

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MAINE**

|   |   |                                 |
|---|---|---------------------------------|
| <b>GREG DOHERTY, on behalf of himself</b> | ) |                                 |
| <b>and all others similarly situated,</b> | ) | <b>Case No.</b>                 |
|   | ) |                                 |
| <b>Plaintiff</b>                          | ) |                                 |
|   | ) | <b>COMPLAINT - CLASS ACTION</b> |
| <b>v.</b>                                 | ) |                                 |
|   | ) |                                 |
| <b>HANNAFORD BROS., CO.</b>               | ) |                                 |
|   | ) |                                 |
| <b>Defendant</b>                          | ) |                                 |

**PLAINTIFF’S CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Greg Doherty hereby brings this class action suit against Hannaford Bros. Co. (“Hannaford” or the “Company”). Plaintiff makes the following allegations, except as to allegations specifically pertaining to Plaintiff and Plaintiff’s counsel, based upon the investigation undertaken by Plaintiff’s counsel, which included, *inter alia*, review and analysis of Defendant’s website and various news articles.

**NATURE OF THIS ACTION**

1. Plaintiff brings this class action suit on his own behalf and on behalf of all other persons or entities in the United States against Hannaford to redress its failure to adequately safeguard certain credit card and debit card information. More specifically, this action arises from Defendant’s failure to maintain adequate computer data security of customer credit and debit card data, which was accessed and stolen by a computer hacker. As a result of Defendant’s wrongful actions, customer information was stolen from Hannaford’s computer network that handles a wide range of financial information for millions of customers, including credit cards

and debit cards linked to checking accounts. Because of Defendant's actions, millions of its customers have had their personal financial information compromised, have had their privacy rights violated, have been exposed to the risk of fraud, and have otherwise suffered damages.

### **JURISDICTION AND VENUE**

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1332(d), as the matter in controversy exceeds \$5 million, at least one plaintiff has diverse citizenship from at least one Defendant, and there are more than 100 class members.

3. Venue properly lies in this District pursuant to 28 U.S.C. §1391(a)(2), since the cause of action arose in this District, and the unlawful conduct of Defendant, out of which the cause of action arose, took place in this District.

### **PARTIES**

4. Plaintiff Greg Doherty resides in Massachusetts. Plaintiff shopped at a Hannaford store, using his debit card, in January 2008.

5. Defendant Hannaford maintains its headquarters at 145 Pleasant Hill Road, Scarborough, ME, 04074. Hannaford is a multi-regional food retailer with supermarkets located throughout Maine, New England, New Hampshire, Vermont, Massachusetts, New York, Florida and other states. The stores are operated primarily under the names of Shop 'N Save and Hannaford.

### **OPERATIVE FACTS**

6. On March 17, 2008, Hannaford first publicly announced that it had been hit by a wide-reaching security breach that has left millions of its customers exposed to the risk of fraud from transactions that date back to at least December 2007.

7. More specifically, on March 17, 2008, Hannaford announced a security breach that led to thefts of customer credit and debit card numbers for more than 270 of its stores. The security breach affected all of its 165 stores in New England and New York, 106 Sweetbay stores in Florida, and a smaller number of independent grocers that sell Hannaford products.

8. According to various news reports, Hannaford estimates that the number of credit and debit card numbers exposed to fraud is 4.2 million. There have been approximately 1,800 cases of reported credit or debit card fraud related to the security breach.

9. The Company says that credit and debit card numbers were stolen during the card authorization transmission process.

10. Reportedly, the security breach began several months ago, on December 7, 2007, but was not contained until March 10, 2007. Hannaford's pending investigation may reveal that the breach occurred even prior to December 2007, as currently reported. Thus, customer transactions were exposed for at least a three month period, and those customers are at risk of credit and debit card fraud.

11. The three month delay in detecting the breach casts doubt on Hannaford's intrusion detection procedures and system monitoring controls.

12. Hannaford says that it first became aware of unusual credit card activity on February 27, 2008. However, Hannaford did not publicly announce the breach until almost three weeks later, on March 17, 2008.

13. On information and belief, the Company violated applicable card-industry rules, including, among other things, Payment Card Industry (PCI) Data Security Standards.

14. According to an article in *SC Magazine* on March 18, 2008:

Some experts on Tuesday suggested the Scarborough, Maine-based company may have fallen victim to a number of security shortfalls, including lacking the proper monitoring solutions, failing to encrypt internal network traffic flowing between store and processor, and running point-of-sales systems that were open to attack.

Michael Dahn, chief technology officer of The Aegenis Group, which trains merchants in PCI security, said the compromise likely resulted from insecure wireless connections or remote access deficiencies. . . .

Still others did not rule out the possibility of an insider attack being the cause of the Hannaford compromise.

Either way, Hannaford Bros . . . likely fell out of compliance with PCI-DSS, experts said.

