

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2019-6567

DIV. "F"

SECTION NO. 7

BARRY J. COOPER, JR.

CIVIL
DISTRICT COURT

~ VS. ~

AMAZON.COM, INC. and TWITCH INTERACTIVE, INC.

FILED: _____

DEPUTY CLERK

**FIRST SUPPLEMENTAL AND AMENDED PETITION FOR DAMAGES
(DATA BREACH), INJUNCTIVE RELIEF, AND VIOLATION OF THE
LOUISIANA UNFAIR TRADE PRACTICES ACT**

NOW INTO COURT, through undersigned counsel comes your Petitioner, Barry J. Cooper, Jr. (hereinafter "Cooper"), a person of majority age and a resident of the historic French Quarter in the City of New Orleans, State of Louisiana who respectfully brings this First Supplemental and Amended Petition for Damages, Injunctive Relief, and Violation of the Louisiana Unfair Trade Practices Act for the reasons discussed below, to wit:

I. DEFENDANTS

Made a defendant herein, Amazon.com, Inc.¹ (hereinafter, "Amazon"), an American multinational technology company based in Seattle, Washington that was founded in 1994 by Jeff Bezos which focuses on e-commerce cloud computing, digital streaming, and artificial intelligence.

II.

Made a defendant herein, Twitch Interactive, Inc. (hereinafter, "Twitch"), is a live streaming video platform and a wholly owned subsidiary of Amazon that is a Delaware corporation whose principal place of business is in San Francisco, California.

III.

Cooper hereby re-alleges and re-incorporates by reference the original Petition for Damages, Injunctive Relief, and Violation of the Louisiana Unfair Trade Practices Act and supplements, amends, and restates the original Petition as follows.

¹ See Amazon's Antitrust Paradox, 126 Yale L.J. 710 (January 2017).

IV. VENUE AND JURISDICTION

Amazon has historically delivered goods and merchandise to Cooper at his residence in the French Quarter up until approximately July 2018 and regularly conducts business in the State of Louisiana. Besides sufficient contacts by Amazon with the City of New Orleans, La. C.C.P. art. 76.1 entitled, "Action on Contract" provides:

That an action on contract may be brought in the parish where the contract was executed or in the parish where any work or services was performed or was to be performed under the terms of the contract.

V.

The jurisdictional amount does not exceed SEVENTY-FIVE THOUSAND DOLLARS (\$ 75,000.00 USD) and there are no federal questions presented therein.

VI.

The Louisiana Long-Arm Statute La. Rev. Stat. Ann. § 13:3201 provides in pertinent part:
Personal jurisdiction over nonresidents

A. A court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a cause of action arising from any one of the following activities performed by the nonresident:

- (1) Transacting any business in this state.
- (2) Contracting to supply services or things in this state.
- (3) Causing injury or damage by an offense or quasi offense committed through an act or omission in this state.
- (4) Causing injury or damage in this state by an offense or quasi offense committed through an act or omission outside of this state if [it] regularly does or solicits business, or engages in any other persistent course of conduct, or derives revenue from goods used or consumed or services rendered in this state.

...

VII. FACTUAL BACKGROUND

Amazon, a publicly traded company, is considered one of the big four technology companies along with Google, Apple, and Facebook.² It is the world's largest e-commerce marketplace.³ Amazon's product lines available at its website include several media (books, DVDs, music CDs, videotapes, and software), apparel, baby products, consumer electronics, beauty

² See Article appearing in The New York Times (International Edition | Friday, June 7th, 2019) by Cecilia Kang and Kenneth P. Vogel, entitled "Tech titans, facing fight, amass army of lobbyist," pp. 1, 6. The four companies [Amazon, Google, Apple, and Facebook] spent a combined \$55 million on lobbying last year, doubling their combined spending of \$27.4 million in 2016, and some are spending at a higher rate so far this year, according to the Center for Responsive Politics, which tracks lobbying and political contributions. That puts them on a par with long-established lobbying powerhouses like the defense, automobile, and banking industries.

³ See [https://en.wikipedia.org/wiki/Amazon_\(company\)](https://en.wikipedia.org/wiki/Amazon_(company))

products, gourmet food, groceries, health and personal-care items, industrial & scientific supplies, kitchen items, jewelry, watches, lawn and garden items, musical instruments, sporting goods, tools, automotive items and toys & games.

VIII.

Amazon has a number of products and services available to the marketplace, including: (1.) AmazonFresh, (2.) Amazon Prime, (3.) Amazon Web Services, (4.) Alexa, (5.) Appstore, (6.) Amazon Drive, (7.) Echo, (8.) Kindle, (9.) Fire Tablets, (10.) Fire TV, (11.) Video, (12.) Kindle Store, (13.) Music, (14.) Music Unlimited, (15.) Amazon Digital Game Store, (16.) Amazon Studios, and (17.) AmazonWireless.

