

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARK S., on behalf of himself and as parent)	
and guardian of his minor child, A.S., and on)	
behalf of all other similarly situated individuals,)	
)	Case No. 1:19-cv-8068
Plaintiff,)	
)	Judge Martha M. Pacold
v.)	
)	
COLLEGE BOARD,)	
)	
Defendant.)	
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FIRST AMENDED CLASS ACTION COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), and with no opposition from Defendant College Board, Plaintiff Mark S., on behalf of himself and as parent and guardian of his minor child, A.S., and on behalf of all other similarly situated individuals (“Plaintiff”), by and through his attorneys, brings this First Amended Class Action Complaint against Defendant College Board and makes the following allegations based upon knowledge as to himself and the acts of himself and his minor child, and upon information and belief as to all other matters, as follows:

INTRODUCTION

1. Every year, hundreds of thousands of students in Illinois and millions of students across the United States take one or more standardized tests provided by Defendant College Board – including, the SAT, PSAT/NMSQT, PSAT 10, PSAT 8/9 and Advanced Placement Exams (“AP

Exams”) (each test, individually, the “Standardized Test” and, collectively, the “Standardized Tests”). While students were made to believe the results of these tests would significantly impact their futures, to College Board the tests served a wholly different purpose – *i.e.*, to obtain highly valuable personal student information to benefit its own business interests and increase its revenues, which exceeded \$1 billion in 2018. College Board obtained the students’ personal information using unfair and deceptive practices and then unlawfully released, transferred, disclosed, disseminated and sold the information. The deceptive practices used by College Board to obtain the personal information included: (a) misrepresenting that it did not sell the information; (b) misrepresenting that it only disclosed nonidentifiable information to third-party targeted advertisers such as Facebook; (c) requiring students to create online accounts for the purported purpose of registering for exams when, in fact, the online accounts provided College Board with a mechanism to obtain massive amounts of personal information that it then unlawfully disclosed and disseminated to third parties; (d) falsely claiming that personal information collected in connection with exams would “[g]uide your counselors in helping you plan your future”; and (e) preying on students’ hopes and fears by making it appear that providing personal information during exams could assist with college acceptance and financial aid while not providing the information would be detrimental to those goals – when in fact, neither scenario was true.

2. Defendant College Board’s practices have injured Plaintiff and class and sub-class members (collectively, “Class Members”) in numerous ways, including by:

- a. Allowing data collectors and targeted advertisers such as Facebook to amass increasingly detailed profiles about Plaintiff and Class Members, which profiles have been, and continue to be used, to prey on Plaintiff and Class Members through the use of targeted advertisements;

- b. Diminishing the value of the personal information of Plaintiff and Class Members;
- c. Depriving Plaintiff and Class Members of the ability to control the sale of personal information of students under the age of sixteen;
- d. Depriving Plaintiff and Class Members of their right to control and to choose how to use their identities for commercial purposes;
- e. Inhibiting the ability of Plaintiff and Class Members to control the information colleges, universities and other third parties received about them;
- f. Precluding Plaintiff and Class Members from conditioning Defendant College Board's sale and dissemination of their personal information on an agreement to provide Plaintiff and Class Members with a portion of the proceeds;
- g. Causing Plaintiff and Class Members to incur the costs associated with spending time to decipher whether solicitations made by third-party organizations were genuine or solely attempts to obtain money from Plaintiff and Class Members based on information third-party organizations purchased or received from College Board;
- h. Invading Plaintiff's and Class Members' privacy; and
- i. Releasing, transferring, disclosing and disseminating students' private, confidential and sensitive school student records to third parties in violation of state law.

3. Plaintiff retains a significant interest in ensuring that his minor child's personal information, which remains in Defendant College Board's possession, is protected from further

unlawful sales, release, transfer, disclosure, dissemination and use, and he seeks to remedy the harms suffered as a result of College Board's improper conduct for himself and on behalf of similarly situated persons.

4. Plaintiff, on behalf of himself and on behalf of all other similarly situated persons, seeks to recover damages, including: (a) statutory and punitive damages; (b) equitable relief, including injunctive relief designed to (i) prevent Defendant College Board from selling, releasing, transferring disclosing or disseminating students' personal information and the resulting injuries, and (ii) require College Board to recover all of the personal information and school student records it has unlawfully and improperly sold, released, transferred, disclosed and disseminated; (c) restitution; (d) disgorgement; (e) reasonable attorney's fees, costs and expenses; and (f) all other remedies this Court deems proper.

PARTIES

5. Plaintiff Mark S., individually and as parent and legal guardian for his minor child A.S., is an Illinois resident. At all times, A.S. was under the age of sixteen and attended a school within the Chicago Public School District in Illinois. Beginning in or about 2018, A.S. started taking various standardized tests offered by Defendant College Board. A.S. took the tests in Illinois.

6. Defendant College Board is a not-for-profit membership association chartered in the State of New York with a principal place of business in New York and its Midwest regional office in Chicago, Illinois. College Board does business throughout the United States, including in the Northern District of Illinois. College Board earns substantial revenues and highly compensates its top executives. In 2018, College Board's President and CEO received total compensation in excess of \$1.75 million, while its Chief Operating Officer received total compensation in excess

of \$1.0 million. In 2018, numerous other College Board officers received total compensation in excess of \$500,000. At relevant times, College Board offered and administered the Standardized Tests to students, including Plaintiff and Class Members. Between approximately 2016 and the present, College Board has contracted with the Illinois State Board of Education to provide the SAT and various PSAT exams to Illinois high school students at a cost of at least \$32 million. Between 2017 and 2019, over 11.9 million students took a PSAT exam, over 4.2 million students took the SAT and over 5.6 million students took an AP Exam.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) (the “Class Action Fairness Act”) because sufficient diversity of citizenship exists between the parties in this action, the aggregate amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and there are 100 or more members of the Classes. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

8. This Court has personal jurisdiction over Defendant College Board because it is authorized to do business in this District and regularly conducts business in this District, has sufficient minimum contacts with this state and/or sufficiently avails itself of the markets of this state through its promotion, sales, licensing, activities and marketing within this state. College Board purposely availed itself of the laws of Illinois, and engaged and is engaging in conduct that has and had a direct, substantial, reasonably foreseeable and intended effect of causing injury to persons throughout the United States, including persons College Board knew or had reason to know are located in Illinois (including in this District).

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2) because the unlawful conduct alleged in this First Amended Class Action Complaint occurred in, was directed to and/or emanated in part from this District.

FACTUAL ALLEGATIONS

Defendant College Board's Standardized Tests

10. At relevant times, Defendant College Board offered and administered to students a series of standardized tests referred to as “The SAT Suite of Assessments,” which was comprised of the SAT, PSAT/NMSQT, PSAT 10 and PSAT 8/9.

11. According to Defendant College Board, the SAT Suite of Assessments “is an integrated system of tests that measure what students are learning in class, and what they need to succeed in college.”

12. According to Defendant College Board, the PSAT 8/9 set a readiness baseline for students; the PSAT/NMSQT and PSAT 10 allowed for a check-in on student progress; and the SAT connected students to college. According to College Board’s website, the PSAT 8/9 was not a program offered by College Board. Rather, it merely was a Standardized Test offered by the company.

13. Defendant College Board also offered high-school students a “college-level academic experience” that culminated in an AP Exam for the subject area in which a student took a class – *e.g.*, AP U.S. History or AP Physics. Each AP Exam was standardized. For the 2018-2019 school year each AP Exam cost \$94.

14. Students understood that Defendant College Board’s evaluation of their Standardized Tests would significantly impact their futures, thereby placing students taking the exams under intense pressure and stress both during the tests and the in the pretest stages when

College Board presented students with questions and directions that impacted their privacy and legal rights against College Board.

