewington's parents' insurance, with the records likely including the PII of Plaintiff Brewington's parents. In addition, Plaintiff Brewington underwent an examination by a physical therapist associated with Shorter for injuries sustained while playing softball.

34. Plaintiff Hinchman has attended Shorter from 2010 to present and was a member of the Shorter wrestling team from 2010 through 2014. In order to participate in wrestling, Plaintiff Hinchman had to undergo a physical examination by a doctor associated with Shorter and also had to provide medical records to Shorter. Plaintiff Hinchman also provided Shorter with medical records for two off-campus medical visits, which was partially reimbursed by Plaintiff Hinchman's parents' insurance, with the records likely including the PII of Plaintiff Hinchman's parents.

35. Defendant maintained records of student athletes, including Plaintiffs, in hard copy format stored on its campus.

36. These records, including medical records and physical exam records, contained PII and PHI such as names, SSN, birthdays, and basic medical information.

37. According to the police investigator quoted in the Rome News-Tribune on February 19, 2015, "the door to the room containing the records was not locked" because "the

door was misaligned, and it was difficult to lock.”

38. On September 23, 2014, Defendant discovered that records of as many as 900 former and current Shorter students had been stolen from the unlocked room by an unauthorized person. Defendant apparently notified some people of the theft by sending them a letter, although Plaintiffs Bishop, Albertson, Green, Williams, and Brewington did not receive any notification from Defendant in September. These Plaintiffs did not learn of the breach until their information was already stolen and used to file fraudulent tax returns.

39. Defendant knew or had reason to know that the theft included medical records with PII and PHI but communicated to the public that it was uncertain if any personal information was actually obtained. Defendant’s failure to adequately inform Plaintiffs and the Class about the data breach has caused substantial harm to Plaintiffs and the Class including, who must now wait to receive their stolen tax refunds – if at all - until the IRS concludes its investigation.

40. IRS investigations of fraudulent tax returns typically fall into two categories:

a. Persons who received a letter from the IRS indicating that a tax return filing with his/her SSN and other PII was attempted but rejected by the IRS. In this scenario, a tax refund has not been issued to the fraudulent filer, and the IRS typically takes at least six months to investigate and resolve the situation (“Category 1”); or

b. Persons who did not receive an IRS letter, but his/her attempt to file a tax return was rejected because someone else already filed a tax return with his/her SSN and other PII. In this scenario, a tax refund typically has been issued to the fraudulent filer already (often routed to a debit card designated by the fraudulent filer), and the IRS typically takes at least nine to twelve months to investigate and resolve the situation (“Category 2”).

41. Regardless of which category above applies, Plaintiffs' and affected Class members' future tax filings will be impacted. In most if not all cases, Plaintiffs and affected Class members will be given a PIN number in advance of each subsequent tax return filing period, and they will have to submit all future tax returns by hard copy mail (*i.e.*, they are no longer permitted to file their tax returns electronically). These limitations typically apply for the remainder of Plaintiffs' and affected Class members' lives.

42. Plaintiff Bishop attempted to file her tax return on January 28, 2015, and was notified by her tax preparer that she suffered Category 2 fraud. Plaintiff Bishop filed a police report with the Rome, Georgia Police Department ("Rome PD"). As a result of the breach, Plaintiff Bishop has not been able to receive her tax refund and has had to spend money on credit monitoring and protection services and will continue to pay a monthly fee for credit monitoring and protection services. In addition, Plaintiff Bishop's husband, a Lance Corporal and Electrical Engineer with the United States Marine Corps, was also not able to file a tax return or receive a tax refund because Plaintiff Bishop and her husband file joint tax returns. The inability to file a tax return and receive a refund has greatly affected Plaintiff Bishop and her husband, as the money from their tax return was earmarked for assisting with their mortgage, contributing to their daughter's college fund, and paying down student loan payments.

