

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

VIRGINIA E. GAFFNEY  
4 Channel Lane  
Hampton, VA 23664

J.G., by his mother and legal guardian,  
Virginia E. Gaffney

E.G., by her mother and legal guardian  
Virginia E. Gaffney, and

ADRIENNE TAYLOR  
3608 Zuni Street  
Glendale, AZ 85307,

on behalf of themselves and all other  
similarly situated,

Plaintiffs,

v.

TRICARE MANAGEMENT ACTIVITY  
1400 Defense Pentagon  
Washington, D.C. 20420

UNITED STATES DEPARTMENT OF  
DEFENSE  
1400 Defense Pentagon  
Washington, D.C. 20420

and

LEON E. PANETTA, in his Official  
Capacity as Secretary of Department of  
Defense  
1400 Defense Pentagon  
Washington, D.C. 20420,

Defendants.

Civil Action No.

**JURY TRIAL DEMANDED**

## **COMPLAINT**

Plaintiffs Virginia E. Gaffney, minor J.G., minor E.G., and Adrienne Taylor, by their undersigned attorneys, as and for their class action complaint, allege, with personal knowledge as to their own actions, and upon information and belief as to those of others, as follows:

### **NATURE OF THE ACTION**

1. This action seeks to redress Defendants' intentional, willful and reckless violations of the privacy rights of more than 4.9 million individuals, whose private medical and other personal information has been publicly disclosed as a result of Defendants' violations of the federal Administrative Procedures Act ("APA") and the federal Privacy Act of 1974 ("Privacy Act").

2. Defendant TRICARE Management Activity ("TRICARE") provides health insurance to millions of military personnel and their families. As a result, TRICARE is entrusted with private medical and personal information for millions of people who faithfully serve our Country. TRICARE is legally required to maintain the privacy of this information.

3. On or about September 29, 2011, TRICARE publicly admitted that data containing the most intimate personal details pertaining to 4.9 million of its members had been unlawfully disclosed.

4. TRICARE flagrantly disregarded Plaintiffs' privacy rights by intentionally, willfully and recklessly failing to take the necessary precautions required to protect the personal identification information of 4,900,000 people from unauthorized disclosure. In violation of federal law, the information was unprotected, easily copied, and not kept

in accordance with basic security protocols. TRICARE and its co-defendant, the United States Department of Defense (“DOD”), inexplicably failed to properly encrypt the information, then intentionally, recklessly and willfully allowed an untrained or improperly trained individual to access the personal identification information. TRICARE compounded its dereliction of duty by authorizing an untrained or improperly trained individual to take the highly confidential information off of government premises and to leave the unencrypted information in an unguarded car parked in a public location, from which it was stolen by an unknown party or parties.

5. Defendants’ intentional, willful and reckless disregard of Plaintiffs’ privacy rights caused one of the largest unauthorized disclosures of Social Security numbers, medical records, and other private information in recent history.

#### **JURISDICTION AND VENUE**

6. The jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States. Jurisdiction is also proper pursuant to 5 U.S.C. §§ 552a(g)(1), (5) because this is a civil action to enforce a liability created under 5 U.S.C. § 552a after September 27, 1975.

7. Venue is also appropriate in this Court pursuant to 28 U.S.C. § 1391 because all defendants reside in this district and a substantial part of the events or omissions giving rise to the claims occurred in this district.

#### **PARTIES**

##### **PLAINTIFFS**

8. Plaintiff Virginia E. Gaffney (“Mrs. Gaffney”) is the spouse of a decorated war veteran. Mrs. Gaffney has received insurance through TRICARE since prior to

1992. Because she is a military spouse, she and her family have lived in and received medical treatment in many locations since 1992, including: Alabama, Florida, Virginia, Illinois, the United Kingdom, Portugal and Japan. TRICARE possesses Mrs. Gaffney's most sensitive personal and medical information, which, pursuant to Federal law, Defendants are required to keep confidential. As a result of Defendants' unlawful conduct, Mrs. Gaffney's medical information and personal information, including her Social Security number, have been exposed, putting her at risk of identity theft. To combat such risk, Mrs. Gaffney has incurred an economic loss as a result of having to purchase a credit monitoring service to alert her to potential misappropriation of her identity. Mrs. Gaffney has also suffered emotional upset as a result of the invasion of her privacy.