Defendant College Board's Student Data Scheme

15. At relevant times, Defendant College Board engaged in a scheme to collect students' personal information for the purpose of increasing College Board's already substantial revenues and otherwise benefitting its business through the sale, release, transfer, disclosure and dissemination of the information.

Defendant College Board's Unfair and Deceptive Data Collection Methods

16. Defendant College Board used myriad unfair and deceptive practices to obtain students' personal information.

Bulk Registration

17. Defendant College Board encouraged school districts and states to upload students' personal information to College Board in bulk via a process called "Bulk Registration" which allowed College Board to collect students': (a) first and last names; (b) grade levels; (c) addresses; (d) dates of birth; (e) races/ethnicities; (f) school identification numbers (partial); (g) email addresses; (h) participation in a free or reduced lunch program; and (i) telephone numbers.

18. On information and belief, based on an examination of Defendant College Board's "Online Account Details" for A.S., College Board used the information collected via Bulk Registration to create online College Board accounts for students without obtaining consent to do so.

Online Accounts

19. Defendant College Board also lured students into signing up for so-called "free College Board accounts" (the "Online Accounts") in order to provide College Board with a

mechanism to mine endless amounts of personal information from the students, which information College Board used to increase its revenues and otherwise benefit its business by selling, releasing, transferring, disclosing and disseminating it to third parties, including targeted advertisers such as Facebook.

20. To maximize the number of students who would sign up for an Online Account, Defendant College Board informed students that by setting up such an account, students could access their standardized test scores online.

21. During the Online Account sign-up process, Defendant College Board collected the following personal information from a student: (a) first name, last name and middle initial; (b) zip code; (c) gender; (d) date of birth; (e) high school; (f) email address; (g) mailing address; (h) mobile phone number; and (i) password.

22. In addition to the information set forth in the preceding paragraph, Defendant College Board also collected, *inter alia*, the following information from website visitors: (a) internet protocol addresses; (b) browser type; (c) internet service provider; (d) referring and exit web pages – *i.e.*, the website the visitor was at immediately prior to visiting College Board’s website, and the website the visitor went to upon leaving College Board’s website; (e) operating system; (f) date/time stamp; and (g) clickstream data.

23. On information and belief, based on an examination of Defendant College Board’s “Online Account Details” for A.S., College Board coordinated information obtained via Bulk Registration with the information it collected once a student signed up for an Online Account.

24. The vast amounts of personal information Defendant College Board collected about students allowed it to amass increasingly detailed and individualized profiles on students that

included highly personal and sensitive information such as the websites they visited and when they visited those websites.

Standardized Tests

25. In connection with the various Standardized Tests, Defendant College Board used unfair and deceptive tactics to further mine personal information from students, which information College Board used to increase its revenues and otherwise benefit its business by selling, releasing, transferring, disclosing and disseminating it to third parties.

26. Knowing that students would not want to provide Defendant College Board with highly personal and sensitive data such as their racial and ethnic backgrounds, their parents' military backgrounds and incomes, their grade point averages, citizenship status and religious preference/interest in religious organizations, College Board omitted: (a) from the test scripts that exam proctors read to students that students did not have to answer those questions; and (b) that failure to answer the questions would have no impact on students' test scores. Instead, the scripts directed exam proctors to "strongly encourage" students to answer the questions. Moreover, College Board's written materials "strongly recommended" that students answer the questions under the false pretense that the answers would "Guide your counselors in helping you plan your future."

Defendant College Board's Sale and Dissemination of Students' Personal Information

27. As alleged herein, Defendant College Board collected, mined and otherwise harvested students' personal information to increase its revenues and otherwise benefit its business by selling, releasing, transferring, disclosing and disseminating it to third parties.

28. Defendant College Board routinely sold, released, transferred, disclosed and/or disseminated students' personal information to third party companies and organizations despite representing that it did not engage in such conduct.

29. By at least March 2020, Defendant College Board falsely represented in its Privacy Statement that it did not share students' "personally identifiable information" with third party targeted advertisers such as Facebook and that the data was "hashed, nonidentifiable information," whereas in fact, students could be and, on information and belief based on targeted advertisers' business models, were individually identified from the information provided.

30. Hashing data is merely a mathematical process whereby an input value – *e.g.*, a social security number – is assigned a random, but unique output value. Importantly, the input value always yields the same output value.¹ As described by the Federal Trade Commission's Chief Technologist Ed Felton, "hashing an SSN does not render it anonymous. The same is true for any data field, unless it is much, much, much harder to guess than an SSN."² An analyst trying to deanonymize hashed data can be assisted by other information about the person in question to which the analyst has access.³

¹ Ed Felton (Chief Technologist). *Does Hashing Make Data "Anonymous?"*, Tech@FTC Blog, <https://www.ftc.gov/news-events/blogs/techftc/2012/04/does-hashing-make-data-anonymous> (Apr. 22, 2012) (last accessed on May 30, 2020).

² *See id.*

³ *See id.*

31. At relevant times, Defendant College Board knew or reasonably should have known that the third party targeted advertisers to which it provided students' data would extract students' personally identifiable information therefrom because the purpose of providing the data was to allow the advertisers to target ads to specified students, the third party advertisers' businesses depended on personally identifiable data, and the third party advertisers had sufficient technology to connect the data to each student, as College Board knew.

32. Further, as alleged in more detail below, without obtaining the necessary consents, Defendant College Board routinely sold students' personal information to third parties via a mechanism it referred to as Student Search Service even though College Board affirmatively and repeatedly represented in publications such as "Our Commitment to Student Data Privacy" and "Data Privacy Overview" that it did not sell students' personal information or data.

33. In May 2018, the United States Department of Education's Privacy Technical Assistance Center published "significant guidance" in which it found that Defendant College Board and another standardized testing company "use completed surveys to develop tailored lists of students, which the testing companies then sell to institutions of higher education (IHEs), scholarship organizations, and other organizations."

34. Further, while Defendant College Board claimed that it allowed students who participated in Student Search Service to later opt out, it made clear in its written materials that opting out would not stop entities that previously received the students' personal information from continuing to send solicitations – a tacit acknowledgment of College Board's data sales.

35. Moreover, during a May 2019 Illinois Senate legislative hearing, a representative of Defendant College Board testified that College Board sold access to student data for \$0.45 per student.

36. Between September 1, 2016 through the present, Defendant College Board charged between \$0.42 and \$0.47 per student name sold to a third-party customer via Student Search Service.

37. While Defendant College Board made it appear as if participation in Student Search Service was voluntary, College Board proactively took advantage of the pressure students faced in taking the Standardized Tests and otherwise engaged in conduct designed to overcome Plaintiff's and Class Members' wills and abilities to make informed and voluntary decisions regarding participation in Student Search Service, such as:

- a. "Strongly recommend[ing]" in the Student Answer Sheet Instructions to the SAT, PSAT/NMSQT and PSAT 10 that students participate in Student Search Service under the pretenses that the students' school counselors' needed the information;
- b. Directing AP Exam proctors and teachers in a document titled "AP Preadministration Instructions" to "[e]ncourage your students to answer 'Yes'" to the question regarding whether students want to participate in Student Search Service;
- c. Directing SAT, PSAT/NMSQT and PSAT 10 exam proctors and teachers in written materials provided by College Board in connection with the administration of the exams to provide instructions regarding Student Search Service that falsely made it appear as if declining to participate in the service could lead to dire consequences, such as missing out on scholarships, and educational and financial aid opportunities;

- d. Preying on students' hopes and fears by making it appear that providing the information could assist with college acceptance and financial aid while not providing the information would be detrimental to those goals – when in fact, neither scenario was true; and
- e. Concealing from students that College Board's true purpose in obtaining the personal information was to sell it to third party organizations in order to increase its already substantial revenues.

