

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CHRISTOPHER LAMIE, *on behalf of himself
and all others similarly situated,*

Plaintiff,

v.

LENDINGTREE, LLC,

Defendant.

Case No. 3:22-cv-00307-FDW-DCK

**DEFENDANT LENDINGTREE, LLC’S ANSWER
AND AFFIRMATIVE AND OTHER DEFENSES TO
PLAINTIFF’S CLASS ACTION COMPLAINT**

Defendant LendingTree, LLC (“LendingTree”) files this Answer and Affirmative and Other Defenses in response to Plaintiff’s Class Action Complaint, ECF No. 1 (the “Complaint”). Defendant denies all allegations, except as specifically admitted pursuant to Rule 8(b)(3). Any factual averment admitted herein is admitted only as to the specific facts and not as to any conclusion, characterization, implication, innuendo, or speculation contained in any averment or in the Complaint as a whole. Headings in the Complaint are not allegations and therefore do not require a response. For ease of reference, LendingTree includes the same headings and footnotes as Plaintiff in responding to the Complaint. LendingTree’s inclusion of those headings and footnotes is not an admission of the truth of any allegations. LendingTree specifically denies all allegations in the Complaint headings and footnotes herein.

ANSWER TO COMPLAINT'S INDIVIDUALLY NUMBERED PARAGRAPHS

In response to the allegations in the enumerated paragraphs in the Complaint, LendingTree responds as follows. LendingTree denies any and all other allegations in the Complaint to the extent that they do not appear in one of the Complaint's specifically enumerated paragraphs.

INTRODUCTION

1. *LendingTree—a publicly traded lending service provider that aggregates loan leads from across the country—lost control over individuals' highly sensitive personal information in a data breach by cybercriminals (“Data Breach”).*

Response to No. 1:

LendingTree admits that it is an online loan marketplace that connects consumers with multiple lenders that compete for their business but denies all remaining allegations in Paragraph 1 of the Complaint. Except as expressly admitted herein, LendingTree denies the allegations in Paragraph 1.

2. *In February 2022, hackers exploited a “code vulnerability” in LendingTree's system which allowed them to bypass LendingTree's security and access information it stores on consumers.*

Response to No. 2:

LendingTree admits that beginning in mid-February 2022, it was subject to a third-party criminal data incident involving a code vulnerability that likely resulted in the unauthorized disclosure of certain personal information. Except as expressly admitted herein, LendingTree denies the allegations in Paragraph 2.

3. *Those consumers include Plaintiff, even though he has never used LendingTree's services in any way and has not applied for loans through LendingTree. Even so, LendingTree*

was in possession of Plaintiff's and other consumers' Social Security numbers, dates of birth, and home addresses, which were accessed in the Data Breach.

Response to No. 3:

LendingTree admits that Plaintiff had no prior relationship with LendingTree. LendingTree admits that it provided Plaintiff and certain other individuals with notice of a data incident that may have involved certain of their personal information, including name, social security number, date of birth, and street address. Except as expressly admitted herein, LendingTree denies the allegations in Paragraph 3.

4. *Plaintiff is part of over 200,000 other consumers whose information LendingTree compromised by employing inadequate data security protocols. Indeed, this is at least the third data breach LendingTree has suffered, with LendingTree failing to discover this most recent breach until June 2022, or four months after the hack.*

Response to No. 4:

LendingTree denies the allegations in Paragraph 4.

5. *What's more, hackers have posted the information on the dark web, bragging about the information they stole on every-day consumers.*

Response to No. 5:

LendingTree lacks information or knowledge sufficient to form an opinion as to the truth of the allegations in Paragraph 5 and on that basis denies them.

6. *When LendingTree finally disclosed the Data Breach in June 2022, it did not tell consumers that their information was on the dark web or disclose all the information that LendingTree lost in the breach.*

Response to No. 6:

LendingTree denies the allegations in Paragraph 6.

7. *In fact, LendingTree’s breach notice downplayed the breach, telling consumers that it lost control over only consumers’ Social Security numbers, dates of birth, and home addresses. But third-party researchers have confirmed that LendingTree is misrepresenting the breach’s scope, as hackers have posted consumers’ phone numbers, IP addresses, loan form submissions, loan types, and credit profile scores online for anyone to download.*

Response to No. 7:

LendingTree denies the allegations of Paragraph 7.

8. *LendingTree’s misconduct violates state and federal law, industry standard practices, and its own internal policies.*

Response to No. 8:

Because Paragraph 8 asserts legal conclusions, LendingTree is not required to respond. To the extent LendingTree is required to respond, LendingTree denies the allegations of Paragraph 8.

9. *Indeed, LendingTree is well-aware it has a duty to employ reasonable cybersecurity policies, telling consumers that it “maintain[s] physical, electronic, and procedural measures designed to safeguard your information from unauthorized access and disclosure.”¹*

Response to No. 9:

Because the first part of Paragraph 9 asserts legal conclusions, LendingTree is not required to respond and, on that basis, denies the allegations in the first part of Paragraph 9. Because the remaining allegations in Paragraph 9 merely purport to describe and/or quote the content of LendingTree’s Privacy Policy, LendingTree states that the document is the best source of its full content and context and, to the extent the allegations in Paragraph 9 do not accurately represent

¹ See LendingTree’s Privacy Policy, <https://www.lendingtree.com/legal/privacy-policy/> (Last visited July 6, 2022).

the document's full content and context, LendingTree denies the allegations. LendingTree denies any remaining allegations of Paragraph 9, including footnote 1.

10. *And LendingTree knows that failing to provide adequate cybersecurity leads to legal liability, disclosing to the Security and Exchange Commission ("SEC"): "The occurrence of any actual or attempted breach, failure of security or fraudulent activity, the reporting of such an incident, whether accurate or not, or our failure to make adequate or timely disclosures to the public or law enforcement agencies following any such event, whether due to delayed discovery or a failure to follow existing protocols, could result in claims made against us[...] which could result in state and/or federal litigation and related financial liabilities, as well as criminal penalties or civil liabilities[...] litigation and claims against us by consumers or third parties and related indemnification obligations."*²

Response to No. 10:

Because the first clause of Paragraph 10 asserts legal conclusions, LendingTree is not required to respond, and on that basis, LendingTree denies the allegations in the first part of Paragraph 10. Because the remaining allegations in Paragraph 10 merely purport to describe and/or quote the content of LendingTree, Inc.'s Form 10-K for the fiscal year ended December 31, 2021, LendingTree states that the document is the best source of its full content and context and, to the extent the allegations in Paragraph 10 do not accurately represent the document's full content and context, LendingTree denies the allegations. LendingTree denies any remaining allegations in Paragraph 10, including footnote 2.

11. *Plaintiff is a Data Breach victim whose highly sensitive information was compromised in the Data Breach. In the four-month span between when the Data Breach started*

² See LendingTree's 2021 Annual Report at https://sec.report/Document/0001434621-22-000009/#i1edd2cf7c4fc4604b5c29461b3ac2691_19 (last visited July 6, 2022).

and LendingTree disclosed it, Plaintiff suffered repeated identity theft, including fraudulent account openings, unwanted address changes, and fraudulent charges. Because LendingTree had not disclosed the Data Breach immediately after it happened, Plaintiff could not proactively protect himself from this identity theft, nor could he understand why it was happening.

Response to No. 11:

LendingTree denies the allegations in the first and third sentences of Paragraph 11. LendingTree lacks information or knowledge sufficient to form an opinion as to the truth of the allegations in the second sentence of Paragraph 11 and, on that basis, denies them. LendingTree denies any remaining allegations in Paragraph 11.

12. *As a result, Plaintiff brings this Class Action on behalf of himself and all others harmed by LendingTree's misconduct.*

Response to No. 12:

LendingTree admits that Plaintiff purports to bring this action on behalf of himself and a putative class. LendingTree denies the claims in Plaintiff's Complaint and denies that Plaintiff is entitled to any damages or other relief. Further, LendingTree denies that Plaintiff can satisfy the requirements for class certification, including without limitation the requirements of Federal Rule of Civil Procedure 23. Except as expressly admitted, LendingTree denies the remaining allegations in Paragraph 12.