9. Plaintiff "J.G." is a sixteen year-old boy who is the son of a decorated war veteran. Pursuant to Federal Rule of Civil Procedure 17, J.G. is represented by and appears in this action through his mother and natural guardian, Mrs. Gaffney. J.G. has received insurance through TRICARE for his entire life. J.G. was born in Virginia and has received medical care in many places, including Alabama and Florida. TRICARE possesses J.G.'s most sensitive personal and medical information, which, pursuant to Federal law, Defendants are required to keep confidential. As a result of Defendants' unlawful conduct, J.G.'s medical information and personal information, including his Social Security number, have been exposed, putting him at risk of identity theft. J.G. has suffered emotional upset as a result of the invasion of his privacy.

10. Plaintiff "E.G." is an eleven year-old girl who is the daughter of a decorated war veteran. Pursuant to Federal Rule of Civil Procedure 17, E.G. is

represented by and appears in this action through her mother and natural guardian, Mrs. Gaffney. E.G. has received insurance through TRICARE for her entire life. She has received medical care in many places, including Virginia and Florida. TRICARE possesses E.G.'s most sensitive personal information and medical information, which, pursuant to Federal law, Defendants were required to keep confidential. As a result of Defendants' unlawful conduct, E.G.'s medical information and personal information, including her Social Security number, have been exposed, putting her at risk of identity theft. E.G. has suffered emotional upset as a result of the invasion of her privacy.

11. Plaintiff Adrienne Taylor ("Mrs. Taylor") is an Air Force veteran and is the spouse of a member of the armed services. Both Mrs. Taylor and her spouse served in Operation Desert Storm. Mrs. Taylor has received insurance through TRICARE since approximately 1979. She and her family have lived in and received medical treatment in many locations since 1992, including: South Carolina, Georgia, Arizona, Wyoming, New Jersey and the United Kingdom. She has undergone medical procedures in San Antonio, Texas while insured through TRICARE. TRICARE possesses Mrs. Taylor's most sensitive personal information and medical information, which, pursuant to Federal law, Defendants were required to keep confidential. As a result of Defendants' unlawful conduct, Mrs. Taylor's medical information and personal information, including her Social Security number, have been exposed, putting her at risk of identity theft. To combat such risk, Mrs. Taylor has incurred an economic loss as a result of having to purchase a credit monitoring service to alert her to potential misappropriation of her identity. Mrs. Taylor has also suffered emotional upset as a result of the invasion of her privacy.

## **DEFENDANTS**

12. Defendant TRICARE is an agency within the Military Health System, the fully integrated healthcare system of the DOD, and is therefore an “agency” for purposes of the Privacy Act. TRICARE provides health-care coverage for medical services, medication, and dental care for military personnel, families, retirees and their survivors. TRICARE is entrusted with highly confidential medical and personal records of millions of members of the armed services and their families.

13. Defendant DOD is an executive department of the federal government and is, therefore, an “agency” for purposes of the Privacy Act. Defendant DOD is entrusted with highly confidential and personal records of millions of citizens who bravely serve our country, as well as their families’ records.

14. Defendant Leon E. Panetta (“Secretary”), in his Official Capacity as Secretary of the DOD, is the official responsible for the proper execution and administration of all laws administered by the DOD and for the control, direction, and management of the DOD.

## **STATEMENT OF THE FACTS**

15. On September 13, 2011, improperly encrypted and/or unencrypted computer tapes containing highly confidential personal and medical information for approximately 4,900,000 persons served by TRICARE (“Personal Information”) were taken from an unguarded car parked in a public location.

16. The Personal Information includes, but is not limited to, names, Social Security numbers, addresses, lab test information, diagnoses, treatment information, provider names, provider locations and other patient data.

17. The Personal Information includes information dated from 1992 through September 7, 2011.

18. The Personal Information was stolen from the car of an individual employed by Science Applications International Corporation ("SAIC"), a company contracted by TRICARE to transport the Personal Information.

19. The Personal Information was not properly encrypted. Shortly after the disclosure became public, a spokesman for SAIC publicly admitted that "the operating system used by the government facility to perform the backup onto the tape was not capable of encrypting data in a manner that was compliant with the relevant federal standard."

20. Upon information and belief, the Personal Information maintained on the computer tapes could be retrieved by the name of an individual or by an identifying number, symbol, or other identifying data assigned to an individual.

21. Sean Glynn, the Marketing Director of a data security firm, has publicly explained that it is unacceptable to leave a computer tape containing millions of health records unguarded in a SAIC employee's vehicle for an entire work day. Mr. Glynn has explained that the proper procedure for transporting such a large amount of sensitive data would require use of an armored car.

22. Upon information and belief, the SAIC employee from whose car Plaintiffs' personal information was stolen did not receive a security background check nor did he receive the requisite trainings mandated by federal law.

