

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

MICHAEL FRIDMAN,

Plaintiff,

v.

Case No.:

THE NEIMAN MARCUS GROUP
LLC,

Defendant.

_____ /

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, without waiving its right to arbitrate, Defendant The Neiman Marcus Group LLC (“NMG”), through its undersigned counsel, hereby gives notice that it is removing the above-captioned case from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida to this Court, the United States District Court for the Southern District of Florida, Miami Division, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, 1452, and 1453.¹

In support of this Notice of Removal, NMG states the following:

INTRODUCTION

1. On March 10, 2021, Michael Fridman (“Plaintiff”) filed a Class Action Complaint (the “Complaint”) in a civil action styled *Michael Fridman v. The Neiman Marcus Group, LLC*, Case No. 2021-005882-CA-01, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “Removed Action”).

¹ This Notice of Removal is filed without prejudice to, subject to, and with express reservation of NMG’s rights to move to compel this matter to individual arbitration in accordance with the Parties’ valid and enforceable arbitration agreement.

2. According to Plaintiff's allegations, NMG unlawfully intercepted Plaintiff's and putative class members' electronic communications without their knowledge or prior consent in alleged violations of the Florida Security of Communications Act ("FSCA"), Fla. Stat. § 934.01, *et. seq*, and in alleged invasions of privacy under Florida Law. *See generally* Compl. ¶¶ 1-6. Plaintiff alleges that he has suffered injury by NMG's alleged use of tracking, recording, and/or "session replay" software provided by Quantum Metric, Inc, ("QM") to intercept Plaintiff's electronic communications with NMG's website, neimanmarcus.com, without consent. *See id* at ¶¶ 1-6; 32.

3. Specifically, Plaintiff alleges that NMG used QM software to create a video recording of his keystrokes and mouse clicks on the website. *Id.* at ¶ 32. Plaintiff also alleges that NMG used QM software to capture his IP address, browser type, the operating system on his device, Plaintiff's location at the time of each visit, and the time, date, and duration of each visit. *See id.* Plaintiff further alleges that NMG uses QM software in a similar manner on its other websites, bergdorfgoodman.com, horchow.com, and lastcall.com (together with neimanmarcus.com, the "Websites"). Compl. ¶¶ 10; 14; 26; 33. Plaintiff contends that NMG's use of QM software constitutes two separate violations of the FSCA and an actionable invasion of privacy under Florida law. Compl. ¶¶ 71-87; *see also* Fla. Stat. § 934.03-04.

4. Further, the Removed Action is a putative class action. *See generally* Compl. ¶¶ 43-60. The Complaint alleges that "Class Members share a similar narrative [to Plaintiff], and each experienced the interception of their electronic communications while visiting [NMG's] Websites[.]" *Id.* at ¶ 33. The Complaint proposes a class defined as "Florida residents who visited the Websites, and whose electronic communications were intercepted or recorded by QM on behalf

of [NMG], without their prior consent[,]” *Id.* ¶ 43. NMG and its employees or agents are excluded from the class. *Id.* ¶ 44.

5. The Complaint seeks at least \$1,000 monetary damages for each alleged violation of the FSCA, compensatory and punitive damages, injunctive relief prohibiting the alleged violations, declaratory relief, and attorneys’ fees and costs on behalf of Plaintiff and the proposed class. Compl. ¶¶ 6; 71; 78.

6. On April 6, 2021, Plaintiff served the summons and copy of the Complaint on the registered agent of NMG. This Notice of Removal is hereby filed on May 3, 2021, which is 27 days after service on NMG. Accordingly, this Notice of Removal was timely filed within the 30 days allowed for removal by 28 U.S.C. § 1446(b)(1). *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 334, 355-56 (1999). Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders that have been served upon NMG are attached hereto as **Exhibit A.**²

7. Without waiving the right to arbitrate, NMG generally denies the allegations made by Plaintiff, disputes the claims asserted by Plaintiff, and disputes that Plaintiff is entitled to pursue or receive any relief on an individual or class-wide basis. NMG discusses the allegations and claims made by Plaintiff herein solely as they are alleged and solely to demonstrate the propriety of removal.

THIS COURT HAS JURISDICTION OVER THIS ACTION AND REMOVAL IS PROPER PURSUANT TO 28 U.S.C. § 1332(d)

8. Under 28 U.S.C. § 1332(d)(2)(A) (“Class Action Fairness Act” or “CAFA”), a defendant may remove a putative class action to federal court when the amount-in-controversy

² These copies include: (1) the Civil Cover Sheet; (2) the Complaint; (3) Summons on the Complaint; (4) Motion for Extension of Time; and (5) the Order Extending Time.

exceeds \$5,000,000 and parties to the action satisfy a minimum diversity of citizenship requirement. 28 U.S.C. §§ 1332, 1441, 1446, 1453; *see also Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84 (2014).

9. A case satisfies CAFA’s class action requirement if it is “filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). The present action satisfies this definition as Plaintiff’s suit is brought “individually and on behalf of all others similarly situated,” consisting of “Florida residents who visited the Websites, and whose electronic communications were intercepted or recorded by QM on behalf of Defendant, without their prior consent[.]” Compl. ¶ 43. The Complaint itself is also styled as a “Class Action,” and contains an entire section devoted to “Class Representation Allegations.” *Id.* at ¶¶ 43-60.

10. The Court has original jurisdiction over this putative class action pursuant to CAFA because the minimal diversity of citizenship requirement is satisfied and the amount-in-controversy for the putative class exceeds \$5,000,000, exclusive of interest and costs. Additionally, this Removed Action is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1446 and 1453.

A. The Minimal Diversity of Citizenship Requirement is Satisfied.

11. Section 1332(d)(2) requires minimal diversity amongst the parties in order for district courts of the United States to have original jurisdiction over class actions. *See* 28 U.S.C. § 1332(d)(2)(A-C). The minimum diversity requirement is satisfied when “any member of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

12. Plaintiff admits that he is a citizen and resident of Miami-Dade County, and therefore is a citizen of Florida. Compl. ¶ 7.

13. NMG is a limited liability company; thus, its citizenship is determined by the citizenship of all members composing the entity. *Rolling Greens MHP v. Comcast SCH Holdings, LLC*, 374 F.3d 1020, 1021-22 (11th Cir. 2004). NMG has a sole member, NMG Holding Company, Inc., which is a corporation incorporated under the laws of Delaware and has its principal place of business in Texas. Declaration of Guido Tirone ¶ 3.³ Therefore, NMG is a citizen of Delaware and/or Texas. *See* 28 U.S.C. § 1332(c)(1).

14. The required diversity exists because Plaintiff and NMG are citizens of different states. *See* 28 U.S.C. § 1332(d)(2)(A).

B. The Amount-In-Controversy Requirement Is Also Satisfied.

15. In a notice of removal, a defendant “need include only a plausible allegation that the amount in-controversy exceeds the jurisdictional threshold.” *Dart Cherokee*, 574 U.S. at 89; *Dudley v. Eli Lilly & Co.*, 778 F.3d 909, 912 (11th Cir. 2014).