PARTIES

13. *Plaintiff, is a natural person and citizen of Massachusetts, residing in Watertown, Massachusetts, where he intends to remain. Plaintiff is a Data Breach victim with no prior relationship with LendingTree. Even so, he received LendingTree's Breach Notice in June 2022.*

Response to No. 13:

LendingTree admits that Plaintiff had no prior relationship with LendingTree. LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the remaining allegations of Paragraph 13 and, on that basis, denies them.

14. *Defendant, LendingTree, is a Delaware Limited Liability Company with its principal place of business in North Carolina at 1415 Vantage Park Drive, Suite 700, Charlotte, North Carolina 28203. LendingTree's sole "Manager" is Douglas R. Lebda, who is a citizen of North Carolina.*

Response to No. 14:

LendingTree admits the allegations in the first sentence of Paragraph 14. LendingTree denies the allegations in the second sentence of Paragraph 14, as LendingTree is managed by the sole member, which is LT Intermediate Company, LLC.

JURISDICTION & VENUE

15. *This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d) because this is a class action wherein the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, there are more than 100 members in the proposed class, and at least one member of the class is a citizen of a state different from Defendant.*

Response to No. 15:

Because the allegations in Paragraph 15 assert legal conclusions, LendingTree is not required to respond, and, on that basis, denies the allegations in Paragraph 15. LendingTree denies that Plaintiff or any putative class members are entitled to any damages or other relief and denies that the case can be certified as a class action.

16. *This Court has personal jurisdiction over Defendant because it maintains its principal place of business in this District, does substantial business in this District, and the acts and omissions giving rise to Plaintiff's claims occurred in this District.*

Response to No. 16:

Because the allegations in Paragraph 16 assert legal conclusions, LendingTree is not required to respond and, on that basis, denies the allegations in Paragraph 16.

17. *Venue is proper under 18 U.S.C § 1391(b)(1) because LendingTree's principal place of business is in this District.*

Response to No. 17:

Because the allegations in Paragraph 17 assert legal conclusions, LendingTree is not required to respond and, on that basis, denies the allegations set forth in Paragraph 17.

BACKGROUND FACTS

a. LendingTree's Business

18. *LendingTree is a lending service provider advertising itself as a "marketplace" for mortgages and "various financial borrowing needs including auto loans, small business loans, personal loans, credit cards, and more."³*

Response to No. 18:

LendingTree admits that it is an online loan marketplace. Because the allegations in Paragraph 18 merely purport to describe and/or quote the content of LendingTree's website (<https://www.lendingtree.com/press/>), LendingTree states that the document is the best source of its full content and context and, to the extent the allegations in Paragraph 18 do not accurately represent the document's full content and context, LendingTree denies the allegations. Except as

³ See LendingTree's "About" page on its website, <https://www.lendingtree.com/press/> (last visited July 6, 2022).

expressly admitted herein, LendingTree denies any remaining allegations in Paragraph 18, including footnote 3.

19. *To conduct its business, LendingTree collects highly sensitive personal information on consumers, including their “personally identifiable information” (“PII”). In fact, LendingTree discloses that it collects PII on consumers through three sources:*

How We Collect Information

1. Information provided by you: We collect information from you when you enter it or otherwise provide it in connection with an inquiry into our Services. This information could be provided via an online form, over the phone, or via other means in which you interact with our Services.
2. Information from third parties: Information is collected from credit bureaus, lead generators and other partners who may have data on your financial profile, home, or other demographic information.
3. Information from cookies and other tracking technologies: We use cookies, web beacons, and similar technologies to record your preferences, track the use of our Site and collect information. This information may include internet protocol (IP) addresses, browser type, internet service provider (ISP), referring/exit pages, operating system, date/time stamp, and/or clickstream data. We may combine this automatically collected log information with other information we collect about you. You may choose to set your web browser to refuse cookies, or to alert you when cookies are being sent. If you do so, please note that some parts of our Sites may not function properly.

Response to No. 19:

As to the first sentence in Paragraph 19, LendingTree admits that it collects certain personal information consistent with its Privacy Policy but denies the remainder of the allegations in the first sentence. Because the remaining allegations in Paragraph 19 merely purport to describe and/or quote the content of LendingTree’s Privacy Policy, LendingTree states that the document is the best source of its full content and context and, to the extent the allegations in Paragraph 19 do not accurately represent the document’s full content and context, LendingTree denies the allegations. LendingTree denies any remaining allegations in Paragraph 19.

20. *In other words, LendingTree not only collects information directly from consumers, but also indirectly from consumers who have no prior relationship with LendingTree.*

Response to No. 20:

Because the allegations in Paragraph 20 merely purport to describe and/or quote the content of LendingTree’s Privacy Policy, LendingTree states that the document is the best source of its full content and context and, to the extent the allegations in Paragraph 20 do not accurately represent the document’s full content and context, LendingTree denies the allegations. LendingTree denies any remaining allegations in Paragraph 20.

21. *In collecting and storing this highly sensitive PII, LendingTree knows it has a duty to protect it. Indeed, its Privacy Policy states that LendingTree “maintain[s] physical, electronic, and procedural measures designed to safeguard your information from unauthorized access and disclosure.”⁴*

Response to No. 21:

Because the allegations in the first sentence of Paragraph 21 assert legal conclusions, LendingTree is not required to respond, and, on that basis, LendingTree denies the allegations in the first sentence of Paragraph 21. Because the remaining allegations in Paragraph 21 merely purport to describe and/or quote the content of LendingTree’s Privacy Policy, LendingTree states that the document is the best source of its full content and context and, to the extent the allegations in Paragraph 21 do not accurately represent the document’s full content and context, LendingTree denies the allegations. LendingTree denies any remaining allegations in Paragraph 21, including footnote 4.

22. *And as a publicly traded company, LendingTree also discloses that it knows the risk that data breaches pose to its business and that hackers target sensitive information like PII: “In the processing of consumer transactions, our businesses collect, use, store, disclose, transfer,*

⁴ See LendingTree’s Privacy Policy, <https://www.lendingtree.com/legal/privacy-policy/> (Last visited July 6, 2022).

*and otherwise process a large volume of personal information and other confidential, proprietary and sensitive data. Breaches or failures of security involving our systems or website[...] have occurred in the past and may occur in the future, and have in the past resulted in, and could in the future result in, the theft, unauthorized access, acquisition, use, disclosure, modification or misappropriation of personal information of our consumers[.]”*⁵

Response to No. 22:

LendingTree denies the allegation in Paragraph 22 that it is a publicly traded company. LendingTree, as named in this Complaint, is a limited liability company that is wholly owned by LT Intermediate Company, LLC. LendingTree, Inc., which is a publicly traded company, is the parent of LT Intermediate Company, LLC. Because the second clause in the first sentence of Paragraph 22 asserts legal conclusions, LendingTree is not required to respond and, on that basis, denies these allegations. Because the remaining allegations in Paragraph 22 merely purport to describe and/or quote the content of LendingTree, Inc.’s Form 10-K for the fiscal year ended December 31, 2021, LendingTree states that the document is the best source of its full content and context and, to the extent the allegations in Paragraph 22 do not accurately represent the document’s full content and context, LendingTree denies the allegations. LendingTree denies any remaining allegations of Paragraph 22, including footnote 5.