IX.

Twitch is a social video platform and community for gamers where more than 100 million gather every month to broadcast, watch and talk about video games. Twitch's video platform is the backbone of both live and on-demand distribution for the entire video game ecosystem. This includes game developers, publishers, media outlets, events, user generated content, and the entire e-sports scene. In February 2014, Wall Street Journal ranked Twitch as the 4th largest website in terms of peak internet traffic in the U.S. fortifying the brand as an entertainment industry leader and the epicenter of social video for gamers.⁴

X.

Cooper has had an active Amazon account for over a decade. This Amazon account was used for purposes of purchasing supplies for his French Quarter residence and office supplies for his law firm in New Orleans, Louisiana.

XI.

In the past, Cooper has utilized the Amazon services of: (1.) Amazon Prime, (2.) Kindle, (3.) Video, (4.) Kindle Store, (5.) Music, and (6.) Music Unlimited.

⁴ See <https://www.crunchbase.com/organization/twitch#section-overview>

XII.

On July 11th, 13th, and 23rd, 2018, Cooper experienced a data breach of his Amazon account when someone, who has yet to be identified, purchased (50) crates of virtual assault rifles at Twitch (hereinafter “Data Breach”).⁵

XIII.

The Data Breach resulted in (50) individual fraudulent charges, some of which were placed on Cooper’s Chase credit card ending in 0655 and the others on Cooper’s Citi MasterCard ending in 0427, both of which were on file with Amazon.

XIV.

Immediately upon discovering the fraudulent credit card charges, Cooper contacted Chase Bank Card Services (hereinafter “Chase”), as well as, Citi MasterCard (hereinafter “Citi”) and reported the fraud. Upon the terms and conditions of both the Chase and Citi card agreement with Cooper, Chase and Citi cards reversed the fraudulent credit card charges pending an investigation. Cooper then contacted Amazon’s customer care department and reported the fraudulent conduct.

XV.

Shortly after Cooper notified Amazon of the fraudulent activity on Cooper’s account and that the charges are being disputed, Amazon informed Cooper that his Amazon account would be placed on hold because of the disputed Amazon charges. The most recent communication came from chargeback-alert@amazon.com on Sunday, April 21st, 2019 at 7:55 PM and is provided below.

Hello,

We are writing to let you know that we have put your account on hold because your card issuer has disputed one or more transactions that you have made.

As a result of the dispute, your card issuer has withdrawn the funds and we have not been paid for this order. Your account will remain on hold until we receive this payment.

Please see the transaction details below. If you have authorized this transaction, we can charge any valid card registered to your account. Just reply to this email with the card type, the last two digits, and the expiration date. For your protection, do not include full credit card numbers in your response.

If you want to use a card that is not registered to your account, fax the following information to our secure line at 206-266-2752:

- The card type, the full credit or debit card number, and the expiration date
- The name, address, and phone number that the cardholder registered to the card

⁵ Fifty H1Z1 Mayhem Crates. See e-mail from chargeback-alert@amazon.com to bcooper@sch-llc.com dated July 17, 2018 at 3:44:24 PM GMT+2.

XIX. FIRST CAUSE OF ACTION
(Negligence - Data Breach)

Cooper hereby realleges and incorporates by reference each of the allegations of all paragraphs above, as though fully set forth at length in the Cause of Action.

XX.

The Federal Trade Communications (hereinafter “FTC”) defines identity theft as “a fraud committed or attempted using the identifying information of another person without authority.”⁶ The FTC describes “identifying information” as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific person.”⁷

XXI.

Identity thieves can use personal information, such as that of Cooper’s, which Amazon failed to keep secure, to perpetrate a variety of crimes that harm victims. For instance, identity thieves may commit various types of government fraud such as: immigration fraud; obtaining a driver’s license or identification card in the victim’s name but with another’s picture; using the victim’s Personal Information to obtain government benefits; or filing a fraudulent tax return using the victim’s Personal Information to obtain a fraudulent refund.

XXII.

Defendants Amazon and Twitch were well aware of the likelihood and repercussions of cyber security threats, including data breaches, having observed numerous other well-publicized data breaches involving major corporations over the last few years alone—including Equifax and Facebook—as well as the numerous other similar data breaches preceding those blockbuster breaches.

XXIII.

In September 2015, credit reporting agency Experian acknowledged that an unauthorized party accessed one of its servers containing the names, addresses, dates of birth, driver’s license, and additional Personal Information of more than 15 million consumers over a period of two years.⁸

⁶ 17 C.F.R § 248.201 (2013).