38. After obtaining students' personal information, Defendant College Board held out the identities of students (*e.g.*, names and email addresses) who participated in Student Search Service, including, on information and belief, the identities of Plaintiff and Class Members, on or in connection with offering Student Search Service for sale to third parties for the purpose of advertising and promoting Student Search Service.

39. Students lured into Student Search Service were further preyed on by organizations seeking to, *inter alia*, dupe the students into paying thousands of dollars to participate in short programs dubbed "leadership conferences" that did not increase their chances of gaining entrance into college and, instead, simply increased the revenues generated by the program organizers.

Defendant College Board's Deceptive Registration Practices

40. Knowing that it engaged in deceptive and otherwise unlawful practices with respect to students' personal information, Defendant College Board implemented and attempted to implement a deceptive exam registration process in an effort to chill students from challenging its practices via litigation.

41. For instance, in the normal course, students signed up and paid for advanced placement classes and AP Exams via their schools, which were acting as Defendant College

Board's agent, with there being no express written contract between the students and College Board.

42. The implied in fact contract between a student signing up for and paying to take an AP Exam and Defendant College Board provided that in return for payment to take an AP Exam, College Board would allow the student to take the AP Exam and provide a score.

43. After accepting payment for the AP Exam and the terms of the implied contract, Defendant College Board sought to unilaterally alter the terms of the contract to deprive students of their right to challenge College Board's unlawful conduct via litigation.

44. Prior to the AP Exams administered in 2019, Defendant College Board carried out and attempted to carry out its contract modification scheme by providing students with answer sheets during their AP Exams that sought to change the contract terms as a condition of allowing students to take exams for which they had already registered, paid and studied many hours.

45. Specifically, via the students' AP Exam answer sheets provided to students once they were seated for the exams, Defendant College Board added and modified contractual terms. Moreover, College Board did so without allowing students to have the modified terms in front of them.

46. Further, Defendant College Board sought to make it appear as if students taking the AP Exams accepted the modified contractual terms by directing exam proctors to provide the following instruction to students: "Look at the statement above Item A, Signature, and read it carefully. Now sign your legal name and print the date where indicated. You must do this each time you take an AP Exam."

47. Defendant College Board claimed and continues to claim that, by signing their answer sheets at College Board's command, the "statement above Item A" forced students to

forego their litigation rights even though the statement had nothing to do with litigation rights but instead related solely to the security of the exam and the validity of the student's score.

48. In connection with the AP Exams administered in 2020, Defendant College Board dispensed with paper answer sheets. However, similar to prior years, College Board sought to modify the contract after the fact by requiring students to electronically accept new terms in order to take the AP Exams for which they previously had signed up and paid. College Board did not provide students with an option to not accept the unilaterally modified contractual terms, and if a student attempted to reject such terms, College Board told the student that refusal was not an option.

Market for Data

49. Several online companies allow individuals to sell their own data online.

50. One such company estimates that an individual can earn up \$2,000 per year selling his data.

51. By obtaining and selling students' data under false pretenses, Defendant College Board has diminished the value of students' data.

Allegations Related Plaintiff and His Minor Child

52. In fall 2018 and spring 2019, A.S. took the PSAT 8/9 as required by A.S.'s school district and the State of Illinois.

53. Each time A.S. took the PSAT 8/9, A.S. did so pursuant to the terms agreed to by Defendant College Board and the State of Illinois and/or A.S.'s school district. As such, A.S. did not waive or otherwise give up any rights in connection with taking those mandated exams.

54. In connection with the fall 2018 PSAT 8/9, Defendant College Board created an Online Account for A.S. in order to enter Bulk Registration data it received about A.S.

55. In or about August 2018, A.S. signed up for three advanced placement classes via the registration system for A.S.'s school. At that time, College Board did not provide A.S. with any written terms or conditions with respect to the advanced placement classes or any AP Exams.

56. On or about March 29, 2019, A.S., via A.S.'s parents, paid \$282 plus fees to take three AP Exams in or about May 2019. Neither at that time nor at any time prior to that date did Defendant College Board provide A.S. with any written terms or conditions with respect to the AP Exams.

57. In or about August 2019, A.S. signed up for three advanced placement classes via the registration system for A.S.'s school. At or about that same time, A.S., via A.S.'s parents, paid \$282 to take the three AP Exams in or about May 2020. Neither at that time nor at any time prior to that date did College Board provide A.S. with any written terms or conditions with respect to the AP Exams.

58. In connection with the PSAT 8/9 and AP Exams, A.S. provided Defendant College Board with personal information.

59. At all times, A.S. was under the age of sixteen.

60. On information and belief, based on publicly-available versions of Defendant College Board's Data Load schedules, College Board first made A.S.'s personal information available for sale on January 7, 2019.

61. At no time did A.S.'s parents consent in writing or otherwise to the sale, release, transfer, disclosure or dissemination of A.S.'s personal information.

62. At no time did A.S. or A.S.'s parents consent in writing to Defendant College Board's use of her identity for commercial purposes

63. Since taking the PSAT 8/9 and AP Exams described herein, A.S. has received solicitations based on her submission of personal information to College Board.

Defendant College Board's Failure to Comply with Illinois Law

The Illinois School Student Records Act

64. Illinois public policy, as set forth in the Illinois School Student Records Act, 105 ILCS § 10/1, *et seq.* (“ISSRA”), seeks to protect the privacy and confidentiality of Illinois school student records by prohibiting their release, transfer, disclosure or dissemination, except in extremely limited circumstances that do not include the release, transfer, disclosure and dissemination of student school records engaged in by Defendant College Board.

65. Pursuant to ISSRA, “school student record” means “any writing or other recorded information concerning a student by which a student may be individually identified, maintained by a school or at its direction . . . regardless of how or where the information is stored.”

66. Pursuant to ISSRA, the information Defendant College Board collected about students as alleged herein constitutes school student records.

67. Pursuant to ISSRA, Defendant College Board is a “school” because it is a “person, agency or institution which maintains school student records from more than one school.”

68. Pursuant to Defendant College Board’s Illinois fiscal year 2017 contract with the Illinois State Board of Education, it agreed to comply with the relevant requirements of ISSRA regarding the confidentiality of school student records. On information and belief, the contracts between College Board and the Illinois State Board of Education for subsequent years required the same compliance.

69. Plaintiff and Class Members were, and continue to be, third party beneficiaries of the Illinois State Board of Education contracts with Defendant College Board.

70. In violation of ISSRA, Defendant College Board released, transferred, disclosed and disseminated school student records.

The Children’s Privacy Protection and Parental Empowerment Act

71. Illinois public policy, as set forth in the Children’s Privacy Protection and Parental Empowerment Act, 325 ILCS § 17/1, *et seq.* (the “Children’s Privacy Protection Act”), seeks to empower parents to protect their children’s personal information by preventing the sale or purchase of the personal information of a child under sixteen without parental consent.

72. The Children’s Privacy Protection Act, defines a “child” as a person under the age of sixteen. It further defines “personal information” as a person’s name, address, telephone number or “any other information that can be used to locate or contact a specific individual.”

73. Pursuant to the Children’s Privacy Protection Act, the “sale or purchase of personal information concerning an individual known to be a child without parental consent is prohibited.”

74. By selling the personal information of children without parental consent, Defendant College Board violated the Children’s Privacy Protection Act.

The Right of Publicity Act

75. Illinois law also empowers individuals to control other’s use of their identities for commercial purposes without first receiving written consent.

76. The Illinois Right of Publicity Act, 765 ILCS § 1075/1, *et seq.*, recognizes that every individual has a right of publicity – namely, “to control and to choose whether and how to use an individual’s identity for commercial purposes.”