16. Plaintiff alleges that NMG used QM’s software to record his “electronic communications” during visits to one of NMG’s Websites without consent. Compl. ¶¶ 30-42. As alleged in the Complaint, various types of information pertaining to his interactions with the website, including Plaintiff’s IP address, allegedly constitute an electronic communication that was allegedly intercepted. *Id.* ¶¶ 32; 35-36.

17. Plaintiff alleges that NMG similarly utilized QM’s software to intercept the electronic communications of other individuals who visited NMG’s Websites. *Id.* ¶ 33. Plaintiff contends that such “wiretaps” are “embedded in the computer code on the Websites,” “begins the moment a visitor first accesses or interacts with Defendant’s Websites,” and that the “Members of the Class number in the thousands.” ¶¶ 2, 34, 47.

³ The Declaration of Guido Tirone is attached hereto as **Exhibit B** and is incorporated herein by reference.

18. From March 10, 2019 to date, a vendor for NMG collected IP addresses from more than 5,000 unique users on neimanmarcus.com connected to IP addresses located in Florida who visited that NMG website.⁴ Declaration of Guido Tirone ¶ 3.

19. Plaintiff further alleges that “[NMG] did not disclose or seek their consent to intercept the communication” and that “visitors like Plaintiff and Class Members never agree or are never given the option to agree to the privacy policy when using the Websites.” *Id.* ¶¶ 17, 40.

20. NMG disputes that prior consent was required to collect such information, and alternatively maintains that all users consent to such data collection by virtue of using NMG’s Websites. For example, NMG’s Privacy Policy and Terms of Use set forth on NMG’s neimanmarcus.com website disclose the collection of such technical information. Declaration of Guido Tirone ¶ 3. The same Privacy Policy and Terms of Use govern all users of neimanmarcus.com in Florida. *Id.* Plaintiff does not allege that he or the Class Members took any unique action with regard to the privacy policy and in fact explicitly alleges that visitors are “not ask[ed]” if they “consent to being wiretapped” and “never agree or are never given the option to agree to the privacy policy.” *Id.* at ¶¶ 37, 40.

21. Thus, as alleged, Plaintiff’s allegations make clear that Plaintiff purportedly seeks to represent a class consisting of the more than 5,000 unique visitors to neimanmarcus.com located in Florida whose IP addresses were collected consistent with NMG’s Privacy Policy and Terms and Use. *Id.* at ¶¶ 33-36 (alleging that all class members “experienced interception of their

⁴ Because it is beyond question that there are more than one hundred individuals in the putative class (*see, e.g.*, Compl. at ¶ 47), the exclusion under 28 U.S.C. § 1332(d)(5) for putative class sizes of less than 100 individuals is plainly inapplicable.

electronic communications while visiting [NMG's] Websites as a result of QM software," and that such electronic communications include "among other things...[t]he visitor's IP address").

22. Based on the allegations in the Complaint, each individual putative class member has an alleged potential recovery of at least \$2,000. Compl. ¶¶ 71; 78. Thus, according to Plaintiff's own allegations, a putative class size of even 2,500 individuals would result in an aggregated amount-in-controversy exceeding \$5,000,000. While NMG denies Plaintiff is entitled to any relief sought in the Complaint, the total value of the relief that Plaintiff seeks well exceeds CAFA's \$5,000,000 amount-in-controversy requirement because the putative class size is more than 5,000.

THE PROCEDURAL REQUIREMENTS OF REMOVAL ARE SATISFIED

23. This Notice of Removal is timely. NMG filed this Notice of Removal within 30 days after NMG received service of the summons and complaint. *See* 28 U.S.C. § 1446(b).

24. Removal to the United States District Court for the Southern District of Florida, Miami Division is proper because it is the district and division embracing the locality in which the Removed Action was pending. *See id.* §§ 89(c), 1441(a).

25. At the time that this action was filed in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and at all times thereafter, NMG was not a citizen of Florida. *See id.* § 1446(b)(2)

26. The requirements of 28 U.S.C. § 1446(a) are satisfied by the attachment hereto of "a copy of all process, pleadings, and orders served upon" NMG. *See Exhibit A*, attached hereto and incorporated by reference.

27. A copy of this Notice of Removal is being served on Plaintiff, and a copy is being filed with the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. *See id.* § 1446(d).

RELIEF REQUESTED

28. NMG respectfully requests that this action pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, be removed to the United States District Court for the Southern District of Florida, Miami Division, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, 1452, and/or 1453.

Dated: May 3, 2021

Respectfully Submitted,

By: /s/ Sherril M. Colombo

Sherril M. Colombo

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*Counsel for Defendant The Neiman Marcus
Group LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email on May 3, 2021 on all counsel or parties of record on the Service List below.

/s/ Sherril M. Colombo
Sherill M. Colombo

SERVICE LIST

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Counsel for Plaintiff

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

Michael Fridman

DEFENDANTS

The Neiman Marcus Group LLC

(b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Dallas (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brian Levin, Esq., Levin Law, PA, 2665 S. Bayshore Dr., PH-2B, Miami, FL 33133, Telp. (305) 402-9050 AND Avi R. Kaufman, Esq., Kaufman PA, 400 NW 26 St., Miami, FL 33127, Telp. 3(05) 469-5881

Attorneys (If Known)

Sherril M. Colombo, Esq., AND Ryan P. Forrest, Esq., Littler Mendelson, P.C., 333 SE 2nd Ave., Ste. 2700, Miami, FL, 33131; Tel. 305.400.7500

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Grid of categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes items like 110 Insurance, 210 Land Condemnation, 310 Airplane, 370 Other Fraud, 422 Appeal 28 USC 158, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge or Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION [Removal pursuant to 28 U.S.C. section 1441] Plaintiff's cause of action for violation of the Florida Security of Communications Act (Fla. Stat. Ann. section 934.01, et. seq.) LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE SIGNATURE OF ATTORNEY OF RECORD

