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6
7 Attorneys for Defendants Hibbett, Inc.,
and Hibbett Retail, Inc.
8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
11

12 ANTHONY KAMEL, individually and
on behalf of a class of other similarly
13 situated individuals,

14 Plaintiffs,

15 v.

16 HIBBETT, INC., a Delaware
corporation, and HIBBETT RETAIL,
17 INC., a Delaware corporation,

18 Defendants.
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Case No. 2:22-3726

**DEFENDANTS' NOTICE OF
REMOVAL**

Complaint Filed: April 29, 2022

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JURISDICTION

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331, in that this case arises under the laws of the United States, specifically, the Fair and Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. § 1681 and presents a federal question.

4. Jurisdiction is also independently proper under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332, as well as 28 U.S.C. § 1441 (a) and (b), and 28 U.S.C. § 1453, because this is a putative class action involving more than 100 putative class members, the aggregate amount in controversy, excluding interest and costs, exceeds \$5,000,000, and there is minimal diversity.

FEDERAL QUESTION JURISDICTION - FACTA

5. Plaintiff Anthony Kamel (“Plaintiff”) brings this putative class action based on alleged violations of FACTA, which generally provides:

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

15 U.S.C.A. § 1681c(g).

6. Plaintiff alleges that Defendants violated FACTA by “printing more than the last five (5) digits of consumers’ debit and credit card account numbers on receipts” provided to consumers. (Cmplt., ¶¶1-2)

7. Plaintiff alleges that on or about January 24, 2022, he used his personal credit card to make a purchase at a Hibbett Sports retail location in Fullerton, California, and that after making his purchase he was provided an electronic receipt showing the first six (6) and last four (4) digits of his credit card account number. (Cmplt., ¶¶ 75-76)

1 8. Plaintiff alleges that Defendants’ printing of his receipt with more than
2 the last five (5) digits of his credit card account number violated FACTA, and he
3 brings a putative class action on behalf of other allegedly similarly situated class
4 members as set forth below.

5 9. Plaintiff further alleges that Defendants’ printing of the ten (10) digits
6 of his credit card accounts “invaded Plaintiff’s privacy as it disclosed his personal
7 financial information” and that as a result he was “required to take steps to safeguard
8 the receipt.” (Cmplt., ¶ 77-78)

9 10. Plaintiff further alleges that the point-of-sale system used by
10 Defendants’ retail locations maintains records of all payment transactions and has
11 the ability to print duplicate copies of all payment receipts provided to customers.
12 (Cmplt., ¶83)

13 11. Plaintiff alleges that by failing to comply with FACTA, Defendants
14 disclosed his “personal financial information to the world, including to ... identity
15 thieves who thrive in environments such as Defendants’ various locations, as well
16 as Defendants’ employees who handled the receipts,” and created an “unjustifiably
17 high risk of harm.” (Cmplt., ¶¶ 85-86)

18 12. Plaintiff seeks damages, individually and on behalf of all others
19 similarly situated, for violation of FACTA, and requests statutory remedies, punitive
20 damages, attorneys’ fees and costs. (Cmplt., p. 28, Prayer for Relief)

21 13. To the extent Plaintiff’s Complaint rests on Defendants’ alleged
22 violations of FACTA, his claim involves a federal question over which this Court
23 has original jurisdiction pursuant to 28 U.S.C. § 1331.

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1 **CAFA JURISDICTION**

2 14. Plaintiff not only brings this action as an individual, but also brings this
3 action on behalf of a class of persons similarly situated. As set forth below, CAFA
4 provides an independent basis for jurisdiction in federal court.

5 15. CAFA grants federal courts original jurisdiction over class actions
6 where: (1) the putative class contains at least 100 members; (2) any member of a
7 class of plaintiffs is a citizen of a state different from that of any defendant; and (3)
8 the amount in controversy exceeds \$5,000,000 in the aggregate for the entire putative
9 class, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2), (d)(5).