77. Section 5 of the Right of Publicity Act defines “commercial purpose” as the “the public use or holding out of an individual’s identity (i) on or in connection with the offering for

sale or sale of a product . . . or services; (ii) for the purposes of advertising or promoting products . . . or services”

78. Section 5 of the Right of Publicity Act defines “identity” as “any attribute of an individual that serves to identify that individual to an ordinary, reasonable viewer or listener, including but not limited to (i) name”

79. Pursuant to § 30 of the Right of Publicity Act, “a person may not use an individual’s identity for commercial purposes during the individual’s lifetime without having obtained previous written consent from the appropriate person or persons . . . or their authorized representatives.”

80. In violation of the Right of Publicity Act, Defendant College Board used the identities of students who took Standardized Tests – including Plaintiff and Class Members – for commercial purposes without having obtained previous written consent from the appropriate person or persons or their authorized representatives. The information provided by College Board that allowed others to be able to identify Plaintiff and Class Members, included students’ names, home addresses, email addresses and dates of birth.

Plaintiff’s and Class Members’ Injuries and Damages

81. As a result of Defendant College Board’s sale, release, transfer, disclosure and dissemination of students’ personal information, Plaintiff and Class Members have suffered and will continue to suffer severe consequences, as College Board’s conduct has, among other things:

- a. Allowed data collectors and targeted advertisers such as Facebook to amass increasingly detailed profiles about Plaintiff and Class Members, which profiles have been, and continue to be used, to prey on Plaintiff and Class Members through the use of targeted advertisements;

- b. Diminished the value of the personal information of Plaintiff and Class Members;
- c. Deprived Plaintiff and Class Members of the ability to control the sale of personal information of students under the age of sixteen;
- d. Deprived Plaintiff and Class Members of their right to control and to choose how to use their identities for commercial purposes;
- e. Inhibited the ability of Plaintiff and Class Members to control the information colleges, universities and other third parties received about them;
- f. Precluded Plaintiff and Class Members from conditioning Defendant College Board's sale and dissemination of their personal information on an agreement to provide Plaintiff and Class Members with a portion of the proceeds;
- g. Caused Plaintiff and Class Members to incur the costs associated with spending time to decipher whether solicitations made by third-party organizations were genuine or solely attempts to obtain money from Plaintiff and Class Members based on information third-party organizations purchased or received from Defendant College Board;
- h. Invaded Plaintiff's and Class Members' privacy; and
- i. Released, transferred, disclosed and disseminated students' private, confidential and sensitive school student records to third parties in violation of state law.

82. Defendant College Board's wrongful actions have directly and proximately caused Plaintiff and Class Members to face the immediate and continuing increased risk of economic damages and other actual harm for which they are entitled to compensation, including:

- a. Damages to, and diminution in value of, the personal information College Board obtained and sold, released, transferred, disclosed and disseminated;
- b. Costs associated with reviewing and trying to stop unwanted solicitations, such as time taken from the enjoyment of one's life, and the inconvenience, nuisance, cost and annoyance of dealing with the unwanted solicitations; and
- c. The loss of Plaintiff's and Class Members' privacy.

CLASS ACTION ALLEGATIONS

83. Plaintiff bring this action on behalf of himself and his minor child as a class action under Federal Rule of Civil Procedure 23, seeking damages and equitable relief on behalf of the following nationwide Class for which Plaintiff seeks certification:

All persons residing in the United States whose personal information was provided to Defendant College Board in connection with a Standardized Test (the "Nationwide Class").

84. Additionally, Plaintiff brings this action on behalf of the following subclass of individuals seeking damages and relief on behalf of the following:

All persons residing in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Vermont, Washington and West Virginia whose personal information was provided to Defendant College Board in connection with a Standardized Test (the "Intrusion Upon Seclusion Class").

85. Additionally, Plaintiff brings this action on behalf of an Illinois subclass seeking damages and equitable relief on behalf of the following:

All persons residing in the State of Illinois whose personal information was provided to Defendant College Board in connection with a Standardized Test (the “Illinois Subclass”).

86. Additionally, Plaintiff brings this action on behalf of an Illinois subclass seeking damages and equitable relief on behalf of the following:

All persons under the age of sixteen and residing in the State of Illinois whose personal information was provided to Defendant College Board in connection with a Standardized Test (the “Illinois Child Under Sixteen Subclass”).

87. Excluded from the Classes are: (a) Defendant College Board; (b) any parent, affiliate or subsidiary of Defendant College Board; (c) any entity in which Defendant College Board has a controlling interest; (d) any of Defendant College Board’s officers or directors; or (e) any successor or assign of Defendant College Board. Also excluded are any judge or court personnel assigned to this case and members of their immediate families.

88. Plaintiff reserves the right to amend or modify the class definitions with greater specificity or division after having had an opportunity to conduct discovery.

89. **Numerosity.** Consistent with Rule 23(a)(1), the Classes are so numerous that joinder of all members is impracticable. While Plaintiff does not know the exact number of members of the Nationwide Class and various subclasses (collectively, the “Subclasses”), Plaintiff believes the Nationwide Class contains over 11 million people. Class Members may be identified through objective means, including objective data available to Defendant College Board regarding what students provided it with personal information. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, social media and/or published notice. All

members of the Nationwide Class and Subclasses are readily ascertainable because College Board has access to information regarding the identity of each student who provided personal information.

90. **Commonality and predominance.** Common questions of law and fact exist as to all Class Members. These common questions of law or fact predominate over any questions affecting only individual members of the Nationwide Class or Subclasses. Common questions include, but are not limited to the following:

- a. Whether Defendant College Board engaged in wrongful conduct as alleged herein;
- b. Whether Defendant College Board sold, released, transferred, disclosed and/or disseminated the personal information of Plaintiff and Class Members;
- c. Whether Defendant College Board misrepresented that it would not sell the personal information of Plaintiff and Class Members;
- d. Whether Defendant College Board misrepresented that it did not provide third party advertisers with Plaintiff and Class Members' personally identifiable information;
- e. Whether Defendant College Board obtained the personal information of Plaintiff and Class Members under false pretenses;
- f. Whether Defendant College Board invaded Plaintiff's and Class Members' privacy;
- g. Whether Defendant College Board failed to obtain previous written consent to use Plaintiff's and Class Members' identities for commercial purposes;

- h. Whether Defendant College Board engaged in unfair or deceptive trade practices with respect to the way in which it collected, mined and otherwise harvested students' personal information;
- i. Whether Defendant College Board engaged in unfair or deceptive trade practices by failing to disclose that it sold Plaintiff's and Class Members' personal information;
- j. Whether Defendant College Board engaged in unfair or deceptive trade practices via its scheme to modify the terms of the contract between students and College Board in an effort to deprive students of their litigation rights;
- k. Whether Plaintiff and Class Members suffered damages as a proximate result of Defendant College Board's conduct; and
- l. Whether Plaintiff and Class Members are entitled to damages, equitable relief and other relief.

91. **Typicality.** Plaintiff's claims are typical of the claims of the Nationwide Class and Subclasses he seeks to represent because Plaintiff and all members of the proposed Nationwide Class and Subclasses have suffered similar injuries as a result of the same practices alleged herein. Plaintiff has no interests to advance adverse to the interests of the other members of the Nationwide Class and Subclasses.

92. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the Nationwide Class and Subclasses and has retained as his counsel attorneys experienced in class actions and complex litigation.

93. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class Member, while meaningful

on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Defendant College Board economically feasible. Even if Class Members could afford individual litigation, those actions would put immeasurable strain on the court system. Moreover, individual litigation of the legal and factual issues of the case would increase the delay and expense to all parties and the court system. A class action, however, presents far fewer management difficulties and provides the benefit of single adjudication, economy of scale and comprehensive supervision by a single court.