May 3, 2021 /s/ Sherril M. Colomba FL Bar No. 948799



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| MICHAEL FRIDMAN VS NEIMAN MARCUS GROUP LLC (THE) | |
|--|-----------------------|
| Local Case Number: | 2021-005882-CA-01 |
| Filing Date: | 03/10/2021 |
| State Case Number: | 132021CA005882000001 |
| Judicial Section: | CA15 |
| Consolidated Case No.: | N/A |
| Case Type: | Other Civil Complaint |
| Case Status: | OPEN |

| Parties Total Of Parties: 2 | | | |
|--|-------------------------------|--|-------------------|
| Party Description | Party Name | Attorney Information | Other Attorney(S) |
| Defendant | Neiman Marcus Group LLC (The) | B#: (Bar Number)948799 N: (Attorney Name)Sherril M Colombo | |
| Plaintiff | Fridman, Michael | B#: (Bar Number)84382 N: (Attorney Name)Kaufman, Avi R | |

| Hearing Details Total Of Hearings: 0 | | | | |
|---|--------------|--------------|-------------|------------------|
| Hearing Date | Hearing Time | Hearing Code | Description | Hearing Location |

| Dockets Total Of Dockets: 10 | | | | | | |
|---|--------|------------|-----------|------------------------------|------------|---|
| | Number | Date | Book/Page | Docket Entry | Event Type | Comments |
| | 9 | 04/22/2021 | | Order Extending Time for | Event | |
| | 8 | 04/22/2021 | | Motion for Extension of Time | Event | Parties: Sherril M Colombo; Kaufman Avi R; Neiman Marcus Group LLC (The); Fridman Michael |
| | | 03/16/2021 | | 20 Day Summons Issued | Service | |
| | 7 | 03/16/2021 | | ESummons 20 Day Issued | Event | Parties: Neiman Marcus Group LLC (The) |



| Number | Date | Book/Page | Docket Entry | Event Type | Comments |
|---|------------|------------|---------------------------------------|------------|--|
| 6 | 03/12/2021 | | Receipt: | Event | RECEIPT#:2530282 AMT PAID:\$10.00 NAME:KAUFMAN, AVI R 2525 PONCE DE LEON BLVD STE 625 CORAL GABLES FL 33134-6051 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3139-SUMMONS ISSUE FEE 1 \$10.00 \$10.00 TENDER TYPE:E-FILING ACH TENDER AMT:\$10.00 RECEIPT DATE:03/12/2021 REGISTER#:253 CASHIER:EFILINGUSER |
| 5 | 03/12/2021 | | Receipt: | Event | RECEIPT#:2530122 AMT PAID:\$401.00 NAME:KAUFMAN, AVI R 2525 PONCE DE LEON BLVD STE 625 CORAL GABLES FL 33134-6051 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3100-CIRCUIT FILING FEE 1 \$401.00 \$401.00 TENDER TYPE:E-FILING ACH TENDER AMT:\$401.00 RECEIPT DATE:03/12/2021 REGISTER#:253 CASHIER:EFILINGUSER |
|  | 4 | 03/11/2021 | (M) 20 Day (C) Summons (Sub) Received | Event | |
|  | 3 | 03/10/2021 | Civil Cover | Event | |
|  | 2 | 03/10/2021 | Complaint | Event | |
|  | 1 | 03/10/2021 | Civil Cover Sheet - Claim Amount | Event | |

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FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Michael Fridman
Plaintiff

Case # _____
Judge _____

vs.

The Neiman Marcus Group LLC
Defendant

II. AMOUNT OF CLAIM

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

- \$8,000 or less
- \$8,001 - \$30,000
- \$30,001- \$50,000
- \$50,001- \$75,000
- \$75,001 - \$100,000
- over \$100,000.00

III. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

CIRCUIT CIVIL

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability—commercial
 - Premises liability—residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure
 - Homestead residential foreclosure
 - Non-homestead residential foreclosure
 - Other real property actions
- Professional malpractice
 - Malpractice—business
 - Malpractice—medical
 - Malpractice—other professional
- Other
 - Antitrust/Trade regulation
 - Business transactions
 - Constitutional challenge—statute or ordinance
 - Constitutional challenge—proposed amendment
 - Corporate trusts
 - Discrimination—employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

COUNTY CIVIL

- Small Claims up to \$8,000
- Civil
- Real property/Mortgage foreclosure

- Replevins
- Evictions
 - Residential Evictions
 - Non-residential Evictions
- Other civil (non-monetary)

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

IV. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Nonmonetary declaratory or injunctive relief;
- Punitive

V. NUMBER OF CAUSES OF ACTION: []

(Specify)

3

VI. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes
- no

VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- no
- yes If "yes," list all related cases by name, case number, and court.

VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes
- no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ Avi Kaufman
Attorney or party

Fla. Bar # 84382
(Bar # if attorney)

Avi Kaufman
(type or print name)

03/10/2021
Date

**IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT,
IN MIAMI-DADE COUNTY, FLORIDA**

**MICHAEL FRIDMAN, individually and
on behalf of all those similarly situated,**

Plaintiff,

Case No.:

v.

THE NEIMAN MARCUS GROUP LLC

Defendant.

/

CLASS ACTION COMPLAINT

Plaintiff, Michael Fridman, appearing both individually and on behalf of all others similarly situated, by and through his attorneys, brings this class action against Defendant The Neiman Marcus Group LLC based upon personal knowledge as to his own acts and experiences and, as to all other matters, based upon information and belief, including the investigation conducted by his counsel, and alleges as follows:

NATURE OF THE ACTION

1. This is a class action under the Florida Security of Communications Act, Fla. Stat. § 934.01, *et seq.* (“FSCA”), against Defendant, The Neiman Marcus Group LLC (“Defendant” or “NMG”), arising from Defendant’s unlawful interception—or “wiretapping”—of Plaintiff’s and Class Members’ electronic communications with the websites NeimanMarcus.com, BergdorfGoodman.com, Horchow.com, and LastCall.com (the “Websites”).

2. Specifically, Defendant uses wiretaps, which are embedded in the computer code on the Websites, to intercept Plaintiff’s and Class Members’ electronic communications with Defendant’s Websites.

3. To accomplish this wiretapping, Defendant uses tracking, recording, and/or “session replay” software to secretly observe and record Plaintiff’s and Class Members’ electronic communications with the Websites, including their keystrokes, mouse movements and clicks, information inputted into the Websites, and/or pages and content viewed on the Websites.

4. Defendant intercepted or allowed for the interception of the electronic communications at issue without the knowledge or prior consent of Plaintiff and the Class Members, for its own financial gain.

5. By doing so, Defendant has invaded Plaintiff’s and Class Members’ privacy rights under Florida Law and violated the FSCA, Fla. Stat. §§ 934.03 and 934.04. Defendant has caused Plaintiff and Class Members to suffer injuries as a result of invading their privacy and/or exposing their private information.

6. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s unlawful wiretapping. Plaintiff additionally seeks damages as authorized by the FSCA on behalf of Plaintiff and the Class Members, and any other available legal or equitable remedies resulting from the actions of Defendant described herein.

THE PARTIES

7. Plaintiff Fridman is a citizen and resident of Miami-Dade County, Florida.

8. Defendant, The Neiman Marcus Group LLC (“Defendant” or “NMG”) is a limited liability company incorporated in Delaware with its principal place of business in Dallas, Texas.

9. NMG provides apparel products and accessories in brick and mortar locations and through its Websites. NMG does business worldwide, including in Florida.

10. NMG owns and operates NeimanMarcus.com, BergdorfGoodman.com, Horchow.com, and LastCall.com (the “Websites”).

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000, exclusive of interest, costs, and attorneys' fees.

12. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with Florida. Plaintiff's and Class Members' used the Websites. Defendant's unlawful interception of those electronic communications without the consent of Plaintiff and Class Members therefore occurred in Florida, and Plaintiff and Class Members were injured by Defendant's acts while residing and physically present in Florida.