10 **The Alleged Putative Class Exceeds 100 Members**

11 16. CAFA requires that the putative class contain at least 100 putative class
12 members. 28 U.S.C. § 1332(d)(5). Plaintiff defines the proposed national class and
13 subclass as follows:

14 “[H]imself and all persons in the United States who,
15 within the time frame relevant to this action, engaged in
16 one or more transactions using a debit card or credit card
17 at one or more of Defendants' retail locations in the United
18 States, and was thereupon provided an electronically
19 printed receipt displaying the first six (6) and last four (4)
20 digits of the credit or debit card account number used in
21 connection with such transaction(s). Plaintiff is a member
22 of this class.” (Cmplt., ¶87)

19 “[T]hemselves (sic) and all persons in the United States
20 who, within the time frame relevant to this action, engaged
21 in one or more transactions using a debit card or credit card
22 at one or more of Defendants' retail locations in the State
23 of California and was thereupon provided an electronically
24 printed receipt displaying the first six (6) and last four (4)
25 digits of the credit or debit card account number used in
26 connection with such transaction(s). Plaintiff is a member
27 of this sub-class.” (Cmplt., ¶88)

24 17. Plaintiff does not state the specific number of putative class members
25 in the Complaint. However, Plaintiff alleges that Defendants systematically violated
26 FACTA with respect to retail customers at Defendants’ retail locations nationwide.
27 The Complaint further alleges Defendants operate retail sporting goods stores in 35
28 states. (Cmplt., ¶12) Plaintiff further alleges that Defendants printed “thousands of

1 point-to-sale receipts containing the first six (6) and last four (4) digits of credit and
2 debit card numbers.” (Cmplt., ¶84) Thus, any customers who allegedly received an
3 electronically printed receipt that purportedly violated FACTA at Defendants’ retail
4 locations would be members of the putative class as defined by Plaintiff. Accepting
5 the allegations of the Complaint as true, each of these transactions would be part of
6 the proposed class. Thus, there are more than 100 members in the putative class.

7 **There is Minimal Diversity among the Parties**

8 18. The second requirement under CAFA is minimal diversity, which
9 requires that at least one putative class member be a citizen of a different state than
10 that of any one defendant. *See* 28 U.S.C. § 1332(d)(2).

11 19. Here, at least one putative class member is a citizen of the State of
12 California, namely Plaintiff Anthony Kamel. (Cmplt., ¶9)

13 20. Defendant Hibbett, Inc. is alleged to be a corporation organized and
14 existing under the laws of the State of Delaware, with its home office in Alabama.
15 (Cmplt., ¶10)

16 21. Defendant Hibbett Retail, Inc. is alleged to be a corporation organized
17 and existing under the laws of the State of Delaware, with its home office in
18 Alabama. (Cmplt., ¶11)

19 22. Therefore, minimal diversity exists between the parties.

20 **The CAFA Amount in Controversy is at Least \$5,000,000**

21 23. The third and final requirement under CAFA is that the amount in
22 controversy exceed \$5,000,000 for the putative class in the aggregate, exclusive of
23 costs and interest. 28 U.S.C. § 1332(d)(2). A defendant’s notice of removal under
24 CAFA “need include only a plausible allegation that the amount in controversy
25 exceeds the jurisdictional threshold.” *Dart Cherokee Operating Co., LLC v. Owens*,
26 135 S. Ct. 547, 554 (2014); *see also Arias v. Residence Inn*, 936 F.3d 920, 924 (9th
27 Cir. 2019) (“[W]hen a notice of removal plausibly alleges a basis for federal court
28 jurisdiction, a district court may not remand the case back to state court without first

1 giving the defendant an opportunity to show by a preponderance of the evidence that
2 the jurisdictional requirements are satisfied.”). Evidence establishing the amount in
3 controversy is only required once the plaintiff challenges or the court questions the
4 defendant’s allegation. *Id.*²

5 24. “[T]he amount in controversy is determined by the complaint operative
6 at the time of removal and encompasses all relief a court may grant on that complaint
7 if the plaintiff is victorious.” *See Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413,
8 414-15, 417-18 (9th Cir. 2018). The Complaint is therefore necessarily reviewed by
9 the Court in determining the amount in controversy. *See LaCrosse, supra*, 775 F.3d
10 at 2002.