94. In the alternative, the proposed classes may be certified because:

- a. The prosecution of separate actions by each individual member of the Nationwide Class and Subclasses would create a risk of inconsistent adjudications, which could establish incompatible standards of conduct for Defendant College Board;
- b. The prosecution of individual actions could result in adjudications that as a practical matter would be dispositive of the interests of non-party Class Members or which would substantially impair their ability to protect their interests; and
- c. Defendant College Board acted or refused to act on grounds generally applicable to the proposed Nationwide Class and Subclasses, thereby making final and injunctive relief appropriate with respect to members of the Nationwide Class and Subclasses.

95. Pursuant to Rule 23(c)(4) particular issues are appropriate for certification – namely the issues described in paragraph 90, above, because resolution of such issues would advance the disposition of the matter and the parties’ interests therein.

CLAIMS FOR RELIEF

COUNT ONE
(NEGLIGENCE)
(On behalf of all Classes)

96. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

97. Defendant College Board obtained Plaintiff's and Class Members' personal information and had a duty to exercise reasonable care in ensuring that it did not share, release, transfer, disclose or disseminate any personally identifiable information of Plaintiff and Class Members to third party targeted advertisers such as Facebook.

98. Specifically, as a result of Defendant College Board's Privacy Statement, its relationship to Plaintiff and Class Members, its possession and custody of Plaintiff and Class Members' personal information and, as to Illinois Subclass and Illinois Child Under 16 Subclass Members, as required by ISSRA, College Board owed a duty of care to Plaintiff and Class Members to ensure that any of their personally identifiable information was not shared, released, transferred, disclosed or disseminated to third party targeted advertisers such as Facebook.

99. Defendant College Board further owed a duty of care to ensure that any protocol or method it used to deidentify Plaintiff's and Class Members' personally identifiable data could not be reidentified.

100. Through its actions and/or failures, Defendant College Board unlawfully breached the duties owed to Plaintiff and Class Members by failing to exercise reasonable care when it shared, released, transferred, disclosed and disseminated Plaintiff's and Class Members' personal information with third party targeted advertisers – namely, College Board provided the data to the third party targeted advertisers in a format that allowed the advertisers to obtain Plaintiff's and

Class Members' personally identifiable information despite knowing the foreseeable risk and likelihood that the advertisers would be able obtain the personally identifiable information from the data provided.

101. Through its failures, Defendant College Board allowed the third party targeted advertisers unmonitored and unrestricted access to Plaintiff's and Class Members' personally identifiable information.

102. Based on industry custom and publicly-published materials, at relevant times, Defendant College Board knew or should have known the risks inherent in sharing, releasing, transferring, disclosing and disseminating Plaintiff's and Class Members' personal information with third party targeted advertisers in a hashed format and the concomitant necessity for using superior encryption methods before disclosing the information to third party targeted advertisers.

103. Defendant College Board's conduct was negligent and departed from all reasonable standards of care, as alleged herein.

104. Neither Plaintiff nor Class Members contributed to Defendant College Board's misuse of their personal information.

105. Defendant College Board's failure to exercise reasonable care in preventing Plaintiff's and Class Members' personally identifiable information from being provided to third party targeted advertisers was the direct and proximate cause of the advertisers' obtaining the information.

106. As a direct and proximate result of Defendant College Board's breach of duties, Plaintiff and Class Members suffered damages, as alleged herein.

COUNT TWO
(BREACH OF CONTRACT)
(On behalf of all Classes)

107. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

108. Defendant College Board offered to allow Plaintiff and Class Members to take Standardized Tests and receive a score in return for a fee; and Plaintiff and Class Members accepted the offer by tendering the required payments (the “Contract”).

109. At no point prior to formation did Defendant College Board seek the right to sell, release, transfer, disclose or disseminate students’ personal information as part of the Contract, nor were such terms in the reasonable contemplation of the parties. Therefore, the Contract did not allow College Board to sell or disseminate students’ personal information.

110. Plaintiff and Class Members performed their obligations under the Contract.

111. Defendant College Board breached the Contract by selling, releasing, transferring, disclosing and disseminating students’ personal information to third parties in a manner not permitted by the Contract.

112. As a direct and proximate result of Defendant College Board’s breach of the Contract, Plaintiff and Class Members sustained actual losses as alleged above.

113. Defendant College Board’s breach of the Contract was a direct and legal cause of Plaintiff’s and Class Members’ injuries and damages as alleged above.

COUNT THREE
UNJUST ENRICHMENT
(On behalf of all Classes)

114. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

115. Plaintiff and Class Members conferred a monetary benefit on Defendant College Board – namely, they provided and entrusted their personal information to College Board.

116. Plaintiff and Class Members did not authorize or otherwise consent to the sale, release, transfer, disclosure of dissemination of their personal information by Defendant College Board.

117. Defendant College Board appreciated, accepted and retained the benefit bestowed upon it under inequitable and unjust circumstances arising from College Board’s conduct toward Plaintiff and Class Members as described herein – namely, (a) Plaintiff and Class Members conferred a benefit on College Board, and College Board accepted or retained that benefit; and (b) College Board used Plaintiff’s and Class Members’ personal information for business purposes – namely, it sold, released, transferred, disclosed and/or disseminated the information.

118. Defendant College Board sold, released, transferred, disclosed and/or disseminated Plaintiff’s and Class Members’ personal information and, therefore, did not provide full compensation for the benefit Plaintiff and Class Members conferred upon College Board.

119. Defendant College Board acquired Plaintiff’s and Class Members’ personal information through inequitable means in that it misrepresented the way in which it would use and protect the personal information.

120. Plaintiff and Class Members have no adequate remedy at law.

121. Under the circumstances, it would be unjust and unfair for Defendant College Board to be permitted to retain any of the benefits that Plaintiff and Class Members conferred on it.

122. Under the principles of equity and good conscience, Defendant College Board should not be permitted to retain the personal information belonging to Plaintiff and Class Members because College Board obtained that information under false pretenses.

123. Defendant College Board should be compelled to disgorge into a common fund or constructive trust, for the benefit of Plaintiff and Class Members, proceeds that it unjustly received from the sale, release, transfer, disclosure and/or dissemination of Plaintiff's and Class Members' personal information.

COUNT FOUR
INTRUSION UPON SECLUSION
(On behalf of the Intrusion Upon Seclusion Subclass)

124. Plaintiff restates and realleges paragraphs 1 through 113, above, as though fully set forth herein.

125. Plaintiff and Class Members had a legitimate expectation of privacy to their personal information and were entitled to protection of this information against disclosure to unauthorized third parties.

126. Defendant College Board owed a duty to Plaintiff and Class Members to keep their personal information confidential, as alleged herein.

127. Notwithstanding its clear duty, Defendant College Board sold, released, transferred, disclosed and disseminated Plaintiff's and Class Members' personal information to unauthorized third parties.

128. By way of Defendant College Board's conduct, it allowed unauthorized third parties to access and examine the personal information of Plaintiff and Class Members, including highly sensitive information contained in Plaintiff's and Class Members' web browsing histories.

129. The unauthorized release to, custody of and examination by unauthorized third parties of Plaintiff's and Class Members' personal information – information that contained sensitive details regarding minor children – is highly offensive to a reasonable person.

130. The intrusion was into a place or thing that was private and entitled to be private. Given Defendant College Board's duties not to sell, release, transfer, disclose and disseminate Plaintiff's and Class Members' personal information, it was reasonable for Plaintiff and Class Members to believe that such information would be kept private and confidential and would not be disclosed without their authorization.