13. Venue for this action is proper in this Court because all facts giving rise to this action occurred in this Circuit.

STATEMENT OF FACTS

Wiretapping via Session Replay Software

14. At all relevant times herein, NMG has engaged Quantum Metric, Inc. ("QM"), a marketing software-as-a-service ("SaaS") company, to provide marketing analytics software for its Websites.

15. QM is a Delaware corporation with its principal place of business in Colorado Springs, Colorado.

16. QM develops, owns, and markets a software of the same name that provides marketing analytics, which is used by NMG on its Websites.

17. QM software provides a feature called "Session Replay," which purports to help businesses improve their website design and customer experience. QM operates on both desktop and mobile devices.

18. According to QM, “Session replay is the reproduction of a user’s interactions on web or native mobile applications. Session replay captures things like mouse movements, clicks, typing, scrolling, swiping, tapping, etc.” Session Replay allows companies to “to pull up any user who ha[s] visited [a] website and watch their journey as if [the company] was standing over their shoulder.” A company can “see every click, every tap and exactly what the website responded with – an error, a success message, or nothing.”

19. QM says its Session Replay feature “capture[s] all the metadata behind the replay—like user platform, API calls, and network details—as well as dozens of out of the box events and errors, plus the custom ones you’ll configure in our UI.”

20. QM’s product demo allows a preview of the Session Replay interface and demonstrates how the software works, highlighting that the software allows a company to see each website visitor’s electronic communications, including what a visitor clicked on, when a visitor reloaded a page, and where a visitor’s mouse pointer is located at any given moment.

21. QM notes that “[o]nce data is captured, it’s sent encrypted via a forward secrecy SSL connection, to the Quantum Metric cloud service, hosted in a secured Google Compute cloud.”

22. QM’s website includes a marketing video that discusses the Session Replay feature. The video touts that companies can “[s]ee actual customer interactions.” The marketing presentation then shows a mock mobile user visiting and interacting with a website. The video shows what items the visitor viewed and added to their cart. The presentation then proceeds to show where exactly the mock visitor clicked on the website.

23. Technology like QM’s is not only highly intrusive, but dangerous. A 2017 study by Princeton University found that session recording technologies like QM’s Session Replay were

collecting sensitive user information such as passwords and credit card numbers. The research notes that this wasn't simply the result of a bug, but rather insecure practices. Thus, technologies such as QM's can leave users vulnerable to data leaks and the harm resulting therefrom.

24. QM's business model involves entering into voluntary partnerships with various companies and providing their software to their partners.

25. One of QM's partners is Defendant NMG.

26. NMG utilizes QM's software on its Websites.

27. NMG knows that QM's software captures the keystrokes, mouse clicks, and other communications of visitors to its Websites, and pays QM to supply that information.

28. Pursuant to an agreement with QM, NMG enabled QM's software by voluntarily embedding QM's software code on the Websites.

29. As currently deployed, QM's software, as employed by NMG, functions as a wiretap.

**Defendant Wiretapped or Facilitated the Wiretap of
Plaintiff's and Class Members' Electronic Communications**

30. In/on or around February 2 and 3, 2021, Plaintiff visited NeimanMarcus.com.

31. During the February 3 visit Plaintiff made a purchase.

32. During that visit, and upon information and belief, the Session Replay feature in QM's software as embedded on Defendant's website created a video capturing each of Plaintiff's keystrokes and mouse clicks on the website. The QM wiretap used by Defendant also captured the date and time of the visit, the duration of the visit, Plaintiff's IP address, his location at the time of the visit, his browser type, and the operating system on his device.

33. Class Members share a similar narrative, and each experienced the interception of their electronic communications while visiting Defendant's Websites as a result of the QM software acting as a wiretap.

34. QM's tracking and recording of keystrokes, mouse clicks, data entry, and other electronic communications begins the moment a visitor first accesses or interacts with Defendant's Websites.

35. When visitors access the Websites and make a purchase, they enter personally identifiable information ("PII"). QM's software captures these electronic communications throughout each step of the process.

36. QM's software captures, among other things:

- (a) The visitor's mouse clicks;
- (b) The visitor's keystrokes;
- (c) The visitor's email address;
- (d) The visitor's shipping and billing address;
- (e) The visitor's payment card information, including card number, expiration date, and CVV code;
- (f) The visitor's IP address;
- (g) The visitor's location at the time of the visit; and
- (h) The visitor's browser type and the operating system on their devices.

37. Crucially, Defendant NMG does not ask visitors, including Plaintiff and Class Members, whether they consent to being wiretapped by QM. Visitors are never actively told that their electronic communications are being wiretapped by QM.

38. Further, NMG’s privacy policy is located at the very bottom of the Websites’ home pages with no notice directing visitors to the privacy policy, *i.e.*, the hyperlink to the privacy policy functions as browserwrap. Additionally, Defendant began recording visitors before any purported disclosure was made *after* the wiretap had already begun.

39. Moreover, visitors are not on notice of the hyperlink to the privacy policy when they click the “Place Order” button, or at any other time during their visit to the Websites.

40. Therefore, visitors like Plaintiff and Class Members never agree or are never given the option to agree to the privacy policy when using the Websites, nor are they on notice of the Privacy policy.

41. Even if visitors do agree to the privacy policy by using the Websites or otherwise—and they do not for the reasons stated above—NMG does not mention any aspect of QM or its Session Replay software (such as by disclosing that visitors will have their mouse clicks and keystrokes recorded in real time) in the Websites’ privacy policy. As such, visitors do not agree to be wiretapped even if they agree to the privacy policy.

42. Plaintiff and Class Members did not consent to being wiretapped on the Websites, nor to having their communications recorded and shared with QM and Defendant. Any purported consent that was obtained was ineffective because (i) the wiretapping began from the moment Plaintiff and Class Members accessed the Websites; (ii) the privacy policy did not disclose the wiretapping or QM; and (iii) the hyperlink to the privacy policy is inconspicuous and therefore insufficient to provide notice.

CLASS REPRESENTATION ALLEGATIONS

43. Plaintiff seeks to represent a class of similarly situated individuals pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3), consisting of:

Florida residents who visited the Websites, and whose electronic communications were intercepted or recorded by QM on behalf of Defendant, without their prior consent (the “Class” or “Class Members”).

44. Defendant and its employees or agents are excluded from the Class. Plaintiff reserves the right to modify or amend the Class definitions, as appropriate, during the course of this litigation.

45. Plaintiff brings all claims in this action individually and on behalf of Class Members against Defendant.

Numerosity

46. Members of the Class are so numerous that their individual joinder is impracticable.

47. On information and belief, Members of the Class number in the thousands.

48. The precise number of Class Members and their identities are unknown to Plaintiff at this time but may be determined through discovery.

49. Class Members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant.

Commonality

50. Common questions of law and fact exist as to all Class Members and predominate over questions affecting only individual Class Members.