11 25. Plaintiff’s allegations and prayer for relief have more likely than not
12 put into controversy an amount that exceeds the \$5 million threshold when
13 aggregating the claims of the putative class members as set forth in 28 U.S.C. §
14 1332(d)(6). In the Complaint, Plaintiff seeks to recover statutory damages, punitive
15 damages, attorneys’ fees and costs. (Cmplt., p. 28, Prayer for Relief)

16 26. FACTA provides for recovery of statutory damages of not less than
17 \$100, but not more than \$1,000 per willful violation. Plaintiff alleges that
18 Defendants printed “thousands of point-to-sale receipts containing the first six (6)
19 and last four (4) digits of credit and debit card numbers.” (Cmplt., ¶84) Plaintiff
20 further alleges that Defendants systematically violated FACTA in this manner in its
21 retail sporting goods stores in 35 states. (Cmplt., ¶12) Thus, the amount in
22 controversy based on Plaintiff’s Complaint exceeds the required minimum.

23 27. Additionally, Plaintiff seeks punitive damages. (Cmplt., p. 28, Prayer
24 for Relief) While Defendants do not concede punitive damages would ever be
25 appropriate under the circumstances of this case, where punitive damages are

26 ² Defendants’ statement of the amount at issue in this removal is solely for purpose
27 of establishing subject matter jurisdiction under CAFA. This statement should not
28 be used as an admission and cannot be used to support damages for any other purpose
in this case. *See LaCrosse v. Knight Truck and Trailer Sales, LLC*, 775 F.3d 1200,
1203 (9th Cir. 2015).

1 available under applicable law, they are considered in determining the amount in
2 controversy. *See Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001),
3 *holding modified on other grounds by Exxon Mobil Corp. v. Allapattah Servs., Inc.*,
4 545 U.S. 546 (2005) (“It is well established that punitive damages are part of the
5 amount in controversy in a civil action.”).

6 28. Moreover, attorneys’ fees are properly included in the amount in
7 controversy if an underlying statute or contract authorizes an award of attorneys’
8 fees. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 698 (9th Cir. 2007);
9 *Vasquez v. Arvato Digital Servs., LLC*, 2011 WL 2560261, at *4 (C.D. Cal. June 27,
10 2011) (“[I]ncluding unspecified future attorneys’ fees in determining the amount in
11 controversy is proper because such fees necessarily accrue until the action is
12 resolved.”). Here, Plaintiff specifically demands attorneys’ fees, litigation fees and
13 costs of suit. (Cmplt., p. 28, Prayer for Relief)

14 29. For all the foregoing reasons, it is evident that the \$5,000,000 CAFA
15 amount in controversy requirement is satisfied.

16 **The Exceptions to CAFA Jurisdiction Do Not Apply**

17 30. CAFA provides two mandatory exceptions and one discretionary
18 exception to the application of federal jurisdiction. 28 U.S.C. § 1332(d)(3)-(4). In
19 this case, no exception applies. Each CAFA exception requires, as a starting point,
20 an in-state defendant. U.S.C. § 1332(d)(3)-(4) (local controversy CAFA exception
21 requires that “significant relief” be sought from an in-state defendant; home state
22 and discretionary CAFA exceptions require that all “primary defendants” be resident
23 defendants). Here, Defendants are not residents of California, which Plaintiff
24 concedes in his Complaint. (Cmplt., ¶¶ 10-11) As such, none of the CAFA
25 exceptions can possibly apply here.

26 31. Accordingly, because the CAFA prerequisites are met and none of the
27 exceptions apply, this civil action is properly removable under CAFA.

28 32. Venue is proper in this district under 28 U.S.C. § 1446(a) because this

1 district and division embrace the place in which the removed action has been
2 pending.

3 33. No further proceedings occurred in this Action prior to Defendants
4 filing this Notice of Removal.

5 34. A Notice of Filing of Notice of Removal, with a copy of the Notice of
6 Removal attached, will be filed promptly in the Superior Court of the State of
7 California, County of Orange, in accordance with the provisions of 28 U.S.C. §
8 1446(d).

9 35. Written notice of the filing of this Notice of Removal will be given to
10 the adverse parties as required by law.

