

Class Action Alleges Deceptive Marketing by Lifelock

Lifelock's CEO is himself a multiple identity theft victim, suit charges

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A West Virginia law firm has filed its third class action lawsuit against Lifelock, whose ubiquitous ads promise ironclad protection against identity theft. Earlier suits were filed in New Jersey and Maryland.

The lawsuits, filed by Marks & Klein, LLP, allege that LifeLock and its multi-million-dollar advertising campaign provided false and misleading information about the limited level of identity protection the company provides, and failed to warn them about the potential adverse impact the company's services could have on their credit profiles.

The complaints also allege that the firm's CEO, Richard "Todd" Davis, has himself been a victim of identity theft by multiple offenders while a customer of LifeLock's services.

Davis publishes his Social Security number in the Lifelock ads as a demonstration of his supposed confidence in the company's practices.

Protection 'overstated'

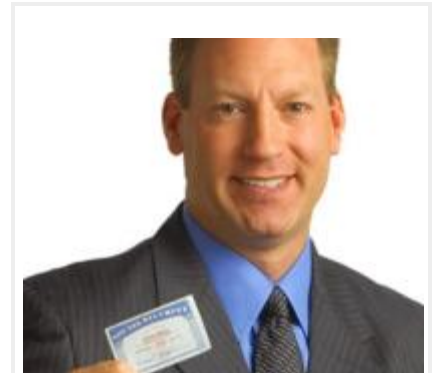
Attorney David Paris maintains that LifeLock dramatically overstates the level of protection provided by its primary service -- the placement and constant renewal of fraud alerts on its subscribers' credit profiles.

"Customers of LifeLock rely on the company's misleading advertisements and pay for a perceived level of protection that is clearly not provided," said Paris.

LifeLock, which is headquartered in Tempe, Ariz., charges subscribers \$10 per month. According to the complaints, potential LifeLock subscribers are enticed by the 'safety net' of what appears to be a \$1 million insurance policy against any losses sustained as a result of identity theft.

"In actuality, once you get beyond the numerous legal limitations and disclaimers, the policy really only guarantees that LifeLock will investigate how to fix its failure if an incident occurs and will pay other third-party organizations to attempt to restore the subscriber's identity," noted David Grubb of the Grubb Law Group in Charleston, W. Va., who is representing West Virginia class plaintiffs.

"The subscriber receives no monetary recompense and no guarantee that their reputation and credit status will be restored," he said.



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According to the complaints, LifeLock induces consumers into subscribing through a marketing campaign that showcases CEO Davis broadcasting his own Social Security number as testimony to his confidence in LifeLock's services.

CEO's identity stolen

As a result, the complaints allege, Davis's identity has been "stolen while he was a customer and is, upon information and belief, presently being misappropriated by at least twenty identity thieves."

The West Virginia action seeks to recover the money subscribers have paid to LifeLock and to prohibit the company from continuing to promote its services through a deceptive marketing campaign. Marks & Klein said it plans to file similar actions on behalf of consumers in other states.

Founded in 2005, LifeLock presently has approximately 1 million subscribers across the United States.

Debit card incident

Beyond the charges leveled in the complaints, lead counsel Paris related the story of a Wisconsin consumer who contacted the firm regarding her accidental experience with LifeLock.

"Her debit card was stolen and the thief had the audacity to use the card to buy a subscription to LifeLock," he noted. "Most disturbingly, LifeLock issued the subscription to the thief in the thief's name, clearly failing to verify the appropriate information."

DIY

Consumer advocates say that the service provided by LifeLock is little more than a "concierge" offering, something that consumers could do themselves for free.

LifeLock, based in Tempe, Arizona, works by renewing an individual's fraud alert with one of the nation's three large credit bureaus, a service which federal laws mandate any individual can do for free, usually within a few minutes over the phone or Internet.

"What the fraud alert does is it basically puts a red flag on your credit report and it tells any potential creditor that if they receive an application for credit, they should take additional measures to determine that the person is the person that they're claiming to be. Typically that would be a phone call," said Paul Stephens, director of public policy at the Privacy Rights Clearinghouse, a nonprofit consumer advocacy organization.

Fraud alerts last 90 days and then must be renewed. LifeLock charges \$10 a month to make sure its customers' fraud alerts never expire – a service most consumer advocates are baffled anyone would pay money for.

"No one needs to pay a third party firm to assert their federal rights," Ed Mierzwinski, consumer program director at the U.S. Public Interest Research Group, a nonprofit consumer advocacy organization, wrote in an e-mail. "And for one hundred bucks plus each year, it is certainly not cheap to do so."

Concierge service?

"I like to think of LifeLock as being a concierge service," Stephens said "Are you the kind of person who would pay somebody, for example, to do your shopping for you?"

"I would point out that to do the sorts of things that LifeLock does for you, you don't even need to leave your house," Stephens continued. "You can get on the phone or get on your computer and do it in a couple of minutes. So I don't really see that they bring a lot of value to the consumer."

Davis didn't argue the concierge analogy in a phone interview with ConsumerAffairs.com, but said the company offers much more than the renewal service.