51. Common legal and factual questions include, but are not limited to, whether Defendants have violated the Florida Security of Communications Act (“FSCA”), Fla. Stat. §§ 934.03 and 934.04, and invaded Plaintiff’s privacy rights in violation of Florida law; and whether Class Members are entitled to actual and/or statutory damages for the aforementioned violations.

Typicality

52. The claims of the named Plaintiff are typical of the claims of the Class because the named Plaintiff, like all other Class Members, visited one of Defendant's Websites and had his electronic communications intercepted and disclosed to QM and Defendant through the use of QM's wiretaps on Defendant's Website.

Adequacy of Representation

53. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class Members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and he intends to prosecute this action vigorously.

54. The interests of Class Members will be fairly and adequately protected by Plaintiff and his counsel.

Superiority

55. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class Members.

56. Many of the Class Members likely lack the ability and/or resources to undertake the burden and expense of individually prosecuting what may be a complex and extensive action to establish Defendant's liability.

57. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system. This strain on the parties and the judicial system would be heightened in this case, given the complex legal and factual issues at play.

58. Individualized litigation also presents a potential for inconsistent or contradictory judgments.

59. In 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 on the issue of Defendant's liability.

60. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I

Violation of the Florida Security of Communications Act, Fla. Stat. § 934.03

61. Plaintiff repeats and incorporates the allegations set forth in paragraphs 1 through 60 as if fully set forth herein.

62. Plaintiff brings this claim individually and on behalf of the Class Members against Defendant.

63. To establish liability under Fla. Stat. § 934.03, captioned "Interception and disclosure of wire, oral, or electronic communications prohibited," a plaintiff need only establish that a defendant:

(a) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;

(b) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

2. Such device transmits communications by radio or interferes with the transmission of such communication;

(c) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication,

knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication intercepted by means authorized by subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s. 934.07, or s. 934.09 when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, has obtained or received the information in connection with a criminal investigation, and intends to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.

Fla Stat. § 934.03(1).

64. Pursuant to Fla. Stat. § 934.02, “‘Electronic communication’ means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce[,]” such as through the internet.

65. At all relevant times, QM’s software, including the Session Replay feature, was intentionally used by Defendant to intercept, endeavor to intercept, use, endeavor to use, disclose, and/or endeavor to disclose Plaintiff’s and Class Members’ electronic communications.

66. At all relevant times, by using QM’s technology, Defendant willfully and without the consent of all parties to the communication, in an unauthorized manner, read or attempted to read or learn the contents or meaning of electronic communications of Plaintiff and Class Members, while the electronic communications were in transit or passing over any wire, line, or cable, or were being sent from or received at any place within Florida.

67. Defendant aided, agreed with, and conspired to implement QM's technology and to accomplish the wrongful conduct at issue here.

68. Plaintiff and Class Members did not consent to any of Defendant's actions in implementing QM's wiretaps on the Websites. Nor have Plaintiff or Class Members consented to Defendant's intentional access, interception, reading, learning, recording, and collection of Plaintiff and Class Members' electronic communications.

69. The violation of Fla. Stat. § 934.03 constitutes an invasion of privacy sufficient to confer Article III standing.

70. Unless enjoined, Defendant will continue to commit or facilitate the illegal acts alleged herein.

71. Plaintiff and Class Members seek all relief available under Fla. Stat. § 934.10, including declaratory and injunctive relief, statutory damages at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher, punitive damages, attorneys' fees, and costs.

COUNT II

Violation of the Florida Security of Communications Act, Fla. Stat. § 934.04

72. Plaintiff repeats and incorporates the allegations set forth in paragraphs 1 through 60 as if fully set forth herein.

73. Plaintiff brings this claim individually and on behalf of the Class Members against Defendant.

74. Fla Stat. § 934.04 provides a private right of action against:

[A]ny person who intentionally:

(a) Sends through the mail or otherwise sends or carries any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for

the purpose of the illegal interception of wire, oral, or electronic communications as specifically defined by this chapter; or

(b) Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the illegal interception of wire, oral, or electronic communications as specifically defined by this chapter[.]

Fla Stat. § 934.04(1).

75. At all relevant times, by implementing QM's wiretaps, Defendant intentionally possessed a wiretap device that is primarily or exclusively designed or intended for eavesdropping upon the communications of another.

76. QM's code is a "device" that is "primarily useful" for eavesdropping. That is, QM's embedded code is designed to gather PII, including keystrokes, mouse clicks, and other electronic communications.

77. Plaintiff and Class Members did not consent to any of Defendant's actions in implementing QM's wiretaps.

78. Plaintiff and Class Members seek all relief available under Fla. Stat. § 934.10, including declaratory and injunctive relief, statutory damages at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher, punitive damages, attorneys' fees, and costs.

COUNT III

Invasion of Privacy Under Florida Law

79. Plaintiff repeats and incorporates the allegations set forth in paragraphs 1 through 60 as if fully set forth herein.

80. Plaintiff brings this claim individually and on behalf of the Class Members against Defendant.

81. Plaintiff and Class Members have an interest in: (1) precluding the dissemination and/or misuse of their sensitive, confidential PII; and (2) making personal decisions and/or conducting personal activities without observation, intrusion, or interference.

82. At all relevant times, by implementing QM's wiretaps on NMG's Websites, Defendant intentionally invaded Plaintiff's and Class Members' privacy rights under Florida law.

83. Plaintiff and Class Members had a reasonable expectation that their PII and other data would remain confidential and that Defendant would not install wiretaps on the Websites.

84. Plaintiff and Class Members did not consent to any of Defendant's actions in implementing QM's wiretaps on the Websites.

85. This invasion of privacy is serious in nature, scope, and impact.

86. The invasion of privacy alleged herein constitutes an egregious breach of the social norms underlying the right to privacy.

87. Plaintiff and Class Members seek all relief available for invasion of privacy claims under Florida law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- (a) For an order certifying the Class under Florida Rule of Civil Procedure 1.220 and naming Plaintiff as the representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class;
- (b) For an order declaring that the Defendant's conduct violates the statutes referenced herein;

- (c) For an order finding in favor of Plaintiff and the Class on all Counts asserted herein;
- (d) For compensatory, punitive, and/or statutory damages in amounts to be determined by the Court and/or jury;
- (e) For prejudgment interest on all amounts awarded;
- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For injunctive relief as pleaded or as the Court may deem proper; and
- (h) For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit.

JURY DEMAND

Plaintiff and Class Members hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases, or other itemizations associated with the allegations herein, including all records, lists, electronic databases, or other itemizations in the possession of any vendors, individuals, and/or companies contracted, hired, or directed by Defendant to assist in sending the alleged communications.

