

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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ROBERT I. HARWOOD, on behalf of all others similarly  
situated,

Index No.  
SUMMONS AND  
COMPLAINT

09601971

Plaintiff

-against-

VERIFIED IDENTITY PASS, INC.,  
Defendant.

Plaintiff designates New York  
County as the place of trial

The basis of Venue is  
Defendant's principal place of  
business

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Plaintiff resides at 22 Appleton  
Place, Dobbs Ferry, New York  
10522

**FILED**  
JUN 25 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

To the above named Defendant:

**YOU ARE HEREBY SUMMONED**, to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons to serve a Notice of Appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Date: June 25, 2009

Squitieri & Fearon, LLP  
Attorneys for Plaintiff



Lee Squitieri  
32 East 57<sup>th</sup> Street - 12<sup>th</sup> Floor  
New York, NY 10022  
(212) 421-6492

Defendants' addresses:  
600 Third Avenue  
New York, New York 10016

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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 ROBERT I. HARWOOD, on behalf of :  
 and all others similarly situated, :  
 :  
 Plaintiff, :  
 :  
 -against- :  
 :  
 VERIFIED IDENTITY PASS, INC., :  
 :  
 Defendant. :  
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Index No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

09601971

FILED

JUN 25 2009

NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff, by his attorneys, on behalf of himself and all others similarly situated, brings this action against defendant Verified Identity Pass, Inc. ("V.I.P.") and alleges the following upon information and belief (except for those allegations that pertain to Plaintiff and his attorneys, which are based upon personal knowledge) and upon an investigation by his counsel, which included, among other things, a review of news articles, press releases, and other publicly available documents:

**THE PARTIES**

1. Plaintiff is a resident of Westchester County and a member of the Class (as defined below) and was injured by defendant's conduct.
2. Defendant V.I.P. is a corporation with its principal place of business at 600 Third Avenue, New York, New York 10016.

**CLASS ACTION ALLEGATIONS**

3. Plaintiff brings this suit as a class action on behalf of himself and all others similarly situated as members of the proposed class. The proposed class which plaintiff seeks to represent is defined as:

All persons who acquired from defendant V.I.P. the "Clear" pass (as described below) whose usage thereof was terminated on June 23, 2009 (the "Class").

Excluded from the Class are defendant, any entity in which defendant has a controlling interest, any employee, officer, or director of defendant, and any legal representative, heir, successor, or assignee of defendant.

4. This action has been brought and may properly be maintained as a class action pursuant to Article 9 of New York's Civil Practice Law and Rules.

5. Members of the Class are so numerous that their individual joinder herein is impracticable, defendant V.I.P. having issued approximately 165,000 "Clear" passes.

Accordingly, plaintiff is informed and believes, and on that basis alleges, that there are thousands of members in the Class. The precise number of Class members and their addresses are unknown to plaintiff, but are particularly within the knowledge of Defendant. Class members may be notified of the pendency of this action by published and/or mailed notice.

6. Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting only individual Class members. These common legal and factual questions include, without limitation:

- (a) whether V.I.P. failed to provide the promised "Clear" pass services to members of the Class;
- (b) whether V.I.P. violated common law; and
- (c) the nature and extent of damages and other remedies to which V.I.P.'s conduct entitles Class members.

7. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have sustained monetary damages arising out of V.I.P.'s violations of common and statutory law as alleged herein.

8. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class he seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation. Plaintiff intends to prosecute this action vigorously. The interests of members of the Class will be fairly and adequately protected by plaintiff and his counsel.

9. The class action is superior to other available means for the fair and efficient adjudication of the claims of plaintiff and the Class. The damages suffered by each individual Class member are of such magnitude that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by V.I.P.'s conduct. Furthermore, it would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by V.I.P.'s conduct. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**FACTUAL BACKGROUND**

10. Defendant V.I.P. sold to plaintiff and each Class member, for the sum of \$199.00, a pass, which V.I.P. called a "Clear" pass. "Clear" was designed to speed frequent travelers past crowded security lines by performing background checks and capturing biometric information about those travelers, and issuing them a "Clear" pass, which enabled them to use an expedited security lane at certain airports.

11. On June 23, 2009, V.I.P. advised plaintiff that: "At 11:00p.m. PST today, Clear will cease operations . . . . After today, Clear lanes will be unavailable."

12. On June 23, 2009, plaintiff demanded a refund from V.I.P. Defendant refused. In addition, according to a notice posted on V.I.P.'s website, V.I.P. "cannot issue refunds" for "Clear" passes.

13. Thus, despite due demand by plaintiff, V.I.P. here failed and/or refused to return the moneys paid to V.I.P. for its failure to provide "Clear" pass services.

14. Defendant has also failed to return to Class members the biometric information described in Paragraph 10 above.

**FIRST CAUSE OF ACTION**  
**(Unjust Enrichment)**

15. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 14 as though fully set forth herein.

16. Defendant V.I.P. has charged plaintiff and members of the Class for the "Clear" pass and failed to provide the promised services.

17. Defendant V.I.P. received and continues to use and benefit from the amounts paid

by plaintiff and members of the Class, together with interest earned on such amounts.

18. Defendant V.I.P. is and has been in possession, custody, and/or control of the improperly billed and paid amount during all relevant times.

19. The improperly paid amounts are the property of plaintiff and the Class.

20. As a consequence, defendant V.I.P. has been and continues to be unjustly enriched by virtue of its continued possession of the improperly billed and paid amounts. Accordingly, defendant V.I.P. must return the improperly billed amounts to plaintiff and the Class.

**SECOND CAUSE OF ACTION**  
**(Moneys Had And Received)**

21. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 20 as though fully set forth herein.

22. Defendant V.I.P. has charged plaintiff and members of the Class for the "Clear" pass and not delivered the promised services.

23. The improperly paid amounts are property of plaintiff and the Class members.

24. Defendant V.I.P. owes plaintiff and the Class for money had and received, to be paid by defendant to plaintiff and the Class.

WHEREFORE, plaintiff, on his own behalf and on behalf of the Class, prays for judgment, as follows:

(a) Declaring this action to be a proper class action and certifying plaintiff as Class representative under Article 9 of New York's Civil Practice Law and Rules;

(b) Awarding compensatory damages in favor of plaintiff and the other members of the Class against defendant for the actual damages sustained as a result of defendant's wrongdoing, together with interest thereon;

(c) Awarding restitution of all amounts paid by plaintiff and Class members;

(d) Awarding punitive damages where defendant has been guilty of oppression, fraud, or malice;

(e) Awarding plaintiff and the other members of the Class their costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees;

(f) Enjoining defendant from making any further use of the Class members' biometric information described in Paragraph 10 above and ordering its return to Class members; and

(g) Granting such other and further relief as this Court deems just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury and designates New York County as the place of trial.

Dated: New York, New York  
June 25, 2009

SQUITIERI & FEARON, LLP

By: 

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New York, New York 10022  
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