23. *As a result, LendingTree understands that a “failure of our data security processes” could lead to civil liability: “The occurrence of any actual or attempted breach, failure of security or fraudulent activity, the reporting of such an incident, whether accurate or not, or our failure to make adequate or timely disclosures to the public or law enforcement agencies following any such event, whether due to delayed discovery or a failure to follow existing*

⁵ See LendingTree’s 2021 Annual Report at https://sec.report/Document/0001434621-22-000009/#i1edd2cf7c4fc4604b5c29461b3ac2691_19 (last visited July 6, 2022).

protocols, could result in claims made against us[...] which could result in state and/or federal litigation and related financial liabilities[...] litigation and claims against us by consumers[.]”⁶

Response to No. 23:

Because the allegations in Paragraph 23 merely purport to describe and/or quote the content of LendingTree, Inc.’s Form 10-K for the fiscal year ended December 31, 2021, LendingTree states that the document is the best source of its full content and context. LendingTree denies that the allegations in Paragraph 23 accurately represent the document’s full content and context. LendingTree denies any remaining allegations of Paragraph 23, including footnote 6.

b. LendingTree’s Prior Data Breaches

24. *Despite understanding its duty to safeguard the PII it collects, LendingTree has a sordid history with data security.*

Response to No. 24:

LendingTree denies the allegations in Paragraph 24.

25. *Indeed, the company has been hacked at least two times before the Data Breach.*

Response to No. 25:

LendingTree denies the allegations in Paragraph 25.

26. *In 2008, LendingTree’s own employees stole consumer data from LendingTree’s internal systems in an act of corporate espionage, transferring it to LendingTree’s competitors.⁷ The breach led consumers to sue LendingTree over its inadequate data security policies.*

⁶ *Id.*
⁷ See Data Breach Victims File Lawsuit Against LendingTree, [CNN.com, https://www.cnn.com/news/security/208200116/data-breach-victims-file-lawsuit-against-lendingtree.htm?itc=refresh](https://www.cnn.com/news/security/208200116/data-breach-victims-file-lawsuit-against-lendingtree.htm?itc=refresh) (last visited July 6, 2022).

Response to No. 26:

LendingTree admits that, in or around 2008, former employees committed unauthorized and criminal acts in helping certain mortgage lenders gain access to customer information. LendingTree admits that this incident led to putative class action lawsuits but denies the remainder of the second sentence of Paragraph 26. LendingTree denies that the citation in footnote 7 of Paragraph 26 is correct—the article cited is from website “CRN.com” and not “CNN.com.” Except as expressly admitted herein, LendingTree denies the allegations in Paragraph 26, including footnote 7.

27. *And again, in January 2022, LendingTree disclosed another data breach affecting an unknown number of consumers.*⁸

Response to No. 27:

LendingTree admits that in January 2022 it notified certain individuals of an incident in which some personal information may have been disclosed without authorization. Except as expressly admitted herein, LendingTree denies the allegations in Paragraph 27, including footnote 8.

28. *In each case, LendingTree was unable to prevent, detect, or stop the breaches from happening before cybercriminals accessed and stole consumer PII, meaning it has been unwilling or unable to implement reasonable cybersecurity.*

Response to No. 28:

LendingTree denies the allegations in Paragraph 28.

⁸ See Breach Notice Letter to the Massachusetts Office of Consumer Affairs and Business Regulation, <https://www.mass.gov/doc/assigned-data-beach-number-25815-lendingtree-llc/download> (last visited July 6, 2022).

c. The February 2022 Data Breach

29. *As explained above, LendingTree collects PII on consumers from across the country using several means.*

Response to No. 29:

LendingTree admits that it collects certain personal information consistent with its Privacy Policy. Except as expressly admitted herein, LendingTree denies the allegations in Paragraph 29.

30. *LendingTree collects and maintains that PII in its computer systems.*

Response to No. 30:

LendingTree admits that it collects and maintains certain personal information consistent with its Privacy Policy, but except as expressly admitted herein, denies the allegations in Paragraph 30.

31. *In collecting and maintaining the PII, LendingTree has a duty to safeguard the data according to its internal policies and state and federal law.*

Response to No. 31:

LendingTree denies the allegations of Paragraph 31.

32. *According to LendingTree, in February 2022, hackers exploited a “code vulnerability” in LendingTree’s systems, allowing them to access the PII belonging to over 200,000 consumers.⁹*

Response to No. 32:

LendingTree admits that beginning in mid-February 2022, it was subject to a third-party criminal data incident involving a code vulnerability that likely resulted in the unauthorized

⁹ See LendingTree’s Breach Notice, <https://media.dojmt.gov/wp-content/uploads/Consumer-Notification-Letter-363.pdf> (last visited July 6, 2022). A copy of LendingTree’s Breach Notice is attached as **Exhibit A**.

disclosure of certain personal information. Except as expressly admitted, LendingTree denies the remaining allegations in Paragraph 32, including footnote 9.

33. *But LendingTree did not immediately detect the Data Breach, nor would it for another four months.*

Response to No. 33:

LendingTree denies the allegations in Paragraph 33.

34. *In that time, Plaintiff suffered at least four instances of identity theft, as further described below.*

Response to No. 34:

LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the allegations in Paragraph 34 and on that basis denies them.

35. *In June 2022, LendingTree finally discovered the Data Breach and began notifying consumers with a breach notice (“Breach Notice”).*

Response to No. 35:

LendingTree admits that on June 3, 2022, it identified the security incident and thereafter began providing notice. Except as expressly admitted herein, LendingTree denies the allegations in Paragraph 35.

36. *But the Breach Notice obfuscated the Data Breach’s nature and downplayed its harm. Indeed, the Breach Notice said that LendingTree had lost control over only consumers’ “social security number[s], date[s] of birth, and street address[es].”*

Response to No. 36:

LendingTree denies the allegations in Paragraph 36. The second sentence of Paragraph 36 purports to quote or paraphrase provisions of a sample “Notice of Data Breach” letter, and that

letter is the best source of its full content and context. LendingTree denies that Plaintiffs have accurately summarized the letter. LendingTree otherwise denies the allegations in Paragraph 36.

37. *But third-party investigation would prove that false.*

Response to No. 37:

LendingTree denies the allegations in Paragraph 37.

38. *Before LendingTree even notified consumers about the breach, hackers were advertising consumers' PII online.¹⁰*

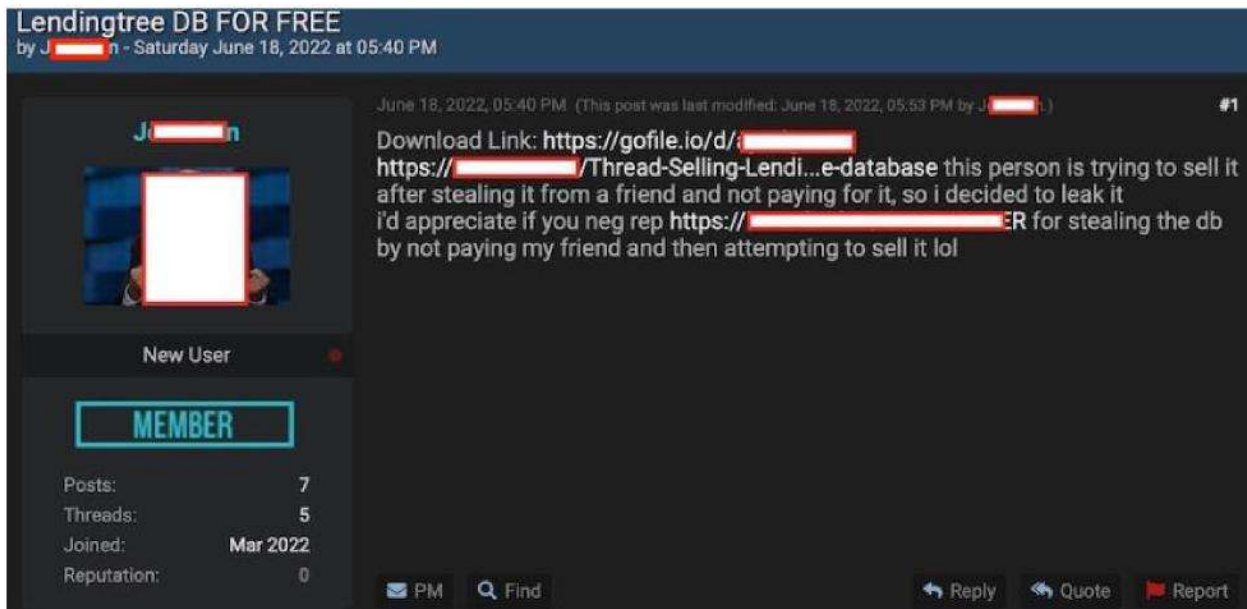
Response to No. 38:

LendingTree denies the allegations in Paragraph 38, including footnote 10.