Dated: March 5, 2021

Respectfully submitted,

By: /s/ Brian Levin
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*Counsel for Plaintiff and
Putative Class*

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(305) 469-5881

*Counsel for Plaintiff and
Putative Class*

| | | | | | | |
|--|--|---|--|--|---|--|
| <input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. <input type="checkbox"/> IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. | | | | | | |
| DIVISION <input checked="" type="checkbox"/> CIVIL <input type="checkbox"/> DISTRICTS <input type="checkbox"/> FAMILY <input type="checkbox"/> OTHER | CIVIL COVER SHEET | CASE NUMBER: _____ JUDGE _____ | | | | |
| PLAINTIFF Michael Fridman, individually and on behalf of all those similarly situated | VS. DEFENDANT The Neiman Marcus Group LLC | CLOCK IN | | | | |
| The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.) | | | | | | |
| AMOUNT OF CLAIM Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose. | | | | | | |
| <input type="checkbox"/> \$8,000 or less <input type="checkbox"/> \$8,001 - \$30,000 <input type="checkbox"/> \$30,001 - \$50,000 <input type="checkbox"/> \$50,001 - \$75,000 <input type="checkbox"/> \$75,001 - \$100,000 <input checked="" type="checkbox"/> over \$100,000.00 | | | | | | |
| TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines. | | | | | | |
| <table style="width:100%; border: none;"> <tr> <td style="width:50%; vertical-align: top;"> CIRCUIT CIVIL <input type="checkbox"/> Condominium <input type="checkbox"/> Contracts and indebtedness <input type="checkbox"/> Eminent domain <input type="checkbox"/> Auto negligence <input type="checkbox"/> Negligence - other <ul style="list-style-type: none"> <input type="checkbox"/> Business governance <input type="checkbox"/> Business torts <input type="checkbox"/> Environmental/Toxic Tort <input type="checkbox"/> Third party indemnification <input type="checkbox"/> Construction defect <input type="checkbox"/> Mass tort <input type="checkbox"/> Negligent security <input type="checkbox"/> Nursing home negligence <input type="checkbox"/> Premises liability - commercial <input type="checkbox"/> Premises liability - residential <input type="checkbox"/> Products liability <input type="checkbox"/> Real property/Mortgage foreclosure <ul style="list-style-type: none"> <input type="checkbox"/> Commercial foreclosure <input type="checkbox"/> Homestead residential foreclosure <input type="checkbox"/> Non-homestead residential foreclosure <input type="checkbox"/> Other real property actions <input type="checkbox"/> Professional malpractice <ul style="list-style-type: none"> <input type="checkbox"/> Malpractice - business <input type="checkbox"/> Malpractice - medical <input type="checkbox"/> Malpractice - other professional </td> <td style="width:50%; 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COMPLEX BUSINESS COURT

REMEDIES SOUGHT (check all that apply):

- Monetary;
- Non-monetary declaratory or injunctive relief;
- Punitive

NUMBER OF CAUSES OF ACTION: [3]

(specify) 1. Violation of the Florida Security of Communications Act, Fla. Stat. 934.03; 2. Violation of the Florida Security of Communications Act, Fla. Stat. 934.04; and 3. Invasion of Privacy Under Florida Law

IS THIS CASE A CLASS ACTION LAWSUIT?

- Yes
- No

HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- No
- Yes If "Yes", list all related cases by name, case number, and court.

IS JURY TRIAL DEMANDED IN COMPLAINT?

- Yes
- No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature Avi Kaufman Florida Bar # 84382
 Attorney of party (Bar #, if attorney)

Avi R. Kaufman March 10, 2021
 (type or print name) Date

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET

Plaintiff must file this cover sheet with the first document filed in the action or proceeding (except small claims cases, probate, or family cases). Domestic and juvenile cases should be accompanied by a completed Florida Family Law Rules of Procedure Form 12.928, Cover Sheet for Family Court Cases. Failure to file a civil cover sheet in any civil case other than those excepted above may result in sanctions.

I. Case Style. Enter the name of the court, the appropriate case number assigned at the time of filing of the original complaint or petition, the name of the judge assigned (if applicable), and the name (last, first, middle initial) of plaintiff(s) and defendant(s).

II. Amount of Claim. Enter the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

III. Type of Case. Place an "X" on the appropriate line. If the cause fits more than one type of case, select the most definitive. If the most definitive label is a subcategory (indented under a broader category label), place an "X" on the category and subcategory lines. Definitions of the cases are provided below in the order they appear on the form.

Circuit Civil

(A) Condominium - all civil lawsuits pursuant to Chapter 718, Florida Statutes, in which a condominium association is a party.

(B) Contracts and indebtedness - all contract actions relating to promissory notes and other debts, including those arising from sale of goods, but excluding contract disputes involving condominium associations.

(C) Eminent domain - all matters relating to the taking of private property for public use, including inverse condemnation by state agencies, political subdivisions, or public service corporations.

(D) Auto negligence - all matter arising out of a party's allegedly negligent operation of a motor vehicle.

(E) Negligence-other - all actions sounding in negligence, including statutory claims for relief on account of death or injury, that are not included in other main categories.

(F) Business governance - all matters relating to the management, administration, or control of a company.

(G) Business torts - all matters relating to liability for economic loss allegedly caused by interference with economic or business relationships.

(H) Environmental/Toxic tort - all matters relating to claims that violations of environmental regulatory provisions or exposure to a chemical caused injury or disease.

(I) Third party indemnification - all matters relating to liability transferred to a third party in a financial relationship.

(J) Construction defect - all civil lawsuits in which damage or injury was allegedly caused by defects in the construction of a structure.

(K) Mass tort - all matters relating to a civil action involving numerous plaintiffs against one or more defendants.

(L) Negligent security - all matters involving injury to a person or property allegedly resulting from insufficient security.

(M) Nursing home negligence - all matters involving injury to a nursing home resident resulting from negligence of nursing home staff or facilities.

(N) Premises liability-commercial - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a commercial property.

(O) Premises liability-residential - all matters involving injury to a person or property allegedly resulting from a defect on the premises of a residential property.

(P) Products liability - all matters involving injury to a person or property allegedly resulting from the manufacture or sale of a defective product or from a failure to warn.

(Q) Real property/Mortgage foreclosure - all matters relating to the possession, title, or boundaries of real property. All matters involving foreclosures or sales of real property, including foreclosures associated with condominium associations or condominium units. (The amount of claim specified in Section II. of the form determines the filing fee pursuant to section 28.241, Florida Statutes.)

(R) Commercial foreclosure - all matters relating to the termination of a business owner's interest in commercial property by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property.

(S) Homestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has been granted a homestead exemption.

(T) Non-homestead residential foreclosure - all matters relating to the termination of a residential property owner's interest by a lender to gain title or force a sale to satisfy the unpaid debt secured by the property where the property has not been granted a homestead exemption.

(U) Other real property actions - all matters relating to land, land improvements, or property rights not involving commercial or residential foreclosure.

(V) Professional malpractice - all professional malpractice lawsuits.

(W) Malpractice-business - all matters relating to a business's or business person's failure to exercise the degree of care and skill that someone in the same line of work would use under similar circumstances.

(X) Malpractice-medical - all matters relating to a doctor's failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar circumstances.