⁷ *Id.*

⁸ Reem Nasr, *Experian data breach hits more than 15M T-Mobile customers, applicants*, CNBC Tech (October 1, 2015) <https://www.cnbc.com/2015/10/01/experian-reports-data-breach-involving-info-for-more-than-15m-t-mobile-customers.html>

XXIV.

In March 2018, numerous media and news outlets broke blockbuster stories concerning Cambridge Analytica's exfiltration of user data from Facebook's platform.⁹

XXV.

Following the Equifax data breach, Senator Elizabeth Warren commissioned an investigation and, in February 2018, Senator Warren's office released the results of the 5-month investigation, setting forth a number of findings regarding Equifax's data breach, including the inadequate data security practices that contributed to the data breach (the "Warren Report").¹⁰

XXVI.

Senator Warren's investigation revealed that the Equifax data breach was made possible because Equifax adopted weak cyber security measures that failed to protect consumer data and information falling within the personal information at issue in this civil action.¹¹

XXVII.

Senator Warren consulted with industry experts, and the Warren Report concluded that companies that hold large amounts of sensitive data—including Personal Information at issue here—should have multiple layers of cyber security, including: (a) frequently updated tools to prevent hackers from breaching their systems; (b) controls that limit hackers' ability to move throughout their systems in the event of an initial breach; (c) restrictions on hackers' ability to access sensitive data in the event of an initial breach; and (d) procedures to monitor and log all unauthorized access in order to stop the intrusion as quickly as possible.¹²

XXVIII.

Upon information and belief, much like Amazon, Senator Warren warned that "Despite collecting data on hundreds of millions of Americans without their permission, Equifax failed to fully and effectively adopt any of these four security measures."¹³

⁹ Marisa Schultz, *Facebook's data breach could be higher than 85m: Cambridge Analytica whistleblower*, New York Post, (April 8, 2018) <https://nypost.com/2018/04/08/facebooks-data-breach-could-be-higher-than-87m-cambridge-analytica-whistleblower/>

¹⁰ The Office of Senator Elizabeth Warren, *Bad Credit: Uncovering Equifax's Failure to Protect Americans' Personal Information* (February 2018) (available at: https://www.warren.senate.gov/files/documents/2018_2_7_%20Equifax_Report.pdf) (last visited June 28, 2018)

¹¹ Warren Report, at 3.

¹² Warren Report, at 3.

¹³ Warren Report, at 3.

XXIX.

Other cyber security analysts also found additional failures in Equifax's security measures, including failure to make use of firewalls that serve as a second line of defense.¹⁴

XXX.

Despite these well-publicized Senate and other expert reports, upon information and belief, Amazon and Twitch failed to heed the recommendations, and inexplicably left its server—and the personal information of Cooper which rested thereon—vulnerable and available to even the most basic cyber-attack.

XXXI.

The Data Breach was caused and enabled by Amazon and its wholly owned subsidiary, Twitch's knowing violation of its obligations to abide by best practices and industry standards in protecting personal information.

XXXII.

The injuries suffered by Cooper as a direct result of the Data Breach include:

- (a.) Theft of his personal information and financial information;
- (b.) Costs for credit monitoring services;
- (c.) Unauthorized charges on his credit card accounts;
- (d.) The imminent and certainly impending injury flowing from potential fraud and identity theft posed by his credit cards and personal information being placed in the hands of criminals and already misused via the sale of Cooper's personal Information on the Internet black market;
- (e.) The failure to notify Cooper of the Data Breach;
- (f.) The improper disclosure of Cooper's customer data;
- (g.) Loss of privacy;
- (h.) Ascertainable losses in the form of out-of-pocket expenses and the value of Cooper's time reasonably incurred to remedy or mitigate the effects of the data breach;
- (i.) Ascertainable losses in the form of deprivation of the value of Cooper's personal information, for which there is a well-established national and international market;
- (j.) Ascertainable losses in the form of the loss of cash back or other benefits as a result of their inability to use certain accounts and cards affected by the data breach;
- (k.) Loss of use of, and access to, Cooper's account funds and costs associated with the inability to obtain money from his accounts or being limited in the amount of money he was permitted to obtain from his accounts, including missed payments on bills and loans, late charges and fees, and adverse effects on his credit including adverse credit notations; and,
- (l.) The loss of productivity and value of his time spent to address, attempt to ameliorate, mitigate, and deal with the actual and future consequences of the data breach, including finding fraudulent charges, cancelling and reissuing cards, purchasing credit monitoring and identity theft protection services, imposition of withdrawal and purchase limits on compromised accounts, changing the information used to verify their identity to information not subject to this data breach, and the stress, nuisance and annoyance of dealing with all such issues resulting from the data breach.

¹⁴ Amos Ndegwa, *What is a Web Application Firewall?*, MAXCDN (May 31, 2016), <https://www.maxcdn.com/one/visual-glossary/web-application-firewall/>; Tushar Richabadas, *WAF Prevents Massive Data Breach at Equifax - The headline that could have been, but wasn't*, BARRACUDA (Sept. 22, 2017).

