

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Billy Perry, <i>individually and on behalf of all others similarly situated</i>,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>Bay & Bay Transportation Services, Inc.,</p> <p style="text-align:center">Defendant.</p>	<p>Court File No. 22-cv-973 (JRT/ECW)</p> <p style="text-align:center">ANSWER AND AFFIRMATIVE DEFENSES</p>
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Defendant Bay & Bay Transportation Services, Inc. (“Bay & Bay”), by and through the undersigned counsel, hereby responds to Plaintiff Billy Perry’s (“Plaintiff”) Complaint. Bay & Bay denies each and every allegation or other statement within except as otherwise expressly admitted, qualified, or answered, including but not limited to the headings, images, and allegations made in footnotes and headings.

ANSWER

Bay & Bay answers the numbered paragraphs of the Complaint in correspondingly-numbered paragraphs below. In response to the unnumbered opening paragraph, Bay & Bay admits that Plaintiff purports to bring this action as a class action. However, Bay & Bay denies that this case may proceed as a class action against it and denies that Plaintiff may obtain damages, restitution, or injunctive relief on behalf of himself or a class. Bay & Bay lacks knowledge or information sufficient to form a belief

as to the truth of the remaining allegations of the unnumbered opening paragraph, and therefore denies same.

1. In response to Paragraph 1, Bay & Bay admits only that in or around November 2021, cybercriminals gained unauthorized access to portions of Bay & Bay's computer systems and that Plaintiff purports to bring this action as a class action as a result of that unauthorized access. Bay & Bay denies that this case may proceed as a class action against it and denies all other allegations in this paragraph.

2. Denied.

3. Denied.

4. In response to Paragraph 4, Bay & Bay admits only that Plaintiff purports to bring this action as a class action. Bay & Bay denies that this case may proceed as a class action against it and denies all other allegations in this paragraph.

5. Denied.

6. Denied.

7. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 7 and therefore denies the same.

8. Denied.

9. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 9 and therefore denies the same.

10. In response to Paragraph 10, Bay & Bay admits only that Plaintiff purports to bring this action as a class action. Bay & Bay denies that this case may proceed as a class action against it and denies all other allegations in this paragraph.

11. In response to Paragraph 11, Bay & Bay admits only that Plaintiff purports to seek remedies. Bay & Bay denies that Plaintiff is entitled to such remedies against it and denies all other allegations in this paragraph.

12. In response to Paragraph 12, Bay & Bay admits only that Plaintiff purports to bring this action as a class action. Bay & Bay denies that this case may proceed as a class action against it and denies all other allegations in this paragraph.

13. Paragraph 13 sets forth legal argument and/or assertions, to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

14. Paragraph 14 sets forth legal argument and/or assertions, to which no response is required. To the extent a response is deemed required, Bay & Bay admits only that it is incorporated in Minnesota, registered to do business in Minnesota, and does business in Minnesota. Bay & Bay denies all other allegations in this paragraph.

15. Paragraph 15 sets forth legal argument and/or assertions, to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

16. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 16 and therefore denies the same.

17. In response to Paragraph 17, Bay & Bay denies that Plaintiff applied for employment with Bay & Bay and that as a condition of employment, he was required to provide his Private Information to Bay & Bay. Bay & Bay lacks knowledge or

information sufficient to form a belief about the truth of the remaining allegations contained in this paragraph and therefore denies the same.

18. In response to Paragraph 18, Bay & Bay admits only that it is incorporated under the laws of the state of Minnesota and has its principal place of business in Eagan, Minnesota. Bay & Bay denies all other allegations in this paragraph and affirmatively states that it is a private, closely-held company.

19. Bay & Bay admits that it is a Minnesota-based, family-owned trucking company that offers logistics solutions to clients nationwide.

20. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 20 and therefore denies the same.

21. In response to Paragraph 21, Bay & Bay admits that, in order to fulfill all of its contractual and legal obligations in connection with employing any given individual, Bay & Bay must necessarily collect and maintain certain personal information of that individual. Bay & Bay specifically denies that it ever employed Plaintiff, or that Plaintiff ever applied for employment with Bay & Bay. Bay & Bay denies all other allegations in this paragraph.

22. In response to Paragraph 22, Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in this paragraph and therefore denies the same.