(Y) Malpractice-other professional - all matters relating to negligence of those other than medical or business professionals.

(Z) Other - all civil matters not included in other categories.

(AA) Antitrust/Trade regulation - all matters relating to unfair methods of competition or unfair or deceptive business acts or practices.

(AB) Business transactions - all matters relating to actions that affect financial or economic interests.

(AC) Constitutional challenge-statute or ordinance - a challenge to a statute or ordinance, citing a violation of the Florida Constitution.

(AD) Constitutional challenge-proposed amendment - a challenge to a legislatively initiated proposed constitutional amendment, but excluding challenges to a citizen-initiated proposed constitutional amendment because the Florida Supreme Court has directed jurisdiction of such challenges.

(AE) Corporate trust - all matters relating to the business activities of financial services companies or banks acting in a fiduciary capacity for investors.

(AF) Discrimination-employment or other - all matters relating to discrimination, including employment, sex, race, age, handicap, harassment, retaliation, or wages.

(AG) Insurance claims - all matters relating to claims filed with an insurance company.

(AH) Intellectual property - all matters relating to intangible rights protecting commercially valuable products of the human intellect.

(AI) Libel/Slander - all matters relating to written, visual, oral, or aural defamation of character.

(AJ) Shareholder derivative action - all matters relating to actions by a corporation's shareholders to protect and benefit all shareholders against corporate management for improper management.

(AK) Securities litigation - all matters relating to the financial interest or instruments of a company or corporation.

(AL) Trade secrets - all matters relating to a formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors.

(AM) Trust litigation - all civil matters involving guardianships, estates, or trusts and not appropriately filed in probate proceedings.

County Civil

(AN) Civil – all matters involving claims ranging from \$8,001 through \$30,000 in damages, exclusive of interest, costs, and attorney fees.

(AO) Real property/Mortgage foreclosure-all matters involving claims up to \$30,000 relating to the possession, title, or boundaries of real property. All matters involving foreclosures or sales of real property up to \$30,000, including associated with condominium associations or condominium units.

(AP) Replevins—all lawsuits pursuant to Chapter 78, Florida Statutes, involving claims up to \$30,000.

(AQ) Evictions-all matters involving the recovery of possession of leased land or rental property by process of law.

(AR) Other civil (non-monetary county civil matters that were not described in other county civil categories).

IV. Remedies Sought. Place an "X" in the appropriate box. If more than one remedy is sought in the complaint or petition, check all that apply.

V. Number of Causes of Action. If the complaint or petition alleges more than one cause of action, note the number and the name of the cause of action.

VI. Class Action. Place an "X" in the appropriate box.

VII. Related Cases. Places an "X" in the appropriate box.

VIII. Is Jury Trial Demanded In Complaint? Check the appropriate box to indicate whether a jury trial is being demanded in the complaint.

ATTORNEY OR PARTY SIGNATURE. Sign the civil cover sheet. Print legibly the name of the person signing the civil cover sheet. Attorneys must include a Florida Bar number. Insert the date the civil cover sheet is signed. Signature is a certification that the filer has provided accurate information on the civil cover sheet, **and has read and complied with the requirements of Florida Rule of Judicial Administration 2.425.**

| | | |
|---|---|--------------------|
| <input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. <input type="checkbox"/> IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. | | |
| DIVISION <input checked="" type="checkbox"/> CIVIL <input type="checkbox"/> DISTRICTS <input type="checkbox"/> OTHER | SUMMONS 20 DAY CORPORATE SERVICE (a) GENERAL FORMS | CASE NUMBER |
| PLAINTIFF(S) MICHAEL FRIDMAN, individually and on behalf of all those similarly situated, | VS. DEFENDANT(S) THE NEIMAN MARCUS GROUP LLC | SERVICE |

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and copy of the complaint or petition in this action on defendant(s): The Neiman Marcus Group LLC c/o The Corporation Trust Company
Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801

Each defendant is required to serve written defense to the complaint or petition on Plaintiff's Attorney: Avi R. Kaufman, Kaufman P.A.
 whose address is: 400 NW 26th St., Miami, FL 33127
Email: Avi@Kaufmanpa.com; Tele: 305.469.5881

CLOCK IN

within 20 days “ **Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to. 768.28, Florida Statutes, the time to respond shall be 30 days.**” after service of this summons on that defendant , exclusive of the day of service, and to file the original of the defenses with the Clerk of this Clerk Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

| | | |
|---|--------------|------|
| HARVEY RUVIN CLERK of COURTS | DEPUTY CLERK | DATE |
|---|--------------|------|

AMERICANS WITH DISABILITIES ACT OF 1990
ADA NOTICE

“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Alean Simpkins, the Eleventh Judicial Circuit Court’s ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Avenue, Suite 2400, Miami, FL 33128; Telephone (305) 349-7175; TDD (305) 349-7174, Email ADA@jud11.flcourts.org; or via Fax at (305) 349-7355, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711.”

| | | |
|---|---|--------------------|
| <input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. <input type="checkbox"/> IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. | | |
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THE STATE OF FLORIDA:

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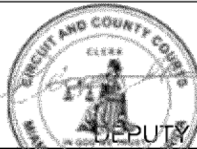
Each defendant is required to serve written defense to the complaint or petition on Plaintiff's Attorney: Avi R. Kaufman, Kaufman P.A.

whose address is: 400 NW 26th St., Miami, FL 33127

Email: Avi@Kaufmanpa.com; Tele: 305.469.5881

CLOCK IN

within 20 days " **Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to. 768.28, Florida Statutes, the time to respond shall be 30 days.**" after service of this summons on that defendant , exclusive of the day of service, and to file the original of the defenses with the Clerk of this Clerk Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

| | | |
|--|--|-------------------|
| HARVEY RUVIN CLERK of COURTS |  310009 DEPUTY CLERK | DATE 3/16/2021 |
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**AMERICANS WITH DISABILITIES ACT OF 1990
 ADA NOTICE**

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**IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO.: 2021-005882-CA-01

MICHAEL FRIDMAN,

Plaintiff,

v.

THE NEIMAN MARCUS GROUP, LLC,

Defendant.

_____ /

**AGREED MOTION FOR EXTENSION
OF TIME TO RESPOND TO PLAINTIFF'S COMPLAINT¹**

The Parties Defendant The Neiman Marcus Group LLC (“NMG”) and Plaintiff Michel Fridman (“Fridman”) respectfully request that the Court enter an agreed Order extending the time for Defendant The Neiman Marcus Group LLC to respond to the Complaint up to and including May 14, 2021, and state:

1. Fridman filed a Complaint with this Court on or about March 10, 2021.
2. Fridman served NMG with a copy of the Complaint on or about April 6, 2021.
3. Under Florida Rule of Civil Procedure 1.140(a)(1), a defendant has 20 days to respond to an initial pleading.

