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District Court dismisses investors' 2017 data breach claims

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Courts Class Action Privacy/Cyber Risk & Data Security Data Breach

On September 18, the U.S. District Court for the Northern District of California dismissed with prejudice a class action suit brought against an online payments firm and associated entities and individuals (collectively, "defendants") for allegedly misleading investors (plaintiffs) about a 2017 data breach. The court stated that the plaintiffs plausibly alleged the defendants' November 2017 announcement about the data breach was misleading because it "disclosed only a security vulnerability, rather than an actual security breach that potentially compromised" 1.6 million customers, which the plaintiffs contended was not actually disclosed until a month later when a follow-up statement was released. However, the court argued that the plaintiffs failed to show under the loss-causation theory that the defendants knew the breach affected 1.6 million customers when the company made its first statement, and contended that confidential witness statements provided by the plaintiffs from three former employees did not credibly support allegations that the defendants and its executives knew the full extent of the breach when they warned of potential vulnerabilities or "used that knowledge (or recklessly disregarded it) to deceive the market." Furthermore, the court determined that while both parties agreed that a plaintiff can support a securities fraud claim with expert opinions, the plaintiffs in this case failed to allege that the cybersecurity expert they hired was familiar with, or had knowledge of, the defendants' specific security setup or that he actually talked to the defendants' employees about the breach. According to the court, the expert provided an opinion on "what likely would have happened in the event of any breach."



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