11 **WHEREFORE**, Defendants give notice that all further proceedings in this
12 matter shall take place in the United States District Court for the Central District of
13 California, unless and until held otherwise by that Court.

14
15 Dated: June 1, 2022

MAYNARD COOPER & GALE LLP

16 By: /s/ Ophir Johna
17 MISTY A. MURRAY
18 OPHIR JOHNA
19 KAREN T. TSUI
Attorneys for Defendants Hibbett Inc.,
and Hibbett Retail, Inc.

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CERTIFICATE OF SERVICE

Anthony Kamel, et al. v. Hibbett, Inc., et al.

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a citizen of the United States and employed in Los Angeles, California, at the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within actions; my business address is 10100 Santa Monica Blvd., Ste. 550, Los Angeles, CA 90067.

On **June 1, 2022**, I served the document(s) entitled, DEFENDANTS’ NOTICE OF REMOVAL on the interested parties in this action by placing true copies thereof enclosed in a sealed envelope(s) addressed as stated below:

(BY MAIL): I deposited such envelope in the mail at Los Angeles, California with postage fully prepaid. I am readily familiar with this firm’s practice of collection and processing correspondence for mailing. Under that practice it would be placed for collection and mailing, and deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the United States that the above is true and correct and was executed on **June 1, 2022**, at Los Angeles, California.



Lea Borys

SERVICE LIST

Kamel, et al. v. Hibbett, Inc., et al.

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5 John R. Habashy, Esq.
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13 *Class*

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Telephone: 310.596.4500

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7 Attorneys for Defendants Hibbett Inc.,
and Hibbett Retail, Inc.
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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
11

12 ANTHONY KAMEL, individually and
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13 situated individuals,

14 Plaintiffs,

15 v.

16 HIBBETT, INC., a Delaware
corporation, and HIBBETT RETAIL,
17 INC., a Delaware corporation,

18 Defendants.
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Case No. 2:22-3726

**DECLARATION OF OPHIR
JOHNA IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL**

[Filed concurrently with Notice of
Removal]

Complaint Filed: April 29, 2022

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DECLARATION OF OPHIR JOHNA

I, Ophir Johna, hereby declare as follows:

1. I am an attorney licensed to practice in this Court and in the State of California, and am an Partner with the law firm of Maynard Cooper & Gale LLP, counsel of record for Defendants Hibbett, Inc., and Hibbett Retail, Inc. (“Hibbett”). I am one of the attorneys with responsibility for the handling of this matter. I have personal knowledge of the matters set forth below and, if necessary, could and would competently testify as to such matters.

2. Attached as **Exhibit A** hereto are true and correct copies of the Summons and Complaint filed on or about April 29, 2022 in the Superior Court of the State of California for the County of Orange, entitled *Anthony Kamel, individually and on behalf of a class of other similar situated individuals, Plaintiffs, v. Hibbett, Inc., a Delaware Corporation, and Hibbett Retail, Inc., a Delaware corporation, Defendants*, Case No. 30-2022-01257316-CU-NP-CXC, and all other documents that were served upon Defendants on May 3, 2022 or are on file with the Orange County Superior Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of June, 2022, at Los Angeles, California.

/s/ Ophir Johna
Ophir Johna

EXHIBIT A

**SUMMONS
 (CITACION JUDICIAL)**

FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
 (AVISO AL DEMANDADO):**

HIBBETT, INC., a Delaware corporation,
 and HIBBETT RETAIL, INC., a Delaware

**YOU ARE BEING SUED BY PLAINTIFF:
 (LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ANTHONY KAMEL, individually and on behalf of a class of other
 similarly situated individuals

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Orange County Superior Court
 Civil Complex Center, 751 W. Santa Ana Blvd, Santa Ana CA 92701

CASE NUMBER:
 (Número del Caso):

30-2022-01257316-CU-NP-CXC

Judge Peter Wilson

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
 John R. Habashy, Esq.; 633 W. 5th Street, 28th Floor, Los Angeles, CA 90071; (213) 223-5900

DATE: 04/29/2022
 (Fecha)