23. In response to Paragraph 23, Bay & Bay states that the website and policy speak for themselves and are the best evidence of their content. To the extent the

allegations in the allegations in this paragraph are inconsistent with the documents, Bay & Bay denies the same.

24. Admitted.

25. Denied.

26. In response to Paragraph 26, Bay & Bay states that the policy speaks for itself. To the extent the allegations in the allegations in this paragraph are inconsistent with the document, Bay & Bay denies the same.

27. Denied.

28. In response to Paragraph 28, Bay & Bay admits that, in order to fulfill all of its contractual and legal obligations in connection with employing any given individual, Bay & Bay must necessarily collect and maintain certain personal information of that individual. Bay & Bay specifically denies that it ever employed Plaintiff, or that Plaintiff ever applied for employment with Bay & Bay. Bay & Bay further specifically denies Plaintiff's characterization that the provision of personal information to facilitate employment is a "condition" of employment. Bay & Bay denies all other allegations in this paragraph.

29. Paragraph 29 sets forth legal argument and/or assertions, to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

30. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 30 and therefore denies the same.

31. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 31 and therefore denies the same.

32. Bay & Bay admits that it discovered suspicious activity on its IT systems on or about January 5, 2022, but denies all other allegations in this paragraph to the extent they relate to the article referenced in footnote 5.

33. In response to Paragraph 33, Bay & Bay admits only that it launched an investigation. Bay & Bay denies all other allegations in this paragraph.

34. Denied.

35. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 35 and therefore denies the same.

36. Denied.

37. Denied.

38. In response to Paragraph 38, Bay & Bay admits only that it had previously experienced a criminal cyberattack in 2018. Bay & Bay denies all other allegations in this paragraph.

39. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 39 and therefore denies the same.

40. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 40 and therefore denies the same.

41. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 41 and therefore denies the same.

42. Plaintiff's Complaint does not contain a Paragraph 42.¹

43. Plaintiff's Complaint does not contain a Paragraph 43.

44. Plaintiff's Complaint does not contain a Paragraph 44.

45. Plaintiff's Complaint does not contain a Paragraph 45.

46. Plaintiff's Complaint does not contain a Paragraph 46.

47. Plaintiff's Complaint does not contain a Paragraph 47.

48. Plaintiff's Complaint does not contain a Paragraph 48.

49. Plaintiff's Complaint does not contain a Paragraph 49.

50. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 50 and therefore denies the same.

51. In response to Paragraph 51, Bay & Bay states that the publication speaks for itself. To the extent the allegations in the allegations in this paragraph are inconsistent with the document, Bay & Bay denies the same.

52. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 52 and therefore denies the same.

53. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 53 and therefore denies the same.

54. Denied.

55. Denied.

56. Denied.

¹ Plaintiff's complaint does not contain paragraphs 42-49. To maintain consistence, Bay & Bay's answer follows Plaintiff's numbering.

57. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 57 and therefore denies the same.

58. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 58 and therefore denies the same.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 64 and therefore denies the same.

65. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 65 and therefore denies the same.

66. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 66 and therefore denies the same.

67. In response to Paragraph 67, Bay & Bay states that the document speaks for itself. To the extent the allegations in the allegations in this paragraph are inconsistent with the document, Bay & Bay denies the same.

68. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 68 and therefore denies the same.

69. In response to Paragraph 69, Bay & Bay states that the document speaks for itself. To the extent the allegations in the allegations in this paragraph are inconsistent with the document, Bay & Bay denies the same.

70. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 70 and therefore denies the same.

71. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 71 and therefore denies the same.

72. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 72 and therefore denies the same.

73. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 73 and therefore denies the same.

74. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 74 and therefore denies the same.

75. In response to Paragraph 75, Bay & Bay states that the document speaks for itself. To the extent the allegations in the allegations in this paragraph are inconsistent with the document, Bay & Bay denies the same.

76. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 76 and therefore denies the same.

77. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 77 and therefore denies the same.

78. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 78 and therefore denies the same.

79. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 79 and therefore denies the same.

80. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 80 and therefore denies the same.

81. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 81 and therefore denies the same.

82. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 82 and therefore denies the same.

83. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 83 and therefore denies the same.

