

Michael Fuller, OSB No. 09357

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Lead Trial Attorney for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JEFF SMITH,

Case No. 3:18-cv-291

Plaintiff,

COMPLAINT

v.

Unlawful Trade Practices Act
Negligent Data Breach

**RURAL CELLULAR
CORPORATION dba
VERIZON WIRELESS,**

Demand for Jury Trial

Defendant.

1.

JURISDICTION AND THE PARTIES

This Court has jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

2.

Plaintiff Jeff Smith is an individual living in Clackamas County, Oregon and a “person” as defined by the Oregon Unlawful Trade Practices Act (UTPA) at ORS 646.605(4).

3.

Defendant Rural Cellular Corporation dba Verizon Wireless (Verizon) is a Minnesota corporation and a “person” as defined by the UTPA at ORS 646.605(4).

4.

This complaint’s allegations are based on personal knowledge as to plaintiff’s conduct and made on information and belief as to the acts of others.

5.

FACTUAL ALLEGATIONS

In the regular course of its business, Verizon advertised and sold its wireless devices and services to plaintiff for personal, family use. Verizon advertised that plaintiff could use its devices and services to store personal photos that he could “cherish for a lifetime.” Verizon certified that its products and services were “protected” on its “secure servers” and advertised that plaintiff could control access to his photos with a personal passcode.

6.

On February 8, 2018, plaintiff discovered for the first time that Verizon's advertisements about the security quality of its devices and services was false. Despite assurances from Verizon that his personal photos would be protected on its secure servers and devices, Verizon negligently breached plaintiff's privacy by exposing his personal photos to at least one other customer without his permission. Among the personal information stored on plaintiff's device that Verizon negligently exposed was private photos of plaintiff's family, including photos of his child and infant nephew. Also exposed were intimate photos of plaintiff's fiancé, including photos of plaintiff's fiancé topless, and photos of plaintiff's fiancé's vagina.

7.

The Verizon customer who was provided access to plaintiff's personal photos was ultimately able to identify plaintiff, and called plaintiff to let him know about Verizon's data breach.

8.

Upon learning of the data breach, plaintiff immediately went to the Verizon branch office in Molalla, Oregon. Plaintiff had hoped to resolve the issue outside of court but he was told by Verizon's agent that nothing could be done unless plaintiff hired a "big shot lawyer" to try to take on Verizon.

9.

CAUSES OF ACTION

Claim One – Violation of the UTPA

Plaintiff would have never paid for Verizon's wireless devices and services had Verizon not made false representations to plaintiff about the security characteristics and qualities of its wireless devices and services. Verizon's behavior as alleged in this complaint willfully and maliciously violated the UTPA, ORS 646.608(1)(b), (e), and (g), causing plaintiff the ascertainable loss of his purchase price. Under ORS 646.638, plaintiff requests actual damages or statutory damages, punitive damages, and reimbursed fees and costs from Verizon.

10.

Claim Two – Negligent Data Breach

Verizon had a duty to protect plaintiff's personal photos on its wireless devices and services from unauthorized access. Plaintiff had a legally protected interest in the security of his personal photos. Plaintiff's protected privacy interests were of sufficient importance as a matter of policy to merit protection from the emotional impact of having his photos negligently exposed to unauthorized third parties.

11.

Based on plaintiff's special relationship with Verizon, and Verizon's encouragement that plaintiff rely on the security of its devices and services to store his most cherished photos, Verizon could foresee that exposure of plaintiff's personal photos would likely cause plaintiff significant harm. Verizon negligently and recklessly breached its duty to plaintiff by exposing his personal photos to at least one other customer without his permission. Verizon's data breach as alleged in this complaint directly caused plaintiff severe ongoing feelings of invasion of privacy, shock, horror, and paralyzed his family with anxiety.

12.

JURY TRIAL DEMAND

Plaintiff is entitled to and so respectfully demands a trial by jury.

PRAYER FOR RELIEF

After a stipulation or determination that Verizon willfully and maliciously violated the UTPA and negligently harmed plaintiff through its data breach as alleged in this complaint, plaintiff prays for judgment against Verizon for actual damages and punitive damages in amounts to be decided by the jury not to exceed \$4 million, and for reimbursed fees and costs in an amount to be decided by the Court.

February 14, 2018

RESPECTFULLY FILED,

s/ Michael Fuller

Michael Fuller, OSB No. 09357

Lead Trial Attorney for Plaintiff

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PROOF OF MAILING

Under ORS 124.100(6), I declare and certify that on the date below I caused a copy of this complaint to be mailed to the Oregon Attorney General at the following address:

**Ellen Rosenblum
Oregon Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096**

February 14, 2018

RESPECTFULLY SERVED,

s/ Michael Fuller
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