DAVID H. YAMASAKI, Clerk of the Court

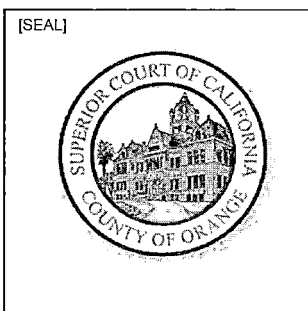
Clerk, by
 (Sec)

Georgina Ramirez

Georgina Ramirez

Deputy
 (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (POS-010)).
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): HIBBETT RETAIL, INC., a Delaware corporation
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date): 5/3/2022

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John Habashy (SBN 236708) Lexicon Law, PC 633 W. 5th Street, 28th Floor Los Angeles, CA 90071 TELEPHONE NO.: (213)223-5900 FAX NO.: (888) 373-2107 ATTORNEY FOR (Name): Plaintiff, Anthony Kamel		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: 751 W. Santa Ana Blvd CITY AND ZIP CODE: Santa Ana 92701 BRANCH NAME: Civil Complex Center		
CASE NAME: ANTHONY KAMEL V. HIBBETT, INC., ET AL.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 30-2022-01257316-CU-NP-CXC JUDGE: Judge Peter Wilson DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input checked="" type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): ONE (1) VIOLATIONS OF 15 U.S.C. § 1681(c)(g)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 29, 2022
 JOHN R. HABASHY, ESQ.
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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Assigned for All Purposes

8 *Additional Counsel for Plaintiff and the*
9 *Proposed Class listed on following page.*

Judge Peter Wilson

cx-102

10 Attorneys for Plaintiff and the Proposed Class

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF ORANGE**

13 ANTHONY KAMEL, individually and on
14 behalf of a class of other similarly situated
15 individuals,

16 *Plaintiff,*

17 v.

18 HIBBETT, INC., a Delaware corporation,
19 and HIBBETT RETAIL, INC., a Delaware
20 corporation,

21 *Defendants.*

CASE NO: 30-2022-01257316-CU-NP-CXC

CLASS ACTION

VIOLATION OF THE FAIR AND
ACCURATE CREDIT
TRANSACTIONS ACT (FACTA)

JURY TRIAL DEMANDED

1
2 Additional Counsel for Plaintiff and the Proposed Class:

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1
2 Plaintiff, Anthony Kamel (hereinafter “Plaintiff”) on behalf of himself and other
3 similarly situated individuals (hereinafter the “Class”), brings the instant action against Hibbett,
4 Inc. (hereinafter “Defendant Hibbett”) and Hibbett Retail, Inc. (hereinafter “Defendant Hibbett
5 Retail”) (collectively with Defendant Hibbett, the “Defendants”), and alleges the following:
6

7 **INTRODUCTION**

8 1. This action arises from Defendants’ violation of the Fair and Accurate Credit
9 Transactions Act (hereinafter “FACTA”) amendment to the Fair Credit Reporting Act, 15 U.S.C.
10 § 1681 *et seq.*, as amended (hereinafter “FCRA”), a federal statute which requires merchants to
11 truncate certain credit and debit card information on printed receipts provided to consumers at
12 the point-of-sale.
13

14 2. Despite the clear language of the statute, Defendants knowingly or recklessly
15 failed to comply with FACTA by printing more than the last five (5) digits of consumers’ debit
16 and credit card account numbers on receipts issued to them. As a result of Defendants’ unlawful
17 conduct, Plaintiff and members of the Class who have conducted business with Defendants
18 during the time frame relevant to this action have suffered a violation of their statutory rights
19 under 15 U.S.C. § 1681c(g), an invasion of their privacy, and have been burdened with an
20 elevated risk of identity theft.
21

22 3. The allegations set forth by Plaintiff herein satisfy the elements of standing in
23 this Court because California courts are not bound by the “case and controversy” requirement
24 of Article III. *See National Paint & Coatings Assn. v. State of California*, 58 Cal. App. 4th 753,
25 760-761, 68 Cal. Rptr. 2d 360 (4th Dist. 1997) (“The California Constitution does not specify,
26 as does the United States Constitution, that the state’s judicial power extends only to “cases and
27
28

1 controversies.”); *see also Angelucci v. Century Supper Club* (2007) 41 Cal. 4th 160, 175 [59 Cal.
2 Rptr. 3d 142, 158 P.3d 718] (“In general terms, in order to have standing, the plaintiff must be
3 able to allege injury—that is, some ‘invasion of the plaintiff’s legally protected interests.’”).