84. Denied.

85. Denied.

86. In response to Paragraph 86, Bay & Bay admits that Plaintiff was sent a notification letter regarding the security incident. Bay & Bay further answers that the letter speaks for itself. To the extent the allegations in the allegations in this paragraph are inconsistent with the document, Bay & Bay denies the same. Bay & Bay specifically denies that it informed Plaintiff that his Private Information was stolen by cyberthieves. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of all other allegations contained in this paragraph and therefore denies the same.

87. Denied.

88. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 88 and therefore denies the same.

89. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 89 and therefore denies the same.

90. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 90 and therefore denies the same.

91. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 91 and therefore denies the same.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 100 and therefore denies the same.

101. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 100 and therefore denies the same.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 109 and therefore denies the same.

110. Denied.

111. Denied.

112. Denied.

113. In response to Paragraph 113, Bay & Bay admits only that Plaintiff purports to bring this action as a class action. Bay & Bay denies that this case may proceed as a class action against it and denies any other allegations in this paragraph.

114. Paragraph 114 sets forth Plaintiff's proposed class definition, to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

115. Paragraph 115 sets forth Plaintiff's proposed class definition, to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

116. Paragraph 116 sets forth Plaintiff's proposed class definition, to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

117. Paragraph 117 purports to set forth a reservation of rights to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

118. Paragraph 118 sets forth legal conclusions to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

119. Paragraph 119 sets forth legal conclusions to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

120. Paragraph 120 sets forth legal conclusions to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

121. Paragraph 121 sets forth legal conclusions to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

122. Paragraph 122 sets forth legal conclusions to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

123. Paragraph 123 sets forth legal conclusions to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations.

124. Plaintiff's Complaint contains two separate, consecutive paragraphs both numbered 124. The first Paragraph 124 sets forth legal conclusions to which no response is required. To the extent a response is deemed required, Bay & Bay denies the allegations. The second Paragraph 124 is a summary paragraph that merely incorporates prior paragraphs, and no response is required. To the extent a response is deemed required, Bay & Bay incorporates by reference all answers set forth above.

125. In response to Paragraph 125, Bay & Bay admits that, in order to fulfill all of its contractual and legal obligations in connection with employing any given individual, Bay & Bay must necessarily collect and maintain certain personal information of that individual. Bay & Bay specifically denies that it ever employed Plaintiff, or that Plaintiff ever applied for employment with Bay & Bay. Bay & Bay denies all other allegations in this paragraph.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

135. Paragraph 135 is a summary paragraph that merely incorporates prior paragraphs, and no response is required. To the extent a response is deemed required, Bay & Bay incorporates by reference all answers set forth above.

136. Denied.

137. Denied.

138. Bay & Bay lacks knowledge or information sufficient to form a belief about the truth of the allegations regarding the FTC's actions contained in Paragraph 138 and therefore denies the same. Bay & Bay denies all other allegations in this paragraph.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Paragraph 144 is a summary paragraph that merely incorporates prior paragraphs, and no response is required. To the extent a response is deemed required, Bay & Bay incorporates by reference all answers set forth above.

145. In response to Paragraph 145, Bay & Bay admits that, in order to fulfill all of its contractual and legal obligations in connection with employing any given individual, Bay & Bay must necessarily collect and maintain certain personal information of that individual. Bay & Bay specifically denies that it ever employed Plaintiff, or that Plaintiff ever applied for employment with Bay & Bay. Bay & Bay denies all other allegations in this paragraph.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

Bay & Bay denies that Plaintiff or any putative class members are entitled to any relief, including any of the relief set forth in the “Prayer for Relief” section of the Complaint. Plaintiff sets forth a demand for a jury trial, to which no response is required.

DEFENSES AND AFFIRMATIVE DEFENSES

Bay & Bay states the following defenses to Plaintiff’s² claims.

1. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

2. The Complaint fails, in whole or in part, to state a claim upon which damages can be awarded.

3. The Complaint fails, in whole or in part, to state a claim upon which declaratory or injunctive relief can be awarded.

4. Plaintiff’s claims may be barred, in whole or in part, because some or all damages Plaintiff claims to have suffered, which Bay & Bay expressly denies, were caused, aggravated, or contributed to by Plaintiff’s own conduct, negligence, and/or failure to act.