39. *In fact, a third-party publication, Restore Privacy, found that hackers had posted consumer PII on the dark web in June 2022, where “two different forum users posted the database allegedly breached from LendingTree.com. In the most recent post, dated June 18, 2022, the user decided to post the ‘LendingTree DB for free’[,]” then including a screenshot of the hackers’ post:¹¹*

¹⁰ See Hacker Leaks Database Claiming to be from LendingTree, [RestorePrivacy.com, https://restoreprivacy.com/lendingtree-data-breach-2022/#comments](https://restoreprivacy.com/lendingtree-data-breach-2022/#comments) (last visited July 6, 2022).

¹¹ *Id.*



Response to No. 39:

LendingTree denies the allegations in Paragraph 39. Because the allegations in Paragraph 39 purport to quote or paraphrase an online article, LendingTree states that the article is the best source of its full content and context. LendingTree otherwise denies the allegations in Paragraph 39, including footnote 11 and the screenshot.

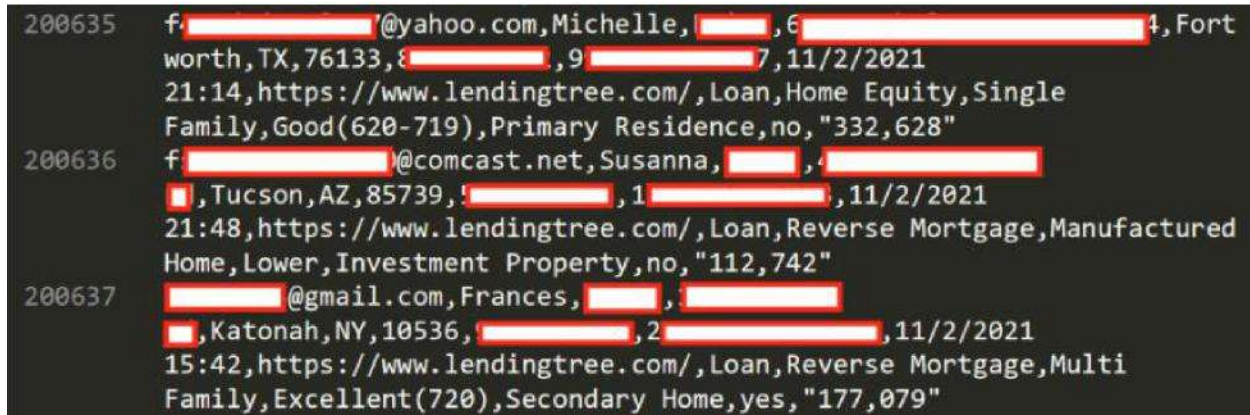
40. *Investigators at Restore Privacy downloaded the information and confirmed that the data included PII belonging to real people: “All of the entries that we attempted to verify using publicly available search tools match real-world people.” (emphasis in original).¹²*

Response to No. 40:

LendingTree denies the allegations in Paragraph 40. Because the allegations in Paragraph 40 purport to quote or paraphrase an online article, LendingTree states that the article is the best source of its full content and context. LendingTree otherwise denies the allegations in Paragraph 40, including footnote 12.

¹² *Id.*

41. *In fact, the stolen data included information clearly depicting it as stolen from LendingTree's website:*



13

Response to No. 41:

LendingTree denies the allegations in Paragraph 41, including footnote 13 and the screenshot.

42. *What's more, the investigation revealed that the Data Breach exposed much more information than LendingTree's Breach Notice disclosed to consumers, as the dark web post had consumers' emails, full names, physical addresses, phone numbers, IP addresses, loan submission dates, lead source, loan type, home description, credit score, property use, military status, and price.¹⁴*

Response to No. 42:

LendingTree denies the allegations in Paragraph 42, including footnote 14.

43. *In other words, the breach involved highly sensitive PII that criminals can use to steal individuals' identities, available for anyone to download and exploit. As Restore Privacy put*

¹³ *Id.*

¹⁴ *Id.*

it, “Not only does this put all of these people at risk for identity theft and financial fraud, it also puts them at risk for targeted attacks pertaining to home loans. Cyber criminals could utilize the private information of these applications, including names, addresses, phone numbers, and credit scores, to open accounts in the victim’s name and possibly carry out financial transactions.”¹⁵

Response to No. 43:

LendingTree denies the allegations in Paragraph 43. Because the allegations in the second and third sentences of Paragraph 43 purport to quote or paraphrase an online article, LendingTree states that the article is the best source of its full content and context. LendingTree denies the allegations in the quoted text of the second and third sentences of Paragraph 43. LendingTree otherwise denies the allegations in Paragraph 43, including footnote 15.

44. *On information and belief, LendingTree caused the Data Breach to happen because it failed to adequately train its employees on reasonable cybersecurity protocols or implement reasonable security measures, after which it lost control over consumers’ PII. LendingTree’s negligence is evidenced by its failure to prevent the Data Breach and stop cybercriminals from accessing PII, even after LendingTree had experience two prior data breaches. Further, the Breach Notice makes clear that LendingTree cannot, or will not, determine the full scope of the Data Breach, as it has been unable to determine exactly what information was stolen and when.*

Response to No. 44:

LendingTree denies the allegations in Paragraph 44.

d. Plaintiff’s Experience

¹⁵ *Id.*

45. *Plaintiff is a Data Breach victim, receiving LendingTree's Breach Notice in July 2022. He also contacted LendingTree by phone to confirm he was part of the breach and received confirmation from LendingTree's representatives.*

Response to No. 45:

LendingTree admits that it sent a notification letter to Plaintiff on or about June 29, 2022. LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the remaining allegations in Paragraph 45 and, on that basis, denies them. Except as expressly admitted herein, LendingTree denies the allegations in Paragraph 45.

46. *Plaintiff has no prior relationship with LendingTree and he does not know how the company accessed or collected his data. Indeed, Plaintiff has never applied for a loan through LendingTree, nor given the company permission to use or access his PII.*

Response to No. 46:

LendingTree admits that Plaintiff had no prior relationship with LendingTree and has never applied for a loan through LendingTree. LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the allegations in Paragraph 46 and on that basis denies them.

47. *After the Data Breach happened, but before LendingTree disclosed it, Plaintiff suffered at least four instances of identity theft. In April 2022, Plaintiff suffered fraudulent charges on his personal credit card. In May 2022, someone attempted to open an account in his name with an online store, someone else changed his USPS home address, and another person tried to open financial accounts in his name with three different institutions.*

Response to No. 47:

LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the allegations in Paragraph 47 and on that basis denies them.

48. *Plaintiff has and will spend considerable time and effort monitoring his accounts to protect himself from additional identity theft. Plaintiff fears for his personal financial security and uncertainty over what PII was exposed in the Data Breach. Plaintiff has and is experiencing feelings of anxiety, sleep disruption, stress, fear, and frustration because of the Data Breach. This goes far beyond allegations of mere worry or inconvenience; it is exactly the sort of injury and harm to a Data Breach victim that the law contemplates and addresses.*

Response to No. 48:

LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the allegations in the first three sentences in Paragraph 48 and on that basis denies them. The fourth sentence of Paragraph 48 consists of legal conclusions, to which no response is required. If a response is required, LendingTree denies the allegations in the fourth sentence of Paragraph 48.

e. Plaintiff and the Proposed Class Face Significant Risk of Continued Identity Theft

49. *Plaintiff and members of the proposed Class have suffered injury from the misuse of their PII that can be directly traced to Defendant.*

Response to No. 49:

LendingTree denies the allegations in Paragraph 49.