43. Plaintiff Davis received a letter from the IRS dated January 28, 2015, informing her that the agency was looking into her tax returns. Plaintiff Davis went to an IRS office on February 2, 2015 and was informed that she suffered Category 1 fraud. Plaintiff Davis was told she could still file her tax return, but that she will not receive her refund until after the investigation is concluded. The inability to file a tax return and receive a refund has greatly affected Plaintiff Davis, as she is in the process of selling her home and had planned to put a

portion of her return towards the down payment of a new house, with the remainder going towards payment of her student loans – loans which were incurred while Plaintiff Davis was a student at Shorter.

44. Plaintiff Owens attempted to file her tax return on February 9, 2015. On February 10, 2015, Plaintiff Owens was notified that someone else already had used her SSN and other PII to file a tax return. On February 11, 2015, Plaintiff Owens contacted the IRS, and was informed that she and her husband suffered Category 2 fraud, which could take up to two years to resolve. Plaintiff Owens also checked her credit score on February 11, 2015 and discovered that it already had dropped 300 points. In addition, Plaintiff Owens' husband, formerly a Corporal with the United States Marine Corps but now medically retired after injuries sustained in Afghanistan, was also not able to file a tax return or receive a tax refund because Plaintiff Owens and her husband file joint tax returns. The inability to file a tax return and receive a refund has greatly affected Plaintiff Owens and her husband, as the money from their tax return was earmarked for their homeowners association annual dues, her husband's \$6,000 enrollment in the police academy, and paying down student loan payments – loans which were incurred while Plaintiff Owens was a student at Shorter. As a result, Plaintiff Owens and her husband may be unable to afford their homeowners association dues and may be subject to a late fee if not paid by this March. Additionally, Plaintiff Owens' recent job application for a computer engineering position with a government contracting company is likely to be jeopardized by this data breach, as the company conducts thorough credit checks.

45. Plaintiff Broome attempted to file her tax return on or about February 6, 2015. Within fifteen minutes of attempting the filing, Plaintiff Broome received a notice that she suffered Category 2 fraud. Plaintiff Broome contacted the IRS and was informed that there was

an investigation into the fraudulent tax return and she would not receive her tax refund until the investigation was concluded. Plaintiff Broome contacted the Rome PD to inform them of the fraud she experienced. The inability to file a tax return and receive a refund has greatly affected Plaintiff Broome, as the money from her tax return was earmarked for purchasing a new car and getting her own apartment.

46. Plaintiff Albertson attempted to file her tax return on or about February 9, 2015. Soon after attempting the filing, Plaintiff Albertson was notified that she suffered Category 2 fraud. Plaintiff Albertson contacted the Rome PD, who directed her to the IRS. The IRS permitted Plaintiff Albertson to mail in her return with an affidavit but informed her that the investigation into the fraudulent tax return would prevent her from receiving her tax refund for up to two years. The IRS also informed Plaintiff Albertson that their investigation would likely affect her filing of a tax return next year as well (likely applicable to all Plaintiffs and affected Class Members). The inability to file a tax return and receive a refund has greatly affected Plaintiff Albertson, as she purchased a home in 2014 and the money from her tax return was earmarked for paying her mortgage.

47. Plaintiff Green attempted to file her tax return on February 4, 2015. Soon after attempting the filing, Plaintiff Green learned that she suffered Category 2 fraud. Plaintiff Green also received a letter at her parents' address dated January 29, 2015 indicated that she was being audited due to discrepancies on the fraudulent tax return that was filed. The inability to file a tax return and receive a refund has greatly affected Plaintiff Green, as she recently had a baby boy and purchased a home, and the money from her tax return was earmarked for paying her mortgage and buying clothing and other baby items for her son.

48. Plaintiff Clark received a letter from the IRS dated February 1, 2015, informing

her that she suffered Category 1 fraud. The inability to file a tax return and receive a refund has greatly affected Plaintiff Clark, as the money from her tax return was earmarked for paying off credit card bills from Christmas gifts and paying for a vacation that she had to cancel.