131. Defendant College Board's sale, release, transfer, disclosure and dissemination of Plaintiff's and Class Members' personal information constitutes an unauthorized intrusion or prying into Plaintiff's and Class Members' seclusion, and the intrusion was of a kind that would be highly offensive to a reasonable person.

132. Defendant College Board acted with a knowing state of mind when it sold, released, transferred, disclosed and disseminated Plaintiff's and Class Members' personal information.

133. As a direct and proximate result of the above acts and omissions of Defendant College Board, the personal information of Plaintiff and Class Members was disclosed to third parties without authorization, causing Plaintiff and Class Members to suffer damages, anguish and suffering.

134. Unless and until enjoined and restrained by order of this Court, Defendant College Board's wrongful conduct will continue to cause great and irreparable injury to Plaintiff and Class Members in that the personal information sold, released, transferred, disclosed and disseminated by College Board can be viewed and used by unauthorized persons. Plaintiff and Class Members have no adequate remedy at law for the injuries in that a judgment for monetary damages will not

end the invasion of privacy for Plaintiff and Class Members or require College Board to retrieve the personal information from the unauthorized entities to which it was sold.

COUNT FIVE
INTRUSION UPON SECLUSION
(On behalf of the Illinois and Illinois Child Under Sixteen Subclasses)

135. Plaintiff restates and realleges paragraphs 1 through 113, above, as though fully set forth herein.

136. Plaintiff and Class Members had a legitimate expectation of privacy to their school student records and personal information and were entitled to protection of this information against disclosure to unauthorized third parties.

137. Defendant College Board owed a statutory duty, among others, to Plaintiff and Class Members to keep their school student records and personal information confidential.

138. Notwithstanding its clear duty, Defendant College Board sold, released, transferred, disclosed and disseminated Plaintiff's and Class Members' school student records and personal information to unauthorized third parties.

139. By way of Defendant College Board's conduct, it allowed unauthorized third parties to access and examine the school student records and personal information of Plaintiff and Class Members, including highly sensitive information contained in Plaintiff's and Class Members' web browsing histories.

140. The unauthorized release to, custody of and examination by unauthorized third parties of Plaintiff's and Class Members' school student records and personal information – information that contained sensitive details regarding minor children – is highly offensive to a reasonable person.

141. The intrusion was into a place or thing that was private and entitled to be private. Given Defendant College Board's duty not to sell, release, transfer, disclose or disseminate Plaintiff's and Class Members' school student records and personal information, it was reasonable for Plaintiff and Class Members to believe that such information would be kept private and confidential and would not be disclosed without their authorization.

142. Defendant College Board's sale, release, transfer, disclosure and dissemination of Plaintiff's and Class Members' school student records and personal information constitutes an unauthorized intrusion or prying into Plaintiff's and Class Members' seclusion, and the intrusion was of a kind that would be highly offensive to a reasonable person.

143. Defendant College Board acted with a knowing state of mind when it sold, released, transferred, disclosed and disseminated Plaintiff's and Class Members' school student records and personal information.

144. As a direct and proximate result of the above acts and omissions of Defendant College Board, the school student records and personal information of Plaintiff and Class Members was disclosed to third parties without authorization, causing Plaintiff and Class Members to suffer damages, anguish and suffering.

145. Unless and until enjoined and restrained by order of this Court, Defendant College Board's wrongful conduct will continue to cause great and irreparable injury to Plaintiff and Class Members in that the school student records and personal information sold, released, transferred, disclosed and disseminated by College Board can be viewed and used by unauthorized persons. Plaintiff and Class Members have no adequate remedy at law for the injuries in that a judgment for monetary damages will not end the invasion of privacy for Plaintiff and Class Members or

require College Board to retrieve the personal information from the unauthorized entities to which it was sold.

COUNT SIX
BREACH OF CONTRACT – THIRD PARTY BENEFICIARIES
(On behalf of the Illinois and Illinois Child Subclasses)

146. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

147. Between Illinois fiscal years 2017 and the present, Defendant College Board and the Illinois State Board of Education entered into a series of written contracts that each required College Board to provide the SAT, PSAT 10 and PSAT 8/9 to eligible Illinois students, including Plaintiff and Class Members (collectively, the “Express Contract”).

148. As consideration for Defendant College Board providing the SAT, PSAT 10 and PSAT 8/9 to eligible Illinois students, the State of Illinois paid a yearly contract fee to College Board.

149. The parties to the Express Contract intended Plaintiff and Class Members to directly benefit from the Express Contract, as the purpose of the testing was to determine if students were meeting their educational goals and, if not, to determine what educational supports were needed.

150. Plaintiff and Class Members were, and remain, third-party beneficiaries of the Express Contract.

151. On information and belief, the Illinois State Board of Education fully performed its obligations under the Express Contract.

152. By unlawfully selling, releasing, transferring, disclosing and disseminating student school records in violation of ISSRA, Defendant College Board breached the Express Contract.

153. As a direct and proximate result of Defendant College Board's breach of the Express Contract, Plaintiff and Class Members sustained actual losses as alleged above.

154. Defendant College Board's breach of the Express Contract was a direct and legal cause of Plaintiff's and Class Members' injuries and damages as alleged above.

COUNT SEVEN
ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT
815 ILCS § 505/1, et seq.
(On behalf the Illinois and Illinois Child Under Sixteen Subclasses)

155. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

156. Defendant College Board is a "person" as defined by 815 ILCS § 505/1(c).

157. Defendant College Board's conduct as alleged herein was in the conduct of "trade" or "commerce" as defined by 815 ILCS § 505/1(f).

158. Defendant College Board's deceptive, unfair and unlawful trade acts or practices, in violation of 815 ILCS § 505/2, include:

- a. Misrepresenting to Plaintiff and Class Members that Defendant College Board did not provide personally identifiable information to third party targeted advertisers such as Facebook;
- b. Luring students into signing up for Online Accounts in order to provide Defendant College Board with a mechanism for collecting, mining and otherwise harvesting massive amounts of personal information from Plaintiff and Class Members;
- c. Concealing from Plaintiff and Class Members that they were not required to answer questions on Standardized Tests regarding sensitive and highly

personal topics and, instead, directing exam proctors to strongly encourage Plaintiff and Class Members to answer the questions;

- d. Concealing from Plaintiff and Class Members that failure to answer questions on Standardized Tests regarding sensitive and highly personal topics would have no impact on their test scores and, instead, directing exam proctors to strongly encourage Plaintiff and Class Members to answer the questions;
- e. Misrepresenting to Plaintiff and Class Members that answering questions on Standardized Tests regarding sensitive and highly personal topics would guide Plaintiff's and Class Members' counselors in helping plan their futures;
- f. Misrepresenting to Plaintiff and Class Members that Defendant College Board did not sell students' personal information and data;
- g. Releasing, transferring, disclosing and disseminating Plaintiff's and Class Members' personal information without obtaining the requisite consents;
- h. Taking advantage of the pressure underlying the Standardized Tests and otherwise engaging in conduct designed to overcome Plaintiff's and Class Members' wills and abilities to make informed and voluntary decisions regarding participation in Student Search Service, such as:
 - i. "Strongly recommend[ing]" in the Student Answer Sheet Instructions to the SAT, PSAT/NMSQT and PSAT 10 that students answer all of the Student Search Service questions under the false