4. Thus, the deadline to respond to the Complaint is currently April 26, 2021.

5. Under Florida Rule of Civil Procedure 1.090(b)(1),

When an act is required or allowed to be done at or within a specified time . . . by these rules . . . for cause shown the court at any time in its discretion with or without notice, may order the period enlarged if request therefor is made before the expiration of the period originally prescribed.

6. The Parties have conferred regarding the upcoming response deadline and

¹ By filing the instant Motion, NMG does not waive and expressly reserves all rights to move to compel arbitration.

respectfully request a short extension of time as per party agreement for NMG to respond to the Complaint up to and until May 14, 2021.

7. Good cause for this extension exists because NMG's recently retained counsel and the undersigned is in the process of investigating the allegations of the Complaint. Moreover, the requested extension will serve the interests of judicial economy by avoiding the need for unnecessary motion practice while NMG is reviewing the Complaint. And the requested extension will also serve the interests of justice by allowing NMG to formulate a robust, fair, and thoughtful response that will advance this case to an ultimate resolution.

8. This motion is not made to unduly delay the proceedings, and the requested extension will not prejudice either party.

WHEREFORE, the Parties respectfully request that the Court enter an Order permitting NMG to respond to Fridman's Complaint on or before May 14, 2021, and granting such other and further relief as the Court deems just and proper.

Agreed as to form and entry requested,

Dated: April 21, 2021

/s/ Sherril M. Colombo
Sherril M. Colombo
Florida Bar No.: 948799
scolombo@littler.com
Ryan P. Forrest
Florida Bar No.: 111487
rforrest@littler.com
LITTLER MENDELSON, P.C.
Wells Fargo Center
333 SE 2nd Avenue, Suite 2700
Miami, FL 33131
Telephone: 305.400.7500
Facsimile: 305.675.8497

Attorneys for Defendant

Respectfully submitted,

/s/ Avi R. Kaufman
Avi R. Kaufman
Florida Bar No. 84382
kaufman@kaufmanpa.com
KAUFMAN P.A.
400 Northwest 26th Street
Miami, Florida 33127
Telephone: 305.469.5881

Brian Levin
Florida Bar No. 26392
LEVIN LAW, P.A.
2665 South Bayshore Drive, PH-2B
Miami, Florida 33133
brian@levinlawpa.com
Telephone: 305.402.9050

Counsel for Plaintiff and Putative Class

CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished via the State of Florida E-filing Portal on this the 21st day of April 2021 to the individuals on the attached service list.

/s/ Sherril M. Colombo
Sherril M. Colombo

SERVICE LIST

KAUFMAN P.A.

Avi R. Kaufman, Esq.
E-mail: kaufman@kaufmanpa.com
400 NW 26th Street
Miami, Florida 33127
Telephone: 305.469.5881

LEVIN LAW, P.A.

Brian Levin, Esq.
E-mail: brian@levinlawpa.com
2665 South Bayshore Drive, PH-2B
Miami, Florida 33133
Telephone: 305.402.9050

Counsel for Plaintiff

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-005882-CA-01

SECTION: CA15

JUDGE: Jose Rodriguez

Michael Fridman

Plaintiff(s)

vs.

Neiman Marcus Group LLC (The)

Defendant(s)

**ORDER GRANTING AGREED MOTION FOR EXTENSION OF TIME TO RESPOND
TO PLAINTIFF'S COMPLAINT**


THIS CAUSE having come before the Court on an Agreed Motion for Extension of Time to Respond to Plaintiff's Complaint ("the Motion"), it is hereby:

ORDERED AND ADJUDGED:

1. The Motion is **GRANTED**.
2. The Neiman Marcus Group LLC shall have through and including May 14, 2021 to respond to Plaintiff's Complaint.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 22nd day of April, 2021.

2021-005882-CA-01 04-22-2021 8:13 PM


2021-005882-CA-01 04-22-2021 8:13 PM

Hon. Jose Rodriguez

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on THIS MOTION

CLERK TO RECLOSE CASE IF POST JUDGMENT

Electronically Served:

Avi Kaufman, kaufman@kaufmanpa.com

Avi Kaufman, rachel@kaufmanpa.com

Avi Kaufman, info@kaufmanpa.com

Ryan P. Forrest, rforrest@littler.com

Ryan P. Forrest, grivas@littler.com

Sherril M Colombo, scolombo@littler.com

Sherril M Colombo, GRivas@littler.com

Physically Served:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

MICHAEL FRIDMAN,

Plaintiff,

v.

Case No.:

THE NEIMAN MARCUS GROUP
LLC

Defendant.

_____ /

DECLARATION OF GUIDO TIRONE

I, Guido Tirone, declare the following:

1. I have personal knowledge of the facts set forth in this declaration, or I have knowledge of such facts based on my review and knowledge of the business records and files of The Neiman Marcus Group LLC (“NMG”), and I could testify to the same if called as a witness in this matter. I make this declaration in support of NMG’s Notice of Removal of Action Under 28 U.S.C. §§ 1332, 1441, 1446, 1452 and/or 1453.

2. I am currently the Senior Director of Site Analytics and Optimization for NMG.

3. In April 2021, in connection with my job responsibilities, I and my colleagues under my direction reviewed the business records of NMG kept in the ordinary course and determined the following:

a. NMG is a limited liability company with one sole member: NMG Holding Company, Inc. NMG Holding Company, Inc. is a corporation incorporated under the laws of Delaware and has its principal place of business in Texas.

b. A vendor for NMG has collected the IP addresses of visitors to neimanmarcus.com. From March 10, 2019 to the present, a vendor for NMG collected IP addresses from more than 5,000 unique users on neimanmarcus.com connected to IP addresses located in Florida who visited neimanmarcus.com.

- c. The location of these users has been determined by reference to their IP addresses.
- d. Neimanmarcus.com has one Privacy Policy and Terms of Use that applies to all visitors of neimanmarcus.com in Florida, which is set forth on the website.
- e. The Privacy Policy states the following:

We process certain personal information when you:

- Visit our website
- Log on to your Neiman Marcus account
- Enter information on our website
- Shop with Neiman Marcus online
- Provide information in other ways such as by subscribing to our emails or consenting to mobile messaging, where you are given the option to unsubscribe or opt out of receiving such communications, at the time of sign-up and in every subsequent email or mobile message.

We may collect the following personal information:

...
Your browsing history on our websites and mobile app, while you are logged on to your Neiman Marcus account

...
From your purchases and other interactions with us, we obtain information concerning the specific products or services you purchase or use, such as your preferences, interests, sizing, and favorite brands....

For customers based in the United States, when you visit this website, whether or not you are logged in or enter any personal information, our web server automatically collects information such as log data and IP addresses, and may collect general information concerning your location. [...] We may use this collected information for a number of purposes, such as improving our site design, product assortments, customer service, and special promotions.

I hereby declare under penalty of perjury of the laws of the United States that the foregoing statements are true and correct.

Executed on this 29th day of April 2021, in Dallas, Texas.



Guido Tirone

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Neiman Marcus Accused of 'Wiretapping' Florida Website Visitors' Electronic Communications](#)