50. *As a result of Defendant's failure to prevent the Data Breach, Plaintiff and the proposed Class have suffered and will continue to suffer damages, including monetary losses, lost time, anxiety, and emotional distress. They have suffered or are at an increased risk of suffering:*

- a. *The loss of the opportunity to control how their PII is used;*
- b. *The diminution in value of their PII;*
- c. *The compromise and continuing publication of their PII;*

- d. *Out-of-pocket costs associated with the prevention, detection, recovery, and remediation from identity theft or fraud;*
- e. *Lost opportunity costs and lost wages associated with the time and effort expended addressing and attempting to mitigate the actual and future consequences of the Data Breach, including, but not limited to, efforts spent researching how to prevent, detect, contest, and recover from identity theft and fraud;*
- f. *Delay in receipt of tax refund monies;*
- g. *Unauthorized use of stolen PII; and*
- h. *The continued risk to their PII, which remains in the possession of defendant and is subject to further breaches so long as defendant fails to undertake the appropriate measures to protect the PII in their possession.*

Response to No. 50:

LendingTree denies the allegations in Paragraph 50, including the allegations in sub-parts (a)–(h).

51. *Stolen PII is one of the most valuable commodities on the criminal information black market. According to Experian, a credit-monitoring service, stolen PII can be worth up to \$1,000.00 depending on the type of information obtained.*

Response to No. 51:

LendingTree denies the allegations in the first sentence of Paragraph 51. LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the remaining allegations in Paragraph 51 and, on that basis, denies them.

52. *The value of Plaintiff and the proposed Class's PII on the black market is considerable. Stolen PII trades on the black market for years, and criminals frequently post stolen*

private information openly and directly on various “dark web” internet websites, making the information publicly available, for a substantial fee of course.

Response to No. 52:

LendingTree denies the allegations in the first sentence of Paragraph 52. LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the remaining allegations in Paragraph 52 and, on that basis, denies them.

53. *It can take victims years to spot identity or PII theft, giving criminals plenty of time to use that information for cash.*

Response to No. 53:

LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the allegations in Paragraph 53 and, on that basis, denies them.

54. *One such example of criminals using PII for profit is the development of “Fullz” packages.*

Response to No. 54:

LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the allegations in Paragraph 54 and, on that basis, denies them.

55. *Cyber-criminals can cross-reference two sources of PII to marry unregulated data available elsewhere to criminally stolen data with an astonishingly complete scope and degree of accuracy in order to assemble complete dossiers on individuals. These dossiers are known as “Fullz” packages.*

Response to No. 55:

LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the allegations in Paragraph 55 and, on that basis, denies them.

56. *The development of “Fullz” packages means that stolen PII from the Data Breach can easily be used to link and identify it to Plaintiff and the proposed Class’s phone numbers, email addresses, and other unregulated sources and identifiers. In other words, even if certain information such as emails, phone numbers, or credit card numbers may not be included in the PII stolen by the cyber-criminals in the Data Breach, criminals can easily create a Fullz package and sell it at a higher price to unscrupulous operators and criminals (such as illegal and scam telemarketers) over and over. That is exactly what is happening to Plaintiff and members of the proposed Class, and it is reasonable for any trier of fact, including this Court or a jury, to find that Plaintiff and other members of the proposed Class’s stolen PII is being misused, and that such misuse is fairly traceable to the Data Breach.*

Response to No. 56:

LendingTree denies the allegations in the first two sentences of Paragraph 56. The third sentence of Paragraph 56 consists of legal conclusions, to which no response is required. If a response is required, LendingTree denies the allegations in the third sentence of Paragraph 56.

57. *Defendant disclosed the PII of Plaintiff and members of the proposed Class for criminals to use in the conduct of criminal activity. Specifically, Defendant opened up, disclosed, and exposed the PII of Plaintiff and members of the proposed Class to people engaged in disruptive and unlawful business practices and tactics, including online account hacking, unauthorized use of financial accounts, and fraudulent attempts to open unauthorized financial accounts (i.e., identity fraud), all using the stolen PII.*

Response to No. 57:

LendingTree denies the allegations in Paragraph 57.

58. *Defendant's failure to properly detect the Data Breach and notify Plaintiff and members of the proposed Class of the Data Breach exacerbated Plaintiff and members of the proposed Class's injury by depriving them of the earliest ability to take appropriate measures to protect their PII and take other necessary steps to mitigate the harm caused by the Data Breach.*

Response to No. 58:

LendingTree denies the allegations in Paragraph 58.

f. LendingTree failed to adhere to FTC guidelines.

59. *According to the Federal Trade Commission ("FTC"), the need for data security should be factored into all business decision-making. To that end, the FTC has issued numerous guidelines identifying best data security practices that businesses, such as LendingTree, should employ to protect against the unlawful exposure of PII.*

Response to No. 59:

Because the allegations in Paragraph 59 purport to summarize unspecified Federal Trade Commission guidelines, LendingTree lacks sufficient knowledge or information to form an opinion as to the truth of the allegations in Paragraph 59 and, on that basis, denies them.

60. *In 2016, the FTC updated its publication, Protecting Personal Information: A Guide for Business, which established guidelines for fundamental data security principles and practices for business. The guidelines explain that businesses should:*

- a. *protect the personal customer information that they keep;*
- b. *properly dispose of personal information that is no longer needed;*
- c. *encrypt information stored on computer networks;*
- d. *understand their network's vulnerabilities; and*
- e. *implement policies to correct security problems.*

Response to No. 60:

Because the allegations in Paragraph 60 purport to summarize a Federal Trade Commission publication, LendingTree states that the publication itself is the best source for its full content and context. To the extent the allegations in Paragraph 60 do not accurately represent the publication's full content and context, LendingTree denies the allegations.

61. *The guidelines also recommend that businesses watch for large amounts of data being transmitted from the system and have a response plan ready in the event of a breach.*

Response to No. 61:

Because the allegations in Paragraph 61 purport to summarize unspecified guidelines, LendingTree lacks sufficient knowledge or information to form an opinion as to the truth of the allegations in Paragraph 61 and, on that basis, denies them.

62. *The FTC recommends that companies not maintain PII longer than is needed for authorization of a transaction; limit access to sensitive data; require complex passwords to be used on networks; use industry-tested methods for security; monitor for suspicious activity on the network; and verify that third-party service providers have implemented reasonable security measures.*

Response to No. 62:

Because the allegations in Paragraph 62 purport to summarize unspecified Federal Trade Commission recommendations, LendingTree lacks sufficient knowledge or information to form an opinion as to the truth of the allegations in Paragraph 62 and, on that basis, denies them.

63. *The FTC has brought enforcement actions against businesses for failing to adequately and reasonably protect customer data, treating the failure to employ reasonable and appropriate measures to protect against unauthorized access to confidential consumer data as an*

unfair act or practice prohibited by Section 5 of the Federal Trade Commission Act (“FTCA”), 15 U.S.C. § 45. Orders resulting from these actions further clarify the measures businesses must take to meet their data security obligations.

Response to No. 63:

LendingTree lacks sufficient information or knowledge to form an opinion as to the truth of the allegations in Paragraph 63 and, on that basis, denies them. To the extent the allegations in Paragraph 63 contain legal conclusions, no response is required. If a response is required, LendingTree denies the allegations in Paragraph 63.

64. *LendingTree’s failure to employ reasonable and appropriate measures to protect against unauthorized access to consumers’ PII constitutes an unfair act or practice prohibited by Section 5 of the FTCA, 15 U.S.C. § 45.*

Response to No. 64:

The allegations in Paragraph 64 consist of legal conclusions, to which no response is required. If a response is required, LendingTree denies the allegations Paragraph 64.

CLASS ACTION ALLEGATIONS

65. *Plaintiff sues on behalf of himself and the proposed Class under Rule 23(b)(2) and 23(b)(3), defined as follows:*

All individuals residing in the United States whose PII was compromised in the Data Breach disclosed by Defendant in June 2022.

Excluded from the Class are Defendant, its agents, affiliates, parents, subsidiaries, any entity in which Defendant has a controlling interest, any Defendant officer or director, any successor or assign, and any Judge who adjudicates this case, including their staff and immediate family.