- pretense that provision of the information “[g]uide[s] your counselors in helping you plan your future”;
- ii. Directing AP Exam proctors and teachers in a document titled “AP Preadministration Instructions” to “[e]ncourage your students to answer ‘Yes’” to the question regarding whether students want to participate in Student Search Service;
 - iii. Directing SAT, PSAT/NMSQT and PSAT 10 exam proctors and teachers in written materials provided by Defendant College Board in connection with the administration of the exams to provide instructions regarding Student Search Service that falsely made it appear as if declining to participate in the service could lead to dire consequences, such as missing out on financial aid opportunities; and
 - iv. Preying on students’ hopes and fears by making it appear that providing the information could assist with college acceptance and financial aid while not providing the information would be detrimental to those goals – when in fact, neither scenario was true; and
 - i. Concealing from students that Defendant College Board’s true or additional purpose in obtaining Plaintiff’s and Class Members’ personal information was to sell, release, transfer, disclose or disseminate it to third party organizations in order to increase its already substantial revenues and otherwise benefit its business;

- j. Attempting to unilaterally and unlawfully change the terms of the agreement between Defendant College Board and Plaintiff and Class Members in an effort to prevent Plaintiff and Class Members from litigating against College Board;
- k. Failing to comply with common law and statutory duties pertaining to the sale of Plaintiff's and Class Members' personal information, including duties imposed by ISSRA, 105 ILCS § 10/6; the Right of Privacy Act, 765 ILCS § 1075/30; the Children's Privacy Protection Act, 325 ILCS § 17/10; and the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/2(a); and
- l. Omitting, suppressing and concealing the material fact that College Board did not comply with common law and statutory duties pertaining to the sale of Plaintiff's and Class Members' personal information, including duties imposed by ISSRA, 105 ILCS § 10/6; the Right of Privacy Act, 765 ILCS § 1075/30, the Children's Privacy Protection Act, 325 ILCS § 17/10, and the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/2(a).

159. Defendant College Board's representations and omissions were material because they were likely to deceive reasonable persons about College Board's use of personal information.

160. Defendant College Board intended to mislead Plaintiff and Class Members and induce them to rely on their misrepresentations and omissions.

161. The above unfair and deceptive practices and acts by Defendant College Board were immoral, unethical, oppressive and unscrupulous. These acts caused substantial injury to

Plaintiff and Class Members that they could not reasonably avoid; this substantial injury outweighed any benefits to competition.

162. Defendant College Board acted intentionally, knowingly and maliciously to violate Illinois' Consumer Fraud and Deceptive Business Practices Act and recklessly disregarded Plaintiff's and Class Members' rights.

163. As a direct and proximate result of Defendant College Board's unfair, unlawful and deceptive practices and acts, Plaintiff and Class Members have suffered and will continue to suffer injury; ascertainable losses of money or property, and monetary and non-monetary damages, including from the diminution in value of their personal information.

164. Unless and until enjoined and restrained by order of this Court, Defendant College Board's wrongful conduct will continue to cause great and irreparable injury to Plaintiff and Class Members in that the personal information sold by College Board can be viewed and used by unauthorized persons. Plaintiff and Class Members have no adequate remedy at law for the injuries in that a judgment for monetary damages will not end the invasion of privacy for Plaintiff and Class Members or require College Board to retrieve the personal information from the unauthorized entities to which it was sold.

165. Plaintiff and Illinois and Class Members seek all monetary and non-monetary relief allowed by law, including damages, restitution, punitive damages, injunctive relief and reasonable attorney's fees and costs.

COUNT EIGHT
ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT
815 ILCS § 510/1, *et seq.*
(On behalf the Illinois and Illinois Child Subclasses)

166. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

167. Defendant College Board is a “person” as defined by 815 ILCS § 510/1(5).

168. Defendant College Board engaged in deceptive trade practices in the conduct of its business in violation of 815 ILCS § 510/2(a), including:

- a. Advertising goods or services with intent not to sell them as advertised; and
- b. Engaging in conduct that creates a likelihood of confusion or misunderstanding.

169. Defendants’ deceptive trade practices include:

- a. Misrepresenting to Plaintiff and Class Members that Defendant College Board did not provide personally identifiable information to third party targeted advertisers such as Facebook;
- b. Luring students into signing up for Online Accounts in order to provide Defendant College Board with a mechanism for collecting, mining and otherwise harvesting massive amounts of personal information from Plaintiff and Class Members;
- c. Concealing from Plaintiff and Class Members that they were not required to answer questions on Standardized Tests regarding sensitive and highly personal topics and, instead, directing exam proctors to strongly encourage Plaintiff and Class Members to answer the questions;
- d. Concealing from Plaintiff and Class Members that failure to answer questions on Standardized Tests regarding sensitive and highly personal topics would have no impact on their test scores and, instead, directing exam proctors to strongly encourage Plaintiff and Class Members to answer the questions;

- e. Misrepresenting to Plaintiff and Class Members that answering questions on Standardized Tests regarding sensitive and highly personal topics would guide Plaintiff's and Class Members' counselors in helping plan their futures;
- f. Misrepresenting to Plaintiff and Class Members that Defendant College Board did not sell students' personal information and data;
- g. Releasing, transferring, disclosing and disseminating Plaintiff's and Class Members' personal information without obtaining the requisite consents;
- h. Taking advantage of the pressure underlying the Standardized Tests and otherwise engaging in conduct designed to overcome Plaintiff's and Class Members' wills and abilities to make informed and voluntary decisions regarding participation in Student Search Service, such as:
 - i. "Strongly recommend[ing]" in the Student Answer Sheet Instructions to the SAT, PSAT/NMSQT and PSAT 10 that students answer all of the Student Search Service questions under the false pretense that provision of the information "[g]uide[s] your counselors in helping you plan your future";
 - ii. Directing AP Exam proctors and teachers in a document titled "AP Preadministration Instructions" to "[e]ncourage your students to answer 'Yes'" to the question regarding whether students want to participate in Student Search Service;
 - iii. Directing SAT, PSAT/NMSQT and PSAT 10 exam proctors and teachers in written materials provided by Defendant College Board

in connection with the administration of the exams to provide instructions regarding Student Search Service that falsely made it appear as if declining to participate in the service could lead to dire consequences, such as missing out on financial aid opportunities; and

iv. Preying on students' hopes and fears by making it appear that providing the information could assist with college acceptance and financial aid while not providing the information would be detrimental to those goals – when in fact, neither scenario was true; and

i. Concealing from students that Defendant College Board's true or additional purpose in obtaining Plaintiff's and Class Members' personal information was to sell, release, transfer, disclose or disseminate it to third party organizations in order to increase its already substantial revenues and otherwise benefit its business;

j. Attempting to unilaterally and unlawfully change the terms of the agreement between Defendant College Board and Plaintiff and Class Members in an effort to prevent Plaintiff and Class Members from litigating against Defendant College Board;

k. Failing to comply with common law and statutory duties pertaining to the sale of Plaintiff's and Class Members' personal information, including duties imposed by ISSRA, 105 ILCS § 10/6; the Right of Privacy Act, 765 ILCS § 1075/30; the Children's Privacy Protection Act, 325 ILCS § 17/10;

and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2; and

1. Omitting, suppressing and concealing the material fact that Defendant College Board did not comply with common law and statutory duties pertaining to the sale of Plaintiff's and Class Members' personal information, including duties imposed by ISSRA, 105 ILCS § 10/6; the Right of Privacy Act, 765 ILCS § 1075/30, the Children's Privacy Protection Act, 325 ILCS § 17/10, and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2.

170. Defendant College Board's representations and omissions were material because they were likely to deceive reasonable persons about College Board's use of personal information.

171. The above unfair and deceptive practices and acts by Defendant College Board were immoral, unethical, oppressive and unscrupulous. These acts caused substantial injury to Plaintiff and Class Members that they could not reasonably avoid; this substantial injury outweighed any benefits to competition.

172. As a direct and proximate result of Defendant College Board's unfair, unlawful and deceptive trade practices, Plaintiff and Class Members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from the diminution in value of their personal information.