49. Plaintiff Williams attempted to file his tax return on or about February 13, 2015. On February 14, 2015, Plaintiff Williams was notified that he suffered Category 2 fraud. Plaintiff Williams was further notified that he would need to get an ID (or “PIN”) number from the IRS to use to file tax returns for the rest of his life (likely applicable to all Plaintiffs and affected Class Members). Plaintiff Williams contacted the IRS, who told him that there would be an investigation and he would not receive his return until the investigation was concluded, which would take at least six months. Plaintiff Williams also contacted the Rome PD and filed a police report for the fraudulent tax return. The inability to file a tax return and receive a refund has greatly affected Plaintiff Williams, as the money from his tax return (approximately \$2,000) was earmarked for savings towards a down payment on a house.

50. Plaintiff Dyer attempted to file a tax return on or about February 25, 2015. On February 25, 2015, Plaintiff Dyer was notified that someone else had already used his SSN and other PII to file a tax return. The inability to file a tax return and receive a refund has greatly affected Plaintiff Dyer, as the money from his tax return was earmarked to pay his Shorter student loans. In addition, Plaintiff Dyer is concerned that the theft of his PII and PHI may adversely affect his ability to obtain student loans for graduate school.

51. Plaintiff Brewington attempted to file her tax return on or about February 8, 2015, at which time her filing was rejected. On February 19, 2015, Plaintiff Brewington received a letter from the IRS indicating it was unable to process her return because additional information was required. Plaintiff Brewington contacted the IRS and was informed that her tax



return was filed under her maiden name, which is not Brewington, and she informed the IRS that the filing was fraudulent (a Category 2 fraud scenario). The IRS informed Plaintiff Brewington that it would open an investigation, but that she would not receive a refund until the investigation concluded. In addition, Plaintiff Brewington's husband was also not able to file a tax return or receive a tax refund because Plaintiff Brewington and her husband file joint tax returns. The IRS further informed Plaintiff Brewington that she would no longer be able to electronically file her tax returns and would have to hire a tax professional to assist with future filings. The inability to file a tax return and receive a refund has greatly affected Plaintiff Brewington and her family, as the money was earmarked to pay for their mortgage, childcare, her student loans, credit card debt, and outstanding medical bills for their son.

52. Plaintiff Hinchman received a letter from the IRS in early January 2015 indicating that he suffered Category 1 fraud. Plaintiff Hinchman then filed a police report with the Rome PD. Plaintiff Hinchman's tax return is now subject to an IRS investigation that will postpone his tax refund until the investigation is concluded. The inability to file a tax return and receive a refund has greatly affected Plaintiff Hinchman, as he is on a low, fixed income and the money was earmarked to pay for his rent in advance, as well as a vacation that he will now have to cancel.

53. According to news accounts, more than thirty (30) people whose records were stolen from Shorter's unlocked room have had similar fraudulent tax returns filed with their PII.

54. According to the same news account, Shorter did not return several calls for comment and has not explained why it communicated to the public and the Class that it was uncertain PII was stolen when it knew that medical records containing PII and PHI had been taken.

55. Shorter's website promises robust protection of students' PII and PHI:

a. "The goal of Campus Safety is to assure to the best of our ability the protection and preservation of life and property from criminal acts and physical hazards. The expected outcomes include . . . better protection for the University against liability risks." <<http://su.shorter.edu>> (last visited Feb. 26, 2015);

b. "Anything not working is reported and repaired within the week." <[http://su.shorter.edu/wp-content/uploads/annual\\_security\\_report.pdf](http://su.shorter.edu/wp-content/uploads/annual_security_report.pdf)> (discussing facilities management and security, last visited Feb. 26, 2015);

c. "The privacy of your medical information is important to us. We understand that your medical information is personal and we are committed to protecting it." <<http://su.shorter.edu/health-services/#hipaa>> (last visited Feb. 26, 2015);

d. "OUR LEGAL DUTY. Law Requires Us to: 1. Keep your medical information private. 2. Give you this notice describing our legal duties, privacy practices, and your rights regarding your medical information. 3. Follow the terms of the notice that is now in effect." *Id.*

56. Plaintiffs overpaid tuition in the expectation that a portion would be spent to adequately protect their PII and PHI, which Defendant did not do. The funds collected from Plaintiffs and not used to adequately protect their PII and PHI is money wrongfully collected by Defendant for services it did not provide.