Response to No. 65:

LendingTree denies the allegations in Paragraph 65. LendingTree denies that this action (including any proposed putative class) satisfies the requirements for class certification, including the requirements of Federal Rule of Civil Procedure 23, and denies that Plaintiff is entitled to any relief.

66. *Plaintiff reserves the right to amend the class definition.*

Response to No. 66:

Paragraph 66 is not a factual allegation requiring a response from LendingTree. If a response is required, LendingTree denies the allegations in Paragraph 66 and reserves all rights to respond to any future amended complaint in accordance with the Federal Rules of Civil Procedure, the Local Rules, and any order of the Court.

67. *This action satisfies the numerosity, commonality, typicality, and adequacy requirements under Fed. R. Civ. P. 23.*

a. **Numerosity.** *Plaintiff is representative of the proposed Class, consisting of over 200,000 members for the Class, far too many to join in a single action;*

b. **Ascertainability.** *Class members are readily identifiable from information in Defendant's possession, custody, and control;*

c. **Typicality.** *Plaintiff's claims are typical of Class member's claims as each arises from the same Data Breach, the same alleged violations by Defendant, and the same unreasonable manner of notifying individuals about the Data Breach.*

d. **Adequacy.** *Plaintiff will fairly and adequately protect the proposed Class's interests. Their interests do not conflict with Class's interests and they have retained counsel experienced in complex class action litigation and data privacy to prosecute this action on the Class's behalf, including as lead counsel.*

e. **Commonality.** *Plaintiff and the Class's claims raise predominantly common fact and legal questions that a class wide proceeding can answer for all Class members. Indeed, it will be necessary to answer the following questions:*

- i. *Whether Defendant had a duty to use reasonable care in safeguarding Plaintiff and the Class's PII;*
- ii. *Whether Defendant failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the Data Breach;*
- iii. *Whether Defendant was negligent in maintaining, protecting, and securing PII;*
- iv. *Whether Defendant took reasonable measures to determine the extent of the Data Breach after discovering it;*
- v. *Whether Defendant's Breach Notice was reasonable;*
- vi. *Whether the Data Breach caused Plaintiff and the Class injuries;*
- vii. *What the proper damages measure is; and*
- viii. *Whether Plaintiff and the Class are entitled to damages, treble damages, or injunctive relief.*

Response to No. 67:

The allegations in Paragraph 67 consist of legal conclusions, to which no response is required. If a response is required, LendingTree denies the allegations in Paragraph 67, including all of its sub-parts.

68. *Further, common questions of law and fact predominate over any individualized questions, and a class action is superior to individual litigation or any other available method to*

fairly and efficiently adjudicate the controversy. The damages available to individual plaintiffs are insufficient to make individual lawsuits economically feasible.

Response to No. 68:

The allegations in Paragraph 68 consist of legal conclusions, to which no response is required. If a response is required, LendingTree denies the allegations Paragraph 68. LendingTree denies that this action can be maintained as a class action and that Plaintiff is entitled to any relief.

**COUNT I
Negligence
(On Behalf of Plaintiff and the Class)**

69. *Plaintiff realleges all previous paragraphs as if fully set forth below.*

Response to No. 69:

LendingTree restates its responses to all previous paragraphs and allegations as if fully set forth below.

70. *Defendant owed to Plaintiff and other members of the Class a duty to exercise reasonable care in handling and using the PII in its care and custody, including implementing industry-standard security procedures sufficient to reasonably protect the information from the Data Breach, theft, and unauthorized use that came to pass, and to promptly detect attempts at unauthorized access.*

Response to No. 70:

LendingTree denies the allegations in Paragraph 70.

71. *Defendant owed a duty of care to Plaintiff and members of the Class because it was foreseeable that Defendant's failure to adequately safeguard their PII in accordance with state-of-the-art industry standards concerning data security would result in the compromise of that PII—just like the Data Breach that ultimately came to pass. Defendant acted with wanton and*

reckless disregard for the security and confidentiality of Plaintiff' and members of the Class's PII by disclosing and providing access to this information to third parties and by failing to properly supervise both the way the PII was stored, used, and exchanged, and those in its employ who were responsible for making that happen.

Response to No. 71:

LendingTree denies the allegations in Paragraph 71.

72. *Defendant owed to Plaintiff and members of the Class a duty to notify them within a reasonable timeframe of any breach to the security of their PII. Defendant also owed a duty to timely and accurately disclose to Plaintiff and members of the Class the scope, nature, and occurrence of the Data Breach. This duty is required and necessary for Plaintiff and members of the Class to take appropriate measures to protect their PII, to be vigilant in the face of an increased risk of harm, and to take other necessary steps to mitigate the harm caused by the Data Breach.*

Response to No. 72:

LendingTree denies the allegations in Paragraph 72.

73. *Defendant owed these duties to Plaintiff and members of the Class because they are members of a well-defined, foreseeable, and probable class of individuals whom Defendant knew or should have known would suffer injury-in-fact from Defendant's inadequate security protocols. Defendant actively sought and obtained Plaintiff' and members of the Class's personal information and PII.*

Response to No. 73:

LendingTree denies the allegations in Paragraph 73.

74. *The risk that unauthorized persons would attempt to gain access to the PII and misuse it was foreseeable. Given that Defendant holds vast amounts of PII, it was inevitable that*

unauthorized individuals would attempt to access Defendant's databases containing the PII—whether by malware or otherwise.

Response to No. 74:

LendingTree denies the allegations in Paragraph 74.

75. *PII is highly valuable, and Defendant knew, or should have known, the risk in obtaining, using, handling, emailing, and storing the PII of Plaintiff and members of the Class's PII and the importance of exercising reasonable care in handling it.*

Response to No. 75:

LendingTree denies the allegations in Paragraph 75.

76. *Defendant breached its duties by failing to exercise reasonable care in supervising its agents, contractors, vendors, and suppliers, and in handling and securing the personal information and PII of Plaintiff and members of the Class which actually and proximately caused the Data Breach and Plaintiff and members of the Class's injury. Defendant further breached its duties by failing to provide reasonably timely notice of the Data Breach to Plaintiff and members of the Class, which actually and proximately caused and exacerbated the harm from the Data Breach and Plaintiff and members of the Class's injuries-in-fact. As a direct and traceable result of Defendant's negligence and/or negligent supervision, Plaintiff and members of the Class have suffered or will suffer damages, including monetary damages, increased risk of future harm, embarrassment, humiliation, frustration, and emotional distress.*

Response to No. 76:

LendingTree denies the allegations in Paragraph 76.

77. *Defendant's breach of its common-law duties to exercise reasonable care and its failures and negligence actually and proximately caused Plaintiff and members of the Class actual,*

tangible, injury-in-fact and damages, including, without limitation, the theft of their PII by criminals, improper disclosure of their PII, lost benefit of their bargain, lost value of their PII, and lost time and money incurred to mitigate and remediate the effects of the Data Breach that resulted from and were caused by Defendant's negligence, which injury-in-fact and damages are ongoing, imminent, immediate, and which they continue to face.

Response to No. 77:

LendingTree denies the allegations in Paragraph 77.

**COUNT II
Negligence Per Se
(On Behalf of Plaintiff and the Class)**

78. *Plaintiff and members of the Class incorporate the above allegations as if fully set forth herein.*

Response to No. 78:

LendingTree incorporates and restates its responses to all preceding allegations as though fully set forth herein.

79. *Pursuant to the FTC Act, 15 U.S.C. § 45, Defendant had a duty to provide fair and adequate computer systems and data security practices to safeguard Plaintiff and members of the Class's PII.*

Response to No. 79:

LendingTree denies the allegations in Paragraph 79.

80. *Section 5 of the FTC Act prohibits "unfair . . . practices in or affecting commerce," including, as interpreted and enforced by the FTC, the unfair act or practice by businesses, such as Defendant, of failing to use reasonable measures to protect consumers' PII. The FTC*

publications and orders promulgated pursuant to the FTC Act also form part of the basis of Defendant's duty to protect Plaintiff and the members of the Class's sensitive PII.