23. Upon information and belief, Defendants were made aware of the disclosure on or about September 14, 2011.

24. However, Defendants did not inform the victims of the disclosure until on or about September 29, 2011, more than two weeks later.

25. On or about September 29, 2011, TRICARE issued a press release and posted a statement on its website informing the public generally of the disclosure and promising to inform individual TRICARE insureds “within the next 6 weeks” as to whether their individual information was on the tapes.

26. TRICARE’s Operations Manual requires that TRICARE and its contractors “shall inform affected individuals whenever they become aware that protected personal information pertaining to a Service member, civilian employee, military retiree, family member, or another individual affiliated with the [DOD] has been lost, stolen, or compromised. Notification will take place as soon as possible, but not later than ten days after the loss or compromise of protected personal information is discovered.” (emphasis added).

27. Defendants’ actions and inactions in failing to report timely the unauthorized disclosure of the Personal Information were arbitrary, capricious and without observance of procedures required by law.

28. Defendant DOD has been repeatedly informed of recurring, systemic, and fundamental deficiencies in its information security, but has failed to effectively respond. Despite the repeated identification of problems, DOD has been unable or unwilling to properly secure the personal information under its control. These repeated failures to correct known vulnerabilities of DOD’s safeguards for Plaintiffs’ private information demonstrate a reckless disregard for TRICARE members’ privacy rights and intentional or willful violations of the Privacy Act.



29. TRICARE's Operations Manual sets forth numerous regulations, with which TRICARE does not comply, including, *inter alia*: that TRICARE will "adopt industry best practices of [electronic personal health information] technologies and management."

30. Upon information and belief, Defendants' policy failures include: (1) failing to properly encrypt computer tapes and other data; (2) providing untrained and/or improperly trained individuals with access to highly sensitive data and allowing those individuals to transport computer tapes and other data; and (3) routinely allowing individuals to transport highly confidential data without taking all precautions mandated by law, including some of the most basic and rudimentary precautions.

31. Defendants flagrantly disregarded Plaintiffs' privacy rights and harmed Plaintiffs by not obtaining prior written consent of Plaintiffs, or any individual, before disclosing the Personal Information to any other individual or government agency, as is required by the Privacy Act, the APA, the Health Information Portability and Accountability Act ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and other pertinent laws and regulations.

32. Defendants flagrantly disregarded Plaintiffs' privacy rights and harmed Plaintiffs by failing to observe the procedures required by law for disclosure of private information, including the Personal Information, without the prior written consent of the affected individuals.

33. Defendants flagrantly disregarded Plaintiffs' privacy rights and harmed Plaintiffs by disclosing, or allowing disclosure of, the Personal Information to individuals

who did not have a need for such records and information in the performance of their duties.

34. Defendants flagrantly disregarded Plaintiffs' privacy rights and harmed Plaintiffs by failing to keep or maintain an accurate accounting of the disclosures of the Personal Information.

35. Defendants flagrantly disregarded Plaintiffs' privacy rights and harmed Plaintiffs by failing to make reasonable efforts to assure that the Personal Information records were accurate, complete, timely, and relevant for Defendants' purposes prior to disseminating a record about an individual to any person other than an agency.

36. Defendants flagrantly disregarded Plaintiffs' privacy rights and harmed Plaintiffs by failing to establish or implement appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against anticipated threats to the records' security or integrity, which could harm any individual about whom information was maintained. Defendants' security deficiencies allowed, and continue to allow, a single individual to disclose and/or compromise the personal information of millions of citizens. Defendants' unwillingness or inability to establish and maintain requisite information security is an abuse of discretion and an intentional and willful failure to observe procedures required by law.

37. Defendants flagrantly disregarded Plaintiffs' privacy rights and harmed Plaintiffs by failing to inform Plaintiffs of the loss of their security information within the ten-day period mandated by Defendants' own regulations. This lack of timely disclosure increased the risk of identity and credit theft, and has forced millions to take actions to protect themselves.

38. Defendant Secretary was ultimately responsible for control, direction, and management of the DOD's processes, policies, and procedures for compliance with the Privacy Act, but failed to ensure that those processes, policies, and procedures were adequately followed by his subordinates. Defendant Secretary knew, or should have known, that DOD had long-standing information security deficiencies that threatened Plaintiffs' privacy rights, but failed to ensure correction or mitigation of those deficiencies.

39. Defendant Secretary flagrantly disregarded Plaintiffs' privacy rights and harmed Plaintiffs by failing to establish and ensure lawful compliance by his subordinates with appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against anticipated threats to the records' security or integrity, which could result in substantial harm to any individual whose information was maintained.