5. Plaintiff’s claims may be barred, in whole or in part, because any damages Plaintiff claims to have suffered, which Bay & Bay expressly denies, were not caused by any alleged acts or omissions by Bay & Bay, but instead were caused by the acts or

² All references to “Plaintiff” in the Defenses and Affirmative Defenses Section necessarily include opt-in plaintiffs and members of the putative class, collective, and aggrieved groups that Plaintiffs purport to represent.

omissions of third parties over which Bay & Bay has no responsibility and does not control.

6. This action is not properly maintained as a class under either Minn. R. Civ. P. 23 or Fed. R. Civ. P. 23. Plaintiff cannot show numerosity, typicality, common questions of law or fact, policies or practices applicable to all proposed class members, and neither Plaintiff nor his counsel adequately protects the interest of the proposed class members. Plaintiff also asserts claims on behalf of class members who he may not represent. Plaintiff also cannot establish that he is similarly situated to any other members of the purported classes with respect to any alleged wrongs.

7. Certification of this action as a class and/or collective action would constitute a denial of Bay & Bay's due process rights in violation of the United States and/or Minnesota Constitutions.

8. The types of claims alleged by Plaintiff on behalf of himself and the alleged classes, the existence of which is expressly denied, and the unique defenses thereto, are matters in which individual questions predominate and therefore are not appropriate for class treatment.

9. Certain of the interests of the proposed class of Plaintiffs are in conflict with the interest of all or certain sub-groups of the members of the alleged classes of persons whom Plaintiff purports to represent, the existence of which is expressly denied.

10. Plaintiff's claims are barred to the extent they seek to pursue claims for which there is no private right of action under applicable state or federal law.

11. Plaintiff's claims may be barred, in whole or in part, by the doctrines of accord and satisfaction, consent, estoppel, unclean hands, waiver, release, payment, laches, and/or other equitable defenses.

12. Plaintiff's claims may be barred, in whole or in part, by Plaintiffs' failure to mitigate alleged damages or injuries, if any.

13. Plaintiff's claims may be barred, in whole or in part, because Plaintiffs have an adequate remedy at law.

14. Plaintiff's claims may be barred, in whole or in part, because Plaintiff lacks standing.

15. Plaintiff's claims may be barred, in whole or in part, to the extent the relief sought by Plaintiff is moot.

16. To the extent Plaintiff and/or members of the putative class, or anyone else who joins this lawsuit, petitioned for bankruptcy, yet failed to list a claim against Bay & Bay as a potential asset in their bankruptcy filings, such individuals are barred from pursuing their claim against Bay & Bay.

17. To the extent Plaintiff and/or members of the putative class, or anyone else who joins this lawsuit, sustained any damages, although such is specifically denied, Bay & Bay is entitled under the equitable doctrine of setoff and recoupment to offset all obligations of the Plaintiff and/or members of the putative class, or anyone else who joins this lawsuit owed to Bay & Bay against any judgment that may be entered against Bay & Bay.

18. As a separate alternative affirmative defense to Plaintiffs' Complaint, Bay & Bay alleges that the claims contained in Plaintiff's Complaint may be barred by any or all of the affirmative defenses contemplated by the Rules of Civil Procedure. The extent to which Plaintiff's claims may be barred by one or more of said defenses, not specifically set out above, cannot be determined until Bay & Bay has had an opportunity to complete discovery. Therefore, Bay & Bay incorporates all said affirmative defenses as if fully set forth herein.

19. Bay & Bay reserves the right to assert additional defenses as Plaintiff's claims are clarified in the course of litigation.

20. Should the Court certify this matter as a class action, Bay & Bay reasserts each of these affirmative defenses to each class member.

WHEREFORE, Bay & Bay requests the following relief:

1. That Plaintiff's Complaint be dismissed with prejudice in its entirety;
2. That the Court deny Plaintiff the ability to maintain or prosecute this action against Bay & Bay as class, and/or representative action;
3. That judgment be entered against Plaintiff in favor of Bay & Bay on all claims;
4. That Plaintiff pay Bay & Bay's costs and expenses, including attorneys' fees;
and
5. For any additional relief this Court deems just and proper in favor of Bay & Bay.

Dated: January 26, 2023

Respectfully submitted,

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