Response to No. 80:

To the extent the first sentence of Paragraph 80 purports to quote the Federal Trade Commission Act, LendingTree states that that law is the best source of its full content and context. LendingTree otherwise denies the allegations in Paragraph 80.

81. *Defendant violated its duty under Section 5 of the FTC Act by failing to use reasonable measures to protect consumers' PII and not complying with applicable industry standards as described in detail herein. Defendant's conduct was particularly unreasonable given the nature and amount of PII Defendant had collected and stored and the foreseeable consequences of a data breach, including, specifically, the immense damages that would result to consumers in the event of a breach, which ultimately came to pass.*

Response to No. 81:

LendingTree denies the allegations in Paragraph 81.

82. *The harm that has occurred is the type of harm the FTC Act is intended to guard against. Indeed, the FTC has pursued numerous enforcement actions against businesses that, because of their failure to employ reasonable data security measures and avoid unfair and deceptive practices, caused the same harm as that suffered by Plaintiff and members of the Class.*

Response to No. 82:

LendingTree denies the allegations in Paragraph 82.

83. *Defendant had a duty to Plaintiff and the members of the Class to implement and maintain reasonable security procedures and practices to safeguard Plaintiff and the Class's PII.*

Response to No. 83:

LendingTree denies the allegations in Paragraph 83.

84. *Defendant breached its respective duties to Plaintiff and members of the Class under the FTC Act by failing to provide fair, reasonable, or adequate computer systems and data security practices to safeguard Plaintiff and members of the Class's PII.*

Response to No. 84:

LendingTree denies the allegations in Paragraph 84.

85. *Defendant's violation of Section 5 of the FTC Act and its failure to comply with applicable laws and regulations constitutes negligence per se.*

Response to No. 85:

LendingTree denies the allegations in Paragraph 85.

86. *But for Defendant's wrongful and negligent breach of its duties owed to Plaintiff and members of the Class, Plaintiff and members of the Class would not have been injured.*

Response to No. 86:

LendingTree denies the allegations in Paragraph 86.

87. *The injury and harm suffered by Plaintiff and members of the Class were the reasonably foreseeable result of Defendant's breach of their duties. Defendant knew or should have known that Defendant was failing to meet its duties and that its breach would cause Plaintiff and members of the Class to suffer the foreseeable harms associated with the exposure of their PII.*

Response to No. 87:

LendingTree denies the allegations in Paragraph 87.

88. *Had Plaintiff and members of the Class known that Defendant did not adequately protect their PII, Plaintiff and members of the Class would not have entrusted Defendant with their PII.*

Response to No. 88:

LendingTree denies the allegations in Paragraph 88.

89. *As a direct and proximate result of Defendant's negligence per se, Plaintiff and members of the Class have suffered harm, including loss of time and money resolving fraudulent charges; loss of time and money obtaining protections against future identity theft; lost control over the value of PII; unreimbursed losses relating to fraudulent charges; losses relating to exceeding credit and debit card limits and balances; harm resulting from damaged credit scores and information; and other harm resulting from the unauthorized use or threat of unauthorized use of stolen personal information, entitling them to damages in an amount to be proven at trial.*

Response to No. 89:

LendingTree denies the allegations in Paragraph 89.

**COUNT III
Unjust Enrichment
(On Behalf of Plaintiff and the Class)**

90. *Plaintiff and members of the Class incorporate the above allegations as if fully set forth herein.*

Response to No. 90:

LendingTree incorporates and restates its responses to all preceding allegations as though fully set forth herein.

91. *Defendant received a benefit from Plaintiff and the Class by obtaining their PII.*

Response to No. 91:

LendingTree denies the allegations in Paragraph 91.

92. *Defendant appreciated or had knowledge of the benefits conferred upon itself. Defendant also benefited from the receipt of Plaintiff and members of the Class's PII, as this was used to conduct its business.*

Response to No. 92:

LendingTree denies the allegations in Paragraph 92.

93. *Under principals of equity and good conscience, Defendant should not be permitted to retain the full value of Plaintiff and the proposed Class's services and their PII because Defendant failed to adequately protect their PII.*

Response to No. 93:

LendingTree denies the allegations in Paragraph 93.

94. *Defendant should be compelled to disgorge into a common fund for the benefit of Plaintiff and members of the Class all unlawful or inequitable proceeds received by it because of its misconduct and Data Breach.*

Response to No. 94:

LendingTree denies the allegations in Paragraph 94.

**COUNT IV
Invasion of Privacy
(On Behalf of the Plaintiff and the Class)**

95. *Plaintiff incorporates all previous paragraphs as if fully set forth below.*

Response to No. 95:

LendingTree incorporates and restates its responses to all preceding allegations as though fully set forth herein.

96. *Plaintiff and the Class had a legitimate expectation of privacy regarding their highly sensitive information and were accordingly entitled to the protection of this information against disclosure to unauthorized third parties.*

Response to No. 96:

LendingTree denies the allegations in Paragraph 96.

97. *Defendant owed a duty to the individuals it obtained information from, including Plaintiff and the Class, to keep this information confidential.*

Response to No. 97:

LendingTree denies the allegations in Paragraph 97.

98. *The unauthorized acquisition (i.e., theft) by a third party of Plaintiff and the Class's PII is highly offensive to a reasonable person.*

Response to No. 98:

LendingTree denies the allegations in Paragraph 98.

99. *The intrusion was into a place or thing which was private and entitled to be private. Plaintiff and the Class were reasonable in their belief that such information would be kept private and would not be disclosed without their authorization.*

Response to No. 99:

LendingTree denies the allegations in Paragraph 99.

100. *The Data Breach constitutes an intentional interference with Plaintiff and the Class's interest in solitude or seclusion, either as to their person or as to their private affairs or concerns, of a kind that would be highly offensive to a reasonable person.*

Response to No. 100:

LendingTree denies the allegations in Paragraph 100.

101. *Defendant acted with a knowing state of mind when it permitted the Data Breach because it knew its information security practices were inadequate.*

Response to No. 101:

LendingTree denies the allegations in Paragraph 101.

102. *Defendant acted with a knowing state of mind when it failed to notify Plaintiff and the Class in a timely fashion about the Data Breach, thereby materially impairing their mitigation efforts.*

Response to No. 102:

LendingTree denies the allegations in Paragraph 102.

103. *Acting with knowledge, Defendant had notice and knew that its inadequate cybersecurity practices would cause injury to Plaintiff and the Class.*

Response to No. 103:

LendingTree denies the allegations in Paragraph 103.

104. *As a proximate result of Defendant's acts and omissions, the private and sensitive PII of Plaintiff and the Class were stolen by a third party and is now available to disclosure and redisclosure without authorization, causing Plaintiff and the Class to suffer damages.*

Response to No. 104:

LendingTree denies the allegations in Paragraph 104.

105. *Unless and until enjoined and restrained by order of this Court, Defendant's wrongful conduct will continue to cause great and irreparable injury to Plaintiff and the Class since those records are still maintained by Defendant with their inadequate cybersecurity system and policies.*

Response to No. 105:

LendingTree denies the allegations in Paragraph 105.

106. *Plaintiff and the Class have no adequate remedy at law for the injuries relating to Defendant's continued possession of their sensitive and confidential records. A judgment for monetary damages will not end Defendant's inability to safeguard the records of Plaintiff and the Class. In addition to injunctive relief, Plaintiff, on behalf of herself and the other members of the Class, also seeks compensatory damages for Defendant's invasion of privacy, which includes the value of the privacy interest invaded by Defendant, the costs of future monitoring of their credit history for identity theft and fraud, plus prejudgment interest, and costs.*

Response to No. 106:

LendingTree denies the allegations in Paragraph 106.

COUNT V
Declaratory Judgment and Injunctive Relief
(On behalf of Plaintiff and the Class)

107. *Plaintiff incorporates all previous paragraphs as if fully set forth below.*

Response to No. 107:

LendingTree incorporates and restates its responses to all preceding allegations as though fully set forth herein.