15. Other reports indicated that Hannaford may have failed to encrypt cardholder data during transmission of card authorization, which would violate card-industry rules.

16. According to *The Wall Street Journal* on March 18, 2008:

People familiar with the investigation say evidence of unauthorized uses of card data have surfaced in Houston, Detroit, San Francisco, France, and Brazil.

. . . .

. . . [T]he U.S. Secret Service is investigating the possibility that data - including PIN numbers and expiration dates contained on credit cards - were compromised, people familiar with the investigation say. The data enable anyone, including unauthorized users, to make purchases with the card online.

. . . .

A person familiar with the inquiry said investigators are looking into the possibility that the breach occurred in Hannaford's wireless system for transmitting data between the card-swiping machine and a computer server. Security experts have identified wireless transmissions as a particular vulnerability for retailers.

17. The Company is urging its customers to monitor their credit and debit cards for

unusual transactions, and to report problems to the appropriate authorities.

18. The Massachusetts Bankers Association said one-third of its 200 member banks have been contacted by Visa and MasterCard about the breach.

19. The Maine Bankers Association has sent an advisory to member banks on March 14, 2008 after learning of the breach. A spokesman for that Association has criticized Hannaford's delay in notifying the public of the breach.

20. Similarly, a spokesperson for the San Diego-based consumer advocacy organization Privacy Rights Clearinghouse, stated that the delay in disclosure "puts consumers in a difficult position because they have no way of knowing whether their accounts may have been impacted or not."

21. According to Hannaford's President and Chief Executive Officer, Ronald C. Hodge, after the breach occurred, the Company has "taken aggressive steps to augment our network security capabilities." The Company did not specify the nature of the augmentation.

22. On January 25, 2008, Plaintiff Doherty shopped at a Hannaford store located in Quincy, Massachusetts. He purchased \$88.15 worth of goods, using his debit card.

23. As a result of Hannaford's actions, Plaintiff has had his privacy rights violated, has been exposed to the risk of fraud, and has suffered other damages. Plaintiff has spent, and/or will continue to spend, considerable time to monitor his accounts and/or credit history for fraudulent activity in seeking to prevent or undo any harm.

#### **CLASS ACTION ALLEGATIONS**

24. Plaintiff brings this class action, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of himself and all others similarly situated, consisting of all persons or

entities in the United States who shopped at a Hannaford store between December 7, 2007 through March 10, 2008, have been exposed to the risk of fraud as a result of Hannaford's security breach, and who were damaged thereby (the "Class"). The Class does not include Defendant, or its officers, directors, agents, or employees.

25. The Class consists of millions of customers of Hannaford's stores located throughout New England and the United States. While the exact number of Class members and the identities of individual Class members are unknown at this time, and can only be ascertained through appropriate discovery, based on the fact that hundreds of thousands of customer accounts have already been affected, the Class is so numerous that joinder of all Class members is impracticable.

26. Defendant's conduct affected all Class members in the same way. Defendant's conduct in failing to properly safeguard customers' financial data and in failing to notify customers of the security breach as soon as practical after the breach was discovered is uniform among the Class.

27. Questions of law and fact common to all Class members predominate over any questions affecting only individual members. Such questions of law and fact common to the Class include:

- a. whether Defendant acted wrongfully by failing to properly safeguard customers' financial data;
- b. whether Defendant failed to notify Class members of the security breach as soon as practical after the breach was discovered; and
- c. whether Plaintiff and the Class have been damaged, and, if so, what is the

appropriate relief as to each member of the Class.

28. Plaintiff's claims, as described herein, are typical of the claims of all Class members, as the claims of Plaintiff and all Class members arise from the same set of facts regarding Defendant's failure to protect Class members' financial data. Plaintiff maintains no interests that are antagonistic to the interests of other Class members.

29. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions of this type. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

30. This class action is a fair and efficient method of adjudicating the claims of Plaintiff and the Class for the following reasons:

a. common questions of law and fact predominate over any question affecting any individual Class member;

b. the prosecution of separate actions by individual members of the Class would likely create a risk of inconsistent or varying adjudications with respect to individual members of the Class thereby establishing incompatible standards of conduct for Defendant or would allow some Class members' claims to adversely affect other Class members' ability to protect their interests;

c. this forum is appropriate for litigation of this action since the cause of action arose in this District;

d. Plaintiff anticipates no difficulty in the management of this litigation as a class action; and

e. the Class is readily definable, and prosecution as a class action will eliminate the possibility of repetitious litigation, while also providing redress for claims that may be too small to support the expense of individual, complex litigation.

31. For these reasons, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**COUNT I**  
**NEGLIGENCE**

32. Plaintiff repeats and re-alleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

33. Defendant Hannaford assumed a duty to use reasonable care to keep the credit card and debit card information of the Class that is, or was, in its possession and control private and secure. By its acts and omissions described herein, Hannaford unlawfully breached this duty. The Class was damaged thereby.