"There are certainly steps beyond just convenience that we're doing, but one of the things that people love are those convenient steps: us renewing the fraud alerts, us being there if you have a question in a retail store when you're applying for credit, us being available 24/7, us being there in case you lose your wallet; (we will) assist canceling and renewing credit cards and helping to get a new driver's license," Davis said.

"We're also doing other things like scouring the (Internet) looking for your personal information being bought or sold on the black market," Davis said. "We're authenticating when someone puts in a change of address to confirm it's you."

In advertisements, the company also promises to stop junk mail, including pre-approved credit offers and provide a credit report – services that again, a consumer can do for free over the phone or Internet.

\$1 million 'guarantee'

The most controversial aspect of LifeLock is its \$1 million guarantee.

"LifeLock's \$1 million guarantee is our intent to go support any member of LifeLock who might become a victim of identity theft while subscribed to our service so we that can go out and (fill) our intent to do everything the law allows us to do to help that person recover their good name," Davis said. "So whether that's hiring third person personnel, whether that's covering any losses or expenses, whether it's getting accounts closed and getting new ones issued, that's what we'll do."

But two pending class action lawsuits claim that the company's \$1 million guarantee is not a guarantee at all, but just a "promise" that the company is not actually obligated to fulfill.

"There is no \$1 million guarantee," said Leonard Aragon, one of the attorneys who filed a class action lawsuit against the company. "If you look at the terms of the contract it very clearly says 'we won't pay consequential damages. We won't pay you directly so there's really no way to get up into the million dollars.'"

"Our understanding is that it basically covers any defect in their product," said Aragon of Hagens Berman Sobol Shapiro in Seattle. "What that means is the failure to place the fraud alert or maybe they accidentally spell your name wrong."

Davis said the reason LifeLock does not make any actual guarantees is because he doesn't want it to become an insurance company.

"Insurance by design is not built to mitigate risk." Davis said. "They spread actuarial risk over a group of people. LifeLock is so dramatically more than that. We want to be the most comprehensive solution out there to actually prevent this crime to mitigate the risk on the front end. We don't want to limit what we can do for consumers. We don't want to limit where they can acquire this protection by only going through licensed insurance agents. We want you to be able to go get this at Office Depot or CVS Pharmacy or through AAA."

85 claims

Of LifeLock's 940,000 customers 85 have filed claims against the company's \$1 million guarantee and all have been pleased with the results, Davis said.

"Those are some of our greatest advocates," he said.

But Aragon warned that although the company is fulfilling its promise now, if there is ever a serious data breach and many of its customers are defrauded, the company may not fulfill its promise. He compared it to the insurance companies who failed to honor their flood clause for consumers whose homes were destroyed in New Orleans from a breached levy rather than flood waters.

"When everyone's all happy and it really isn't that big of a deal and there really aren't that many claims, well insurance companies say 'sure, we'll pay that. We don't want to cause trouble because we want people to come to our insurance company. But when it hits the fan and there are a lot of claims well that's when we start going into the contracts,'" Aragon said.

"You can't promise one thing and have your contract say one thing because eventually that's going to come around and it's going to be bad news for the consumers who thought they were buying protection when in actuality they weren't buying anything," Aragon said. "They were buying some good customer service. Big deal."

Davis said no matter what, the company will honor its promise and that its terms are only written that way to avoid becoming an insurance company, and thus subject to regulation in each state where it does business.

"If we didn't (honor our guarantee), it would be catastrophic for the company," Davis said. "It wouldn't behoove us in the business we're in when our sole purpose is protecting consumers and taking care of consumers if we elected to say we choose not to keep our promises then it's going to be catastrophic to the company."

Despite the language of the \$1 million guarantee, Aragon and consumer advocates say LifeLock is no guarantee to ward off fraud or identity theft.

"They're telling everyone this is LifeLock so we're going lock your credit and we're going to protect you from identity theft when the reality is all they do is put a fraud alert and all that does is protect you from having instant credit taken out under your Social Security number," Aragon said.

"Let's say you get your wallet stolen and your checkbook stolen and someone goes to a checks cashed store. It does nothing to protect against that. Aragon continued. "It also does nothing to protect against your credit card (being) stolen."

"Fraud alerts do not stop the issuance of credit," Mierzwinski wrote. "They do condition the issuance of credit by making the creditor liable if the consumer can prove damages, but they don't stop it."

Davis said if a LifeLock customer is defrauded in any way, even outside the limited protection of a fraud alert, the customer can invoke the \$1 million guarantee and the company will honor it.

What to do

Consumers who wish to sign up for the 90-day fraud alert or a credit report, can do so for free at any of the three major credit bureaus' websites or by calling them. Once one of the credit bureaus has been notified of the fraud alert, it will immediately notify the other three.

- [TransUnion](#): (800) 680-7289
- [Equifax](#): (800) 525-6285
- [Experian](#): (888) 397-3742

Consumers who wish to opt out of credit offers can do so by calling the Consumer Credit Reporting Industry at (888) 567-8688 or by visiting its [website](#).

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