108. *Under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq., this Court is authorized to enter a judgment declaring the rights and legal relations of the parties and to grant further necessary relief. Furthermore, the Court has broad authority to restrain acts, such as those alleged herein.*

Response to No. 108:

Because the allegations in Paragraph 108 purport to summarize the Declaratory Judgment Act, LendingTree states that that law is the best source for its full content and context. LendingTree otherwise denies the allegations in Paragraph 108.

109. *An actual controversy has arisen in the wake of the Data Breach at issue regarding Defendant's common law and other duties to act reasonably with respect to employing reasonable data security. Plaintiff alleges Defendant's actions in this respect were inadequate and unreasonable and, upon information and belief, remain inadequate and unreasonable. Additionally, Plaintiff and the Class continue to suffer injury due to the continued and ongoing threat of new or additional fraud against them or on their accounts using the stolen data.*

Response to No. 109:

LendingTree denies the allegations in Paragraph 109.

110. *Pursuant to its authority under the Declaratory Judgment Act, this Court should enter a judgment declaring, among other things, the following:*

- a. *Defendant owed, and continues to owe, a legal duty to employ reasonable data security to secure the PII it possesses;*
- b. *Defendant breached, and continues to breach, its duty by failing to employ reasonable measures to secure its customers' personal and financial information;*
and
- c. *Defendant's breach of its legal duty continues to cause harm to Plaintiff and the Class.*

Response to No. 110:

LendingTree denies the allegations in Paragraph 110, including subparts (a)–(c).

111. *The Court should also issue corresponding injunctive relief requiring Defendant to employ adequate security protocols consistent with industry standards to protect Plaintiff's and the Class's data.*

Response to No. 111:

LendingTree denies the allegations in Paragraph 111.

112. *If an injunction is not issued, Plaintiff and the Class will suffer irreparable injury and lack an adequate legal remedy in the event of another breach of Defendant's data systems. If another breach of Defendant's data systems occurs, Plaintiff and the Class will not have an adequate remedy at law because many of the resulting injuries are not readily quantified in full and they will be forced to bring multiple lawsuits to rectify the same conduct. Simply put, monetary damages, while warranted to compensate Plaintiff and the Class for their out-of-pocket and other damages that are legally quantifiable and provable, do not cover the full extent of injuries suffered by Plaintiff and the Class, which include monetary damages that are not legally quantifiable or provable.*

Response to No. 112:

LendingTree denies the allegations in Paragraph 112.

113. *The hardship to Plaintiff and the Class if an injunction does not issue exceeds the hardship to Defendant if an injunction is issued.*

Response to No. 113:

LendingTree denies the allegations in Paragraph 113.

114. *Issuance of the requested injunction will not disserve the public interest. To the contrary, such an injunction would benefit the public by preventing another data breach, thus eliminating the injuries that would result to Plaintiff, the Class, and the public at large.*

Response to No. 114:

LendingTree denies the allegations in Paragraph 114.

PRAYER FOR RELIEF

The Prayer for Relief on pages 24–25 of the Complaint is not an allegation, so no response is required. If a response is required, LendingTree denies that this action can be maintained as a class action and that Plaintiff is entitled to any relief.

JURY DEMAND

The Jury Demand on page 25 of the Complaint is not an allegation, so no response is required.

* * *

Unless expressly admitted above, LendingTree denies each and every allegation in the Complaint and denies that Plaintiff is entitled to any judgment or other relief whether or not expressly requested.

* * *

AFFIRMATIVE AND OTHER DEFENSES

LendingTree asserts the following affirmative and other defenses without admitting that it bears the burden of proof as to any of them:

FIRST DEFENSE

Plaintiff lacks Article III standing and, accordingly, this Court lacks subject-matter jurisdiction over Plaintiff's claims.

SECOND DEFENSE

Plaintiff's claims, in whole or in part, fail to state a claim upon which relief can be granted.

THIRD DEFENSE

Plaintiff's claims are barred because he has not sustained any cognizable injury attributable to LendingTree's conduct.

FOURTH DEFENSE

Plaintiff's claims are barred because any alleged harm is the result of the intervening criminal conduct of a third party.

FIFTH DEFENSE

Plaintiff's claims are barred because Plaintiff cannot establish that any alleged harm was proximately caused by an act or omission of LendingTree.

SIXTH DEFENSE

Plaintiff's claims are barred to the extent Plaintiff failed to mitigate damages.

SEVENTH DEFENSE

Plaintiff's claims are barred by the economic loss rule.

EIGHTH DEFENSE

Plaintiff's claims are barred because LendingTree owed no duty to Plaintiff.

NINTH DEFENSE

Plaintiff's claims are barred by the doctrines of comparative and contributory negligence.

TENTH DEFENSE

Plaintiff is estopped from seeking double recovery.

ELEVENTH DEFENSE

Plaintiff's claims are subject to set off and/or apportionment.

TWELFTH DEFENSE

Plaintiff's claims are barred by any applicable statute of limitations.

THIRTEENTH DEFENSE

Plaintiff's claims are barred by the doctrines of waiver, estoppel, and laches.

FOURTEENTH DEFENSE

Plaintiff's claims are barred because he has not asserted any legally cognizable damages.

FIFTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because they seek relief unavailable under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*

SIXTEENTH DEFENSE

Insofar as Plaintiff purports to allege a claim of some failure to fully or timely "disclose" information to Plaintiff, LendingTree complied with any and all statutory and regulatory disclosure requirements.

SEVENTEENTH DEFENSE

This action is not maintainable as a class action under Federal Rule of Civil Procedure 23.

EIGHTEENTH DEFENSE

Plaintiff is not entitled to its requested amount, or rate, of pre- or post-judgment interest.

NINETEENTH DEFENSE

Plaintiff is not entitled to recover attorney's fees, experts' fees, or other costs and expenses.

TWENTIETH DEFENSE

LendingTree affirmatively pleads and relies upon all defenses and affirmative defenses set forth in Rules 8(c) and 12(b) of the Federal Rules of Civil Procedure or in the statutes or common law doctrines under which Plaintiff has brought suit or that Plaintiff has invoked, that are or may later become applicable to the claims made, and expressly reserves the right to assert any and all

other defenses, including affirmative defenses that may become apparent during the course of discovery and further investigation.

Respectfully submitted August 24, 2022.

ALSTON & BIRD LLP

/s/ Brandon C.E. Springer

Brandon C.E. Springer (Bar Number 54523)
ALSTON & BIRD LLP
101 N. Tryon Street, Suite 4000
Charlotte, NC 28280
Telephone: (704) 444- 1007
Fax: (704) 444-1111
brandon.springer@alston.com

Kristine M. Brown (*pro hac vice* pending)
Scott A. Elder (*pro hac vice* pending)
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309
Telephone: (404) 881-7000
Fax: (404) 881-7777
kristy.brown@alston.com
scott.elder@alston.com

Attorneys for Defendant LendingTree, LLC

CERTIFICATE OF SERVICE

I certify that on August 24, 2022, I electronically filed this Answer and Affirmative and Other Defenses with the Clerk of Court using the CM/ECF system, which will send notification to the following people:

Joel R. Rhine (Bar Number 16028)
Martin A. Ramey (Bar Number 33617)
Rhine Law Firm, PC
1612 Military Cutoff Road, Suite 300
Wilmington, NC 28403
Tel: (910) 772-9960
Fax: (910) 772-9062
jrr@rhinelawfirm.com

Samuel J. Strauss
Raina C. Borrelli
Turke & Strauss LLP
613 Williamson Street, Suite 201
Madison, WI 53703
Telephone: (608) 237-1775
Facsimile: (608) 509-4423
raina@turkestrauss.com
sam@turkestrauss.com

/s/ Brandon C.E. Springer
Brandon C.E. Springer (Bar Number 54523)
ALSTON & BIRD LLP
101 N. Tryon Street, Suite 4000
Charlotte, NC 28280
Telephone: (704) 444- 1007
Fax: (704) 444-1111
brandon.springer@alston.com