40. Each of Defendants' failures complained of herein caused Plaintiffs adverse effects including, but not limited to, mental distress, emotional trauma, inconvenience, loss of peace of mind, embarrassment, pecuniary damages and the threat of current and future harm from identity theft.

41. The real threat of identity theft and similar adverse effects of the Defendants' unlawful actions and inactions requires affirmative actions by Plaintiffs to recover peace of mind, emotional stability, and personal security, including, but not limited to: purchasing credit reporting services; frequently obtaining and reviewing credit reports, bank statements, and other similar information; and, closing or modifying

financial accounts. Plaintiffs have, and will continue to, suffer tangible and intangible damages for the foreseeable future.

42. As a direct result of the Defendants' failures, named plaintiffs Mrs. Gaffney and Mrs. Taylor have purchased credit monitoring services to safeguard the financial identity of themselves and their families.

43. In addition to the pecuniary loss caused by purchasing a credit monitoring service, all of the Plaintiffs have suffered emotional harm from the disclosure of their private medical histories, as well as their Social Security numbers and other information that Defendants were legally obligated to keep private.

44. Indeed, victims and potential victims of identity theft spend hundreds of hours in personal time and hundreds of dollars in personal funds to resolve their credit issues. See [www.ftc.org](http://www.ftc.org); [www.fightidentitytheft.com](http://www.fightidentitytheft.com).

#### **CLASS ACTION ALLEGATIONS**

45. This action is maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a), (b)(1)-(3).

46. The class consists of all persons who have been adversely affected by Defendants' APA and/or Privacy Act violations.

47. The class is so numerous that joinder of all members is impracticable. The class size exceeds 4,900,000 people, which is the number of individuals whose information Defendants admit was collected and maintained in the missing records.

48. Joinder of class members' individual actions is impractical because of the geographical diversity of class members, the limited ability of individual class members

to institute separate suits, and the general nature of the underlying action and relief sought.

49. Class representatives' counsel are appropriately qualified to represent the class.

50. There are substantial questions of fact and law common to all class members. The legal issues are limited to violations of the APA and the Privacy Act. The factual issues relating to Defendants' violations of legal requirements are common to all class members. Similarly, the relief Plaintiffs seek is dominated by equitable remedies. The facts, circumstances, and merits of the case, therefore, apply equally to all class members.

51. The claims of the representative Plaintiffs are typical of the claims of the class members. Representative Plaintiffs are military personnel and/or family members who have had their personal information improperly maintained and disclosed by Defendants.

52. The representative Plaintiffs will fairly and adequately protect the interests of the class. The representative Plaintiffs' claims span the breadth of issues raised in this action.

53. Defendants have acted and refused to act on grounds generally applicable to the class, making appropriate final injunctive and declaratory relief with respect to the class as a whole.

54. The prosecution of separate actions by individual class members would create a risk of inconsistent results that could establish incompatible standards of conduct for Defendants.

55. Defendants' liability for damages can be established by facts and circumstances common to the class as a whole and does not require the examination of the Plaintiffs' individual circumstances.

56. Questions of law and fact common to members of the class predominate over any questions affecting only individual members.

57. A class action is superior in this case to other methods for a fair and efficient adjudication of the controversy because: (A) the common interests of the class members predominate over any individual interest in controlling prosecution or control of separate actions; (B) no similar litigation concerning the controversy is known to have been commenced by members of the class; (C) concentrating litigation of this action in this Court is appropriate to ensure appropriate, consistent, and efficient resolution of the issues raised in the district where the offending conduct occurred, continues to occur, and could occur in the future; and (D) the difficulties in managing an action involving this class are significantly reduced by existing databases of potential class members prepared by the government.

#### **FIRST CLAIM FOR RELIEF**

##### **Violation of the Administrative Procedures Act, 5 U.S.C. § 706 et seq.**

58. Plaintiffs reassert their allegations set forth in Paragraphs (1) through (57) above and incorporate them by reference into this first Claim of Relief.

59. Defendant DOD and Defendant TRICARE possess and are charged with maintaining the privacy of personal information of Plaintiffs and millions of other citizens. DOD and TRICARE have repeatedly demonstrated an inability or unwillingness to implement, or callous disregard for, fundamental procedures to provide

minimally acceptable safeguards to prevent against the disclosure of the personal and private information in their possession.

60. Defendant Secretary is ultimately responsible in his official capacity for safeguarding citizens' private information under DOD control pursuant to applicable laws, including the Privacy Act and the APA, but has been unable or unwilling to require or ensure compliance with those laws.