#### **CLASS ACTION ALLEGATIONS**

57. This action may be brought and properly maintained as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure, *et seq.* Plaintiffs bring this action on behalf of themselves and a class of all others similarly situated.

58. Plaintiffs bring this class action on behalf of the following class, although Plaintiffs reserve the right to amend or alter the class definitions or add additional classes or subclasses after further discovery:

**All individuals whose PII and/or PHI was compromised from Defendant's files in September 2014 and/or were notified by Defendant that their PII and/or PHI may have been compromised from Defendant's files in September 2014.**

59. In accordance with Rule 23 of the Federal Rules of Civil Procedure, the Class is so numerous that joinder of all members is impracticable. While the exact number is not known at this time, it is generally ascertainable by appropriate discovery, and it is believed the class includes up to 900 members.

60. In accordance with Rule 23 of the Federal Rules of Civil Procedure, there are questions of law and fact common to the Class and which predominate over any individual issues. Common questions of law and fact include, without limitation:

- a. Whether Defendant owed a duty to Class Members under the applicable statutes and law;
- b. Whether Defendant violated industry standards regarding the safeguarding of Class members' PII and PHI;
- c. Whether Defendant failed to use reasonable care to secure and safeguard Plaintiffs and the Class's PII and PHI;
- d. Whether Defendant breached its fiduciary duty to Plaintiffs and Class Members when it failed to use reasonable care to secure and safeguard Plaintiffs and the Class's PII and PHI, and when it failed to adequately inform Plaintiffs and Class Members about the nature and extent of the breach;
- e. Whether Defendant's conduct constitutes a breach of implied contract;

f. Whether Plaintiffs and the Class are entitled to damages, injunctive relief, or other equitable relief;

g. Defendant's vicarious liability for the actions of its employees;

h. Whether Defendant negligently misrepresented the scope of the data theft in September 2014, and/or failed to notify Plaintiffs and the Class of the theft in violation of Georgia law;

i. The extent of damages caused by Defendants' willful violations.

61. Plaintiffs' claims are typical of the Class. The claims of Plaintiffs and the Class arise from the same set of facts regarding Defendant's failure to protect PII and PHI. As with members of the Class, Plaintiffs' PII and PHI was stolen because Defendant failed to properly safeguard their data under lock and/or key. Plaintiffs' interests coincide with, and are not antagonistic to, those of the other class members, and Plaintiffs have standing to assert claims against Defendant because Plaintiffs were in fact harmed by Defendant's acts and omissions.

62. In accordance with Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs will fairly and adequately represent and protect the interests of the Class.

63. Plaintiffs have retained counsel experienced in the prosecution of class action litigation and counsel will adequately represent the interests of the Class.

64. Plaintiffs and their counsel are aware of no conflicts of interests between Plaintiffs and absent Class members or otherwise;

65. Plaintiffs have or can acquire adequate financial resources to assure that the interests of the Class will not be harmed; and

66. Plaintiffs are knowledgeable concerning the subject matter of this action and will assist counsel to vigorously prosecute this litigation.

67. In accordance with Rule 23 of the Federal Rules of Civil Procedure, *et seq.*, the class litigation is an appropriate method for fair and efficient adjudication of the claims involved. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein; it will permit a large number of individual citizens 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 require. Class action treatment will also permit the adjudication of relatively small claims by certain class members, who could not individually afford to litigate a complex claim against a large corporate defendant. Further, even for those class members who could afford to litigate such a claim, it would still be economically impractical, as the cost of litigation is almost certain to exceed any recovery they would obtain.

68. Plaintiffs are unaware of any difficulty likely to be encountered in the management of this case that would preclude its maintenance as a class action.

**COUNT I**  
**NEGLIGENCE**

Plaintiffs, individually and on behalf of all others similarly situated, for this Count, allege the following:

69. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1-68 as if fully set forth herein.

70. Defendant owed Plaintiffs and Class Members a duty of reasonable care to protect their PII and PHI in its custody and control, and/or assumed a duty to protect that data by collecting and maintaining the PII and PHI in its offices. This duty also includes following the standards and procedures under HIPAA and other federal and state statutes for the safeguarding of medical records, PII and PHI.