173. Unless and until enjoined and restrained by order of this Court, Defendant College Board's wrongful conduct will continue to cause great and irreparable injury to Plaintiff and Class Members in that the personal information sold by College Board can be viewed and used by unauthorized persons. Plaintiff and Class Members have no adequate remedy at law for the injuries

in that a judgment for monetary damages will not end the invasion of privacy for Plaintiff and Class Members or require College Board to retrieve the personal information from the unauthorized entities to which it was sold.

174. Plaintiff and Class Members seek all monetary and non-monetary relief allowed by law, including damages, restitution, punitive damages, injunctive relief and reasonable attorney's fees and costs.

COUNT NINE
ILLINOIS SCHOOL STUDENT RECORDS ACT
105 ILCS 10/1, *et seq.*
(On behalf of the Illinois and Illinois Child Under Sixteen Subclasses)

175. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

176. As alleged herein, Defendant College Board violated ISSRA by unlawfully releasing, transferring, disclosing and disseminating school student records.

177. Defendant College Board's violation of ISSRA was willful or, pleaded in the alternative, negligent.

178. As a direct and proximate result of Defendant College Board's violations of ISSRA, Plaintiff and Class Members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages.

179. Unless and until enjoined and restrained by order of this Court, Defendant College Board's wrongful conduct will continue to cause great and irreparable injury to Plaintiff and Class Members in that the school student records that College Board unlawfully released, transferred, disclosed and disseminated can be viewed and used by unauthorized persons. Plaintiff and Class Members have no adequate remedy at law for the injuries in that a judgment for monetary damages will not end the invasion of privacy for Plaintiff and Class Members or require College Board to

retrieve the school student records from the unauthorized entities to which they were unlawfully released, transferred, disclosed and disseminated.

180. Plaintiff and Class Members seek relief under 105 ILCS § 10/9 for the harm they suffered because of Defendant College Board's violations of ISSRA, including actual damages, restitution, injunctive relief and reasonable attorneys' fees and costs.

COUNT TEN
RIGHT OF PUBLICITY ACT
765 ILCS § 1075/1, et seq.
(On behalf of the Illinois and Illinois Child Subclasses)

181. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

182. Plaintiff and Class Members are persons under the Right of Publicity Act.

183. As alleged herein, Defendant College Board violated the Right of Publicity Act.

184. Defendant College Board's violation of the Right of Publicity Act was willful.

185. As a direct and proximate result of Defendant College Board's willful violations of the Right of Publicity Act, Plaintiff and Class Members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages.

186. Plaintiff and Class Members seek as monetary relief the greater of: (a) actual damages, profits derived from the unauthorized use of Plaintiff and Class Members' identities, or both; or (b) \$1,000 for each violation of the Right of Publicity Act.

187. Unless and until enjoined and restrained by order of this Court, Defendant College Board's wrongful conduct will continue to cause great and irreparable injury to Plaintiff and Class Members in that the personal information sold by College Board can be viewed and used by unauthorized persons. Plaintiff and Class Members have no adequate remedy at law for the injuries in that a judgment for monetary damages will not end the invasion of privacy for Plaintiff and

Class Members or require College Board to retrieve the personal information from the unauthorized entities to which it was sold.

188. Plaintiff and Class Members also seek punitive damages, injunctive relief and the reasonable attorney's fees, costs and expenses relating to this action.

COUNT ELEVEN
ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT
815 ILCS § 505/1, *et seq.*
(On behalf of the Illinois Child Under Sixteen Subclass)

189. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

190. At relevant times, Defendant College Board knew that Plaintiff and Class Members were under the age of sixteen and, therefore, children as defined by the Children's Privacy Protection Act.

191. In violation of the Children's Privacy Protection Act, 325 ILCS § 17/10, Defendant College Board sold Plaintiff's and Class Members' personal information without parental consent.

192. Pursuant to 325 ILCS § 17/20, a violation of any provision of the Children's Privacy Protection Act is a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

193. As a direct and proximate result of Defendant College Board's violations of 325 ILCS § 17/10, Plaintiff and Class Members suffered damages, as described above.

194. Unless and until enjoined and restrained by order of this Court, Defendant College Board's wrongful conduct will continue to cause great and irreparable injury to Plaintiff and Class Members in that the personal information sold by College Board can be viewed and used by unauthorized persons. Plaintiff and Class Members have no adequate remedy at law for the injuries in that a judgment for monetary damages will not end the invasion of privacy for Plaintiff and

Class Members or require College Board to retrieve the personal information from the unauthorized entities to which it was sold.

195. Plaintiff and Class Members seek relief under 815 ILCS § 505/10(a) for the harm they suffered because of Defendant College Board's willful violations of 325 ILCS § 17/10, including actual damages, restitution, punitive damages, injunctive relief and reasonable attorneys' fees and costs.

COUNT TWELVE
INJUNCTIVE RELIEF
(On behalf of all Classes)

196. Plaintiff restates and realleges paragraphs 1 through 95, above, as though fully set forth herein.

197. Plaintiff and Class Members have clear and ascertainable rights in need of protection – namely: (a) the right to have Defendant College Board specifically perform the terms of its contracts; (b) the right to have College Board abide by its statutory obligations; and (c) the right to privacy.

198. Plaintiff and Class Members have no adequate remedy at law because a legal remedy cannot retrieve the personal information and school student records that Defendant College Board unlawfully sold, released, transferred, disclosed and disseminated to third parties and cannot end the invasion of privacy caused by College Board's conduct.

199. Plaintiff and Class Members will suffer irreparable harm, as alleged herein, from Defendant College Board if its conduct is not so restrained, requiring injunctive relief.

200. Plaintiff and Class Members are likely to succeed on the merits because, as alleged herein, Defendant College Board unlawfully sold, released, transferred, disclosed and

disseminated students' personal information and school student records despite being prohibited from doing so.

201. Plaintiff and Class Members seek injunctive relief: (a) barring Defendant College Board from any further sales, release, transfer, disclosure or dissemination of Plaintiff's and Class Members' personal information and school student records; (b) barring College Board from continuing to engage in its unlawful business practices, as alleged herein; (c) requiring College Board to specifically perform the terms of its contracts; and (d) requiring College Board to retrieve and collect all personal information and school student records sold, released, transferred, disclosed and disseminated to third parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mark S., on behalf of himself and as parent and guardian of his minor child, A.S., and on behalf of the Classes, respectfully seeks from the Court the following relief:

- a. Certification of the Classes as requested herein;
- b. Appointment of Plaintiff as Class representative and his undersigned counsel as Class counsel;
- c. Award Plaintiff and members of the proposed Classes damages, including statutory and punitive damages;
- d. Award Plaintiff and members of the proposed Classes equitable, injunctive and declaratory relief, including the enjoining of Defendant College Board from selling, releasing, transferring, disclosing or disseminating students' personal information; from releasing, transferring, disclosing or disseminating school

student records; from continuing its unlawful business practices, as alleged herein; and requiring specific performance of its contractual agreements;

- e. Award Plaintiff and members of the proposed Classes pre-judgment and post-judgment interest as permitted by law;
- f. Award Plaintiff and members of the proposed Classes reasonable attorneys' fees and costs of suit, including expert witness fees; and
- g. Award Plaintiffs and members of the proposed Classes any further relief the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all claims so triable.

Dated: June 1, 2020

Respectfully submitted,

/s/ Scott R. Drury

SCOTT R. DRURY

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CERTIFICATE OF SERVICE

I, Scott R. Drury, an attorney, hereby certify that, on June 1, 2020, I filed the foregoing document using the Court's CM/ECF system, which effected service on all counsel of record.

/s/ Scott R. Drury
SCOTT R. DRURY
One of Plaintiff's Attorneys