61. Defendants' actions and inactions in failing to safeguard Plaintiffs' private information were willful, reckless, arbitrary, capricious, and otherwise not in accordance with law.

62. Plaintiffs have suffered, and continue to suffer, harm as a proximate result of Defendants' actions, inactions and delays.

63. Plaintiffs are entitled to equitable relief for Defendants' violation of Plaintiffs' rights pursuant to the APA.

## **SECOND CLAIM FOR RELIEF**

### **Violation of the Privacy Act of 1974, 5 U.S.C. § 552a et seq.**

64. Plaintiffs reassert their allegations set forth in Paragraphs (1) through (57) above and incorporate them by reference into this Second Claim for Relief.

65. All Defendants violated the Privacy Act.

66. Each of Defendants' violations of the Privacy Act was intentional and/or willful.

67. Each of Defendants' Privacy Act violations proximately caused Plaintiffs adverse effects.

68. Defendants' unauthorized disclosure of individuals' medical records, names, addresses, and phone numbers linked to their Social Security numbers has, in particular, placed each Plaintiff in legitimate fear of identity theft, corruption of their credit files and plundering of bank accounts and retirement funds. It has also resulted in the disclosure of private personal information concerning each Plaintiff's health and medical care.

69. Plaintiffs have suffered actual damages as a result of Defendants' Privacy Act violations.

70. Plaintiffs are entitled to monetary relief and the costs of this action, together with reasonable costs and attorneys fees.

### **THIRD CLAIM FOR RELIEF**

#### **Declaratory Relief Pursuant to 28 U.S.C. §§ 2201 *et seq.***

71. Plaintiffs reassert their allegations set forth in Paragraphs (1) through (57) above and incorporate them by reference into this Third Claim of Relief.

72. An actual, justiciable controversy, over which this Court has jurisdiction, has arisen and now exists between the parties relating to the legal rights and duties of Plaintiffs and Defendants for which Plaintiffs desire a declaration of rights. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment pursuant to 28 U.S.C. § 2201.

73. A declaratory judgment is necessary to determine Plaintiffs' rights in connection with Defendants' maintenance of Plaintiffs' private and personal information.



**PRAYER FOR RELIEF**

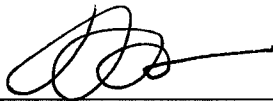
WHEREFORE, Plaintiffs pray as follows:

- (a) That this Court permanently enjoin Defendant DOD and Defendant TRICARE from transporting any confidential records by any non-secure means, including by unprotected cars;
- (b) That this Court permanently enjoin Defendant DOD and Defendant TRICARE from transporting any confidential records off of government property unless the records are fully and properly encrypted;
- (c) That this Court order all Defendants to immediately identify all victims of the disclosure of Personal Information and to immediately inform the victims as to what information may have been disclosed and to whom;
- (d) That this Court order all Defendants to set up proper systems and procedures so that, in the event Defendants again fail to maintain the privacy of personal information entrusted to them, Defendants will have effective mechanisms in place to promptly identify all victims of disclosures and to promptly provide the victims with pertinent information regarding any disclosures;
- (e) That this Court order all Defendants to ensure that victims of disclosure of Personal Information are provided with all services necessary to reduce the damage caused by the disclosure, including free credit monitoring and assistance with any credit-related or emotional harm and reimbursement to those who have already purchased credit monitoring services;

- (f) That this Court permanently enjoin Defendant DOD and Defendant TRICARE, their officers, agents, employees, and those acting for and with them, from in any way transferring any record or system of records subject to Privacy Act's requirements until an independent panel of experts finds that adequate information security has been established and implemented by the DOD and TRICARE, unless such activity is explicitly allowed by Court Order and under supervision of persons independent of the DOD and TRICARE;
- (g) That this Court permanently enjoin Defendants from allowing SAIC to access or transport any confidential information until an independent panel of experts finds that adequate information security has been established and implemented by SAIC;
- (h) That this Court grant to Plaintiffs judgment against Defendant DOD and Defendant TRICARE for damages in an amount of \$1,000.00 for each individual who was adversely affected by Defendant's Privacy Act violations;
- (i) That this Court issue a declaratory judgment that Defendants violated, and continue to violate, Plaintiffs' rights under the APA and the Privacy Act;
- (j) That this Court grant to Plaintiffs their costs and reasonable attorney's fees; and
- (k) That this Court grant such additional relief as the Court deems proper and just.

Dated: October 11, 2011

Respectfully submitted,



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