71. Defendant knew or should have known that Plaintiffs and Class Members PII and PHI was not secure. Specifically, according to a news article in the Rome Tribune on September 29, 2014, Defendant informed the public that the records were kept in a locked room and that the door was broken. However, a police investigation later found that the door had not actually been locked.

72. Defendant violated its duty of reasonable care by failing to store sensitive and private records containing PII and PHI in a safe manner that would protect this information from anyone who wanted to see it, use it, or take it.

73. Defendant also violated its duty of care by failing to comply with HIPAA data security standards, statutes and/or regulations prohibiting the storage of unprotected sensitive personal information.

74. The compromise of Plaintiffs and Class Members PII and PHI demonstrates an invasion of their legally protected interest to have that information safeguarded and protected while in Defendant's custody.

75. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class Members have suffered actual identity theft.

76. As a direct and proximate result of Defendant's conduct, Plaintiffs and the Class Members suffered and will continue to suffer damages, including, but not limited to, the loss of their PII and PHI, fraudulent activity associated with the use of their compromised PII and PHI, and the loss of money and costs incurred as a result of the identity theft and/or the increased risk of identity theft, all of which have ascertainable value to be proven at trial.

**COUNT II**  
**BREACH OF IMPLIED CONTRACT**

Plaintiffs, individually and on behalf of all others similarly situated, and for this Court, alleges the following:

77. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1-68 as if fully set forth herein.

78. Plaintiffs and Class Members, by participating in athletics and providing Defendant with their medical records and/or physical examinations, entered into an implied contract with Defendant whereby Defendant became obligated to reasonably safeguard Plaintiffs and Class Members' sensitive, non-public information.

79. Plaintiffs and Class Members would not have entrusted their medical records, PII and PHI to Defendant in the absence of such an implied contract.

80. Plaintiffs and Class Members fully performed their obligations under the implied contract with Defendant.

81. Defendant breached the implied contract with Plaintiffs and Class Members by:

- a. failing to take reasonable measures to safeguard their PII and PHI;
- b. allowing improper access to these records and compromising the PII and PHI of Plaintiffs and Class Members;
- c. failing to implement policies and procedures to prevent, detect, contain and correct security violations that lead to the breach;
- d. failing to effectively train and educate employees about the risks of data compromise, their role in prevention and how to respond in the event of an incident; and
- e. failing to provide timely and accurate notice to Plaintiffs and Class Members that their PII and PHI was compromised as a result of the theft.

82. The compromise of Plaintiffs and Class Members' PII and PHI demonstrates an invasion of their legally protected interest to have that information safeguarded and protected while in Defendant's custody.

83. Plaintiffs and Class Members are entitled to recover for expenditures reasonably made or harm suffered in a reasonable effort to avert the harm threatened or to avert future harm.

84. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class Members have suffered actual identity theft.

85. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class Members have suffered actual identity theft.

86. As a direct and proximate result of Defendant's conduct, Plaintiffs and the Class Members suffered and will continue to suffer damages, including, but not limited to, the loss of their PII and PHI, fraudulent activity associated with the use of their compromised PII and PHI, and the loss of money and costs incurred as a result of the identity theft and/or the increased risk of identity theft, all of which have ascertainable value to be proven at trial.

**COUNT III**  
**BREACH OF FIDUCIARY DUTY**

Plaintiffs, individually and on behalf of all others similarly situated, and for this Count, allege the following:

87. Plaintiffs repeat, reallege, and incorporates by reference paragraphs 1-68 as if fully set forth herein.

88. Plaintiffs and Class Members, as student athletes undergoing physicals and/or providing medical records to Defendant and competing on Defendant's behalf, have a special relationship with Defendant. Defendant owes a fiduciary duty to Plaintiffs and Class Members to keep their PHI and PII private and confidential and to protect it from misuse by others.



89. As guardians of Plaintiffs' and Class Members PII and PHI, Defendant owed a fiduciary duty to Plaintiffs and Class Members to: (1) protect their PII and PHI; (2) timely and adequately notify them of the data breach, including the extent of the breach; and (3) maintain complete and accurate records of what and where Class Members' information was stored.