34. The private financial information of the Class that was compromised by the breach of Hannaford's security included, without limitation, information that was being inadequately safeguarded in violation of, among other things, industry rules and regulations, including but not limited to Payment Card Industry (PCI) Data Security Standards. Those rules and regulations created a duty of reasonable care and a standard of care that was breached by Hannaford.

35. The breach of security was a direct and proximate result of Defendant's failure to use reasonable care to implement and maintain appropriate security procedures reasonably designed to protect the credit and debit card information of the Class. This breach of security

and unauthorized access to the private nonpublic information of the Class was reasonably foreseeable.

36. Defendant was in a special fiduciary relationship with the Class by reason of its entrustment with credit and debit card information. By reason of this fiduciary relationship, Defendant had a duty of care to use reasonable means to keep the credit and debit card information of the Class private and secure. Defendant also had a duty to inform Class members in a timely manner when their credit and debit card information became compromised. Defendant unlawfully breached these duties.

37. Pursuant to Class members' rights to privacy, Defendant had a duty to use reasonable care to prevent the unauthorized access, use, or dissemination of the credit and debit card information and other nonpublic information. Defendant unlawfully breached this duty.

38. The compromise of the Class' nonpublic information, and the resulting burden, fear, anxiety, emotional distress, loss of time spent seeking to prevent or undo any further harm, and other economic and non-economic damages to the Class, were the direct and proximate result of Defendant's violations of its duty of care.

39. Defendant had a duty to timely disclose the data compromise to all customers whose credit and debit card information was, or was reasonably believed to have been, accessed by unauthorized persons. Disclosure was required so that, among other things, the affected customers could take appropriate measures to avoid unauthorized charges on their accounts, cancel or change account numbers on the compromised cards, and monitor their account information and credit reports for fraudulent activity. Defendant breached this duty by failing to notify Class members in a timely manner that their information was compromised. Class

members were harmed by Defendant's delay because, among other things, fraudulent charges have been made to Class members' accounts.

40. Defendant knew or should have known that its network for processing and storing credit and debit card transactions information had security vulnerabilities. Defendant was negligent in continuing such data processing in light of those vulnerabilities and the sensitivity of the data.

41. As a direct and proximate result of Defendant's conduct, the Class suffered damages including, but not limited to, loss of control of their credit and debit cards, and debit and credit card information; monetary loss for fraudulent charges incurred on their accounts; fear and apprehension of fraud, and loss of money; the burden and cost of credit monitoring to monitor their accounts and credit history; the burden and cost of closing compromised accounts and opening new accounts; the burden of closely scrutinizing credit card statements for unauthorized transactions; damage to their credit history; loss of privacy; and other economic and non-economic damages.

**COUNT II**  
**BREACH OF IMPLIED CONTRACTS**

42. Plaintiff repeats and re-alleges the allegations contained in the foregoing paragraphs as if fully set forth herein.

43. When providing financial information to Hannaford in order to transact business at Hannaford's stores, Plaintiff and the Class entered into implied contracts with Hannaford such that Hannaford would safeguard this information and notify them promptly of any and all theft of this information.

44. Without such implied contracts, customers (including Plaintiff and the Class) would not have used their financial information to transact business with Hannaford.

45. Hannaford breached these implied contracts, and, as a result of these breaches, Plaintiff and the Class have been harmed as alleged herein.

**PRAYER FOR RELIEF**

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

A. that this Court certify this action as a Class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), and appoint Plaintiff and his counsel to represent the Class;

B. that this Court enter judgment in favor of Plaintiff and the Class, and against Defendant under the legal theories alleged herein;

C. that this Court award damages under the common law theories alleged herein;

D. that this Court award injunctive relief, including the provision of credit monitoring and/or credit-card monitoring services for Plaintiff and the Class;

E. that this Court award injunctive relief, including the requirement that Defendant strengthen the security of its computer network used to process credit and debit card transactions;

F. that this Court award attorneys' fees, expenses, and costs of this suit;

G. that this Court award Plaintiff and the Class pre-judgment and post-judgment interest at the maximum rate allowable by law; and

H. that this Court award such other and further relief as it may deem just and appropriate.

**JURY TRIAL DEMAND**

Plaintiff, on behalf of himself and the Class, demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: March 19, 2008

s/ Sidney St. F. Thaxter

Sidney St. F. Thaxter  
CURTIS THAXTER STEVENS BRODER  
& MICOLEAU LLC  
One Canal Plaza, Suite 1000  
P.O. Box 7320  
Portland, Maine 04112-7320  
TEL: (207) 774-9000  
FAX: (207) 775-0612  
sthaxter@curtisthaxter.com

Sherrie R. Savett  
Michael T. Fantini  
Jon Lambiras  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
TEL: (215) 875-3000  
FAX: (215) 875-4636

Attorneys for plaintiff  
Greg Doherty, on behalf of himself  
and all others similarly situated