XXXIII.

Cooper asserts claims, as a consumer, against Amazon and Twitch for negligence, negligence *per se*, and unjust enrichment, as well as, violation of state consumer protection and/or privacy laws. Cooper seeks monetary damages, declaratory, and injunctive relief, and other remedies for violations of Louisiana state statutes.

XXXIV.

Amazon and Twitch's acts and/or inactions in connection with the fraudulent activity and Data Breach on Cooper's Amazon account has resulted in damages to Cooper in an amount to be proven at trial.

XXXV. SECOND CAUSE OF ACTION

(Violation of the Louisiana Unfair Trade Practices Act § 51:1401, *et seq.*)

Cooper hereby realleges and incorporates by reference each of the allegations of all paragraphs above, as though fully set forth at length in the Cause of Action.

XXXVI.

Amazon and Twitch's acts, omissions, policies and practices set forth above constitute unlawful, unfair and/or fraudulent business practices within the meaning of the Louisiana Unfair Trade Practices and Consumer Protection Law (La. Rev. Stat. § 51:1401, *et seq.*).

XXXVII.

Among other things, Amazon and Twitch's business practices are unfair and unlawful because they are injurious and/or their utility is outweighed by the harm caused. As the most established, popular, widely-viewed, and influential platforms for e-commerce and competitive video gaming, both Amazon and its wholly owned subsidiary, Twitch, were placed on notice of the financial fraud committed upon Amazon's user and consumer, Cooper, but chose to take no corrective action. Instead, Amazon persisted in attempting to collect fees derived from an illegal activity for which it had full and superior knowledge.

XXXVIII.

Amazon's persistent attempt to collect on (50) separate fraudulent charges made to Cooper's Amazon account after placing Amazon on notice of the fraudulent and unlawful activity is a direct violation of the Louisiana Unfair Trade Practices Act § 51:1427 entitled, "Stolen or misappropriated computer software; violations" which provides:

- A. **It shall be unlawful** for a person to develop or manufacture a product, or **to develop or supply a service using stolen or misappropriated**

property, including but not limited to computer software that does not have the necessary copyright licenses, where that product or service is sold or offered for sale in competition with those doing business in this state.

B. Any violation of this Section shall be an unfair method of competition and unfair practice or act and shall subject the violator to any and all actions and penalties provided for in this Chapter. For the purpose of this Section, a violation shall occur each time such a product or service is sold or offered for sale.

Acts 2010, No. 74, §1. (emphasis added)

XXXIX.

Amazon and Twitch's acts and/or inactions in connection with the fraudulent activity and alleged violations of Louisiana's Unfair Trade Practices and Consumer Protection Laws on Cooper's Amazon account has resulted in damages to Cooper in an amount to be proven at trial.

WHEREFORE, Petitioner, Barry J. Cooper, Jr., prays for relief against the Defendants, Amazon.com, Inc. and Twitch Interactive, Inc., as follows:

1. For general damages according to proof;
2. For special damages according to proof;
3. For prejudgment interest at the maximum rate allowed by law;
4. For costs and expenses, and expert witness fees;
5. For a determination of joint, several, and *in-solido* liability as to all Defendants;
6. For injunctive relief that Amazon shall lift the block from Cooper and his spouse's account;
7. For such other relief as the Court may deem just and proper.

Respectfully submitted:



Barry J. Cooper, Jr. (LSBA No. 27202)
Victor T. Cobb (LSBA No. 36830)
Claris E. Smith (LSBA No. 38591)
COOPER LAW FIRM, LLC
1525 Religious Street
New Orleans, Louisiana 70130
Telephone: (504) 399-0009
Facsimile: (504) 309-6989
E-Mail: bcooper@sch-llc.com; vcobb@sch-llc.com;
csmith@sch-llc.com

ATTORNEYS FOR PETITIONER,
BARRY J. COOPER, JR.

**SERVICE EFFECTED UPON DEFENDANTS VIA
THE LOUISIANA LONG ARM STATUTE (LA. REV. STAT. § 13:3201)
AND U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED, UPON:**

**Amazon.com, Inc. &
Twitch Interactive, Inc.**
Through its legal counsel
David Bateman, Esq.
K&L Gates, LLP
925 Fourth Avenue, Suite No. 2900
Seattle, Washington 98104-1158

**SERVICE EFFECTED VIA U.S. CERTIFIED MAIL,
RETURN RECEIPT REQUESTED, UPON:**

Hon. Jeff Landry, Louisiana Attorney General
LOUISIANA DEPARTMENT OF JUSTICE
1450 Poydras Street, Suite No. 900
New Orleans, Louisiana 70112