90. Defendant breached the fiduciary duty it owed to Plaintiffs and Class Members by:

a. failing to adequately safeguard their PHI and PII against unauthorized disclosure and misuse;

b. failing to diligently investigate the data breach to determine the extent and ramifications of the breach;

c. failing to timely and adequately notify Plaintiffs and Class Members of the breach of their PHI and PII and misleading them about the nature and extent of the breach and the information stolen;

d. failing to implement policies and procedures to prevent, detect, contain and correct security violations that lead to the breach; and

e. failing to adequately identify and respond to the suspected or known breach and to mitigate, to the extent possible, harmful effects of the breach.

91. Defendant's failure to adequately safeguard Plaintiffs' and Class Members' PHI and PII has resulted in losses and damages to Plaintiffs and Class Members.

92. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class Members have suffered actual identity theft.

93. As a direct and proximate result of Defendant's conduct, Plaintiffs and the Class Members suffered and will continue to suffer damages, including, but not limited to, the loss of

their PII and PHI, fraudulent activity associated with the use of their compromised PII and PHI, and the loss of money and costs incurred as a result of the identity theft and/or the increased risk of identity theft, all of which have ascertainable value to be proven at trial.

**COUNT IV**  
**NEGLIGENT MISREPRESENTATION**

Plaintiff, individually and on behalf of all others similarly situated, for this Count, alleges the following:

94. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1-68 as if fully set forth herein.

95. Defendant has engaged in a common fraud and/or misrepresentation.

96. Defendant knew of the theft on or about September 23, 2014, and knew that the theft included at least two files full of medical records and physical examination records that contained names, birthdays, SSN, and other identifying information, of as many as 900 students.

97. Despite this actual knowledge, Defendant failed to adequately communicate the nature, extent and ramifications of the theft to Plaintiffs and Class Members.

98. Instead, on September 25, 2014, Shorter sent a letter to former student-athletes warning them to keep a close eye on their credit and financial records, but indicating that it was “uncertain if any personal information was actually obtained during the unauthorized access.”

99. Further, Defendant negligently disseminated false information to the public. According to a news article in the Rome Tribune on September 29, 2014, Defendant informed the public that the records were kept in a locked room and that the door was broken. However, a police investigation later found that the door had not actually been locked.

100. These misrepresentations, omissions and failures to adequately notify Plaintiff and Class Members that their medical records had been stolen and as a result their PII and PHI

had been stolen were material misrepresentations and omissions.

101. Plaintiffs and Class Members are presumed to have justifiably relied on Defendant's omissions and failures to disclose in not taking adequate steps to safeguard their financial information, change their SSN or communicate to the IRS that their financial information had been stolen and therefore prevent the fraudulent tax returns filed by a third party.

102. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class Members have suffered actual identity theft.

103. As a direct and proximate result of Defendant's conduct, Plaintiffs and Class Members have suffered actual identity theft, Plaintiffs and the Class Members suffered and will continue to suffer damages, including, but not limited to, the loss of their PII and PHI, fraudulent activity associated with the use of their compromised PII and PHI, and the loss of money and costs incurred as a result of the identity theft and/or the increased risk of identity theft, all of which have ascertainable value to be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and the members of the Class, demands judgment as follows:

- A. A determination that this action is a proper class action maintainable pursuant to Rule 23 of the Federal Rules of Civil Procedure for compensatory, consequential, and statutory damages as alleged herein;
- B. For pre-judgment interest from the date of filing this suit;
- C. For reasonable attorney's fees and expenses;
- D. For exemplary and punitive damages;

E. For all costs of this proceeding;

F. A preliminary injunction enjoining Defendant and all others, known and unknown, from continuing to take unfair, deceptive, illegal and/or unlawful action as set forth in this Complaint; and

G. Such other and further relief as this Honorable Court finds just and proper under the circumstances.

**JURY DEMAND**

WHEREFORE, as to each of the foregoing matters, Plaintiff demands a trial by jury on all issues so triable as a matter of right.

Dated: February 27, 2015

Respectfully submitted,

*/s/ Andrew Lee Hagenbush*

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