4
5 4. However, *federal* courts in California hold that plaintiffs with nearly identical
6 allegations to those in the instant action have not met the necessary elements to confer Article
7 III standing. *See Bassett v. Parking Services, Inc.*, 883 F.3d 776 (9th Cir. 2018) (“[W]e conclude
8 that Bassett failed to allege a concrete injury sufficient to give him standing.”); *see also Noble*
9 *v. Nev. Check Cab. Corp.*, 726 Fed. Appx. 582, 584 (9th Cir. Mar. 9, 2018) (Plaintiff in FACTA
10 action failed to satisfy Article III standing requirements).

11 JURISDICTION AND VENUE

12
13 5. This court has subject matter jurisdiction because the amount in controversy is
14 not less than the jurisdictional limit of this Court and because Plaintiff seeks to enforce his
15 legally protected interests created by statute.

16
17 6. Plaintiff concedes that the allegations contained herein are not sufficient to meet
18 the requirements set forth by *federal* courts in relation to Article III standing. *See Noble*, 726
19 Fed.Appx. at 583 (9th Cir. 2018) (“Citing *Spokeo* we held that the plaintiff had not alleged a
20 concrete injury sufficient to warrant Article III standing...” (quoting *Bassett*, 883 F.3d at 783
21 (9th Cir. 2018)).

22
23 7. *In personam* jurisdiction over the Defendants is proper in this Court as the
24 Defendants conduct substantial business within the State such that their affiliation is continuous
25 and systematic.

26
27 8. Venue is proper in this Court pursuant to sections 395 and 395.5 of the Code of
28 Civil Procedure, as one or more Defendants conducted substantial business and/or committed

1 violations of law here, and Plaintiff Kamel resides within this county.

2 **PARTIES**

3 9. At all times relevant hereto, Plaintiff is and was a natural person over the age of
4 eighteen (18) residing in Orange County, California.
5

6 10. At all times relevant hereto, Defendant Hibbett is and was a Delaware publicly
7 traded corporation whose principal address is located at 2700 Milan Court, Birmingham,
8 Alabama 35211.

9 11. At all times relevant hereto, Defendant Hibbett Retail is and was a Delaware
10 privately held corporation whose principal address is located at 2700 Milan Court, Birmingham,
11 Alabama 35211.
12

13 12. At all times relevant hereto, Defendants operated athletic wear retail stores as a
14 unitary enterprise under the names Hibbett Sports and City Gear in 35 states throughout the
15 United States, including the State of California.¹
16

17 13. At all times relevant hereto, Defendants exercised control over the
18 aforementioned Hibbett Sports and City Gear retail stores, including but not limited to, the type
19 of point-of-sale (POS) systems utilized to print customer transaction receipts.
20

21 **FACTUAL ALLEGATIONS**

22 **Background of FACTA**

23
24
25
26
27
28 ¹ See **Exhibit 'A'** - Hibbett, Inc. Form 10-K for the fiscal year ended January 29, 2022 (hereinafter the
"2022 Annual Report") (Item 2. Properties, p. 28).

1 14. Congress enacted FACTA to prevent identity theft and related harm. *See* Pub. L.
2 No. 108-159 (December 4, 2003) (“An Act . . . to prevent identity theft . . . and for other
3 purposes.”).

4 15. Upon signing FACTA into law, President George W. Bush remarked that “[s]lips
5 of paper that most people throw away should not hold the key to their savings and financial
6 secrets.” 39 Weekly Comp. Pres. Doc. 1746, 1757 (Dec. 4, 2003). President Bush added that the
7 government, through FACTA, was “act[ing] to protect individual privacy.” *Id.*

8
9 16. Along those lines, one such FACTA provision was specifically designed to
10 thwart identity thieves’ ability to gain sensitive information regarding a consumer’s credit or
11 bank account from a receipt provided to the consumer during a point-of-sale transaction, which,
12 through any number of ways, could fall into the hands of someone other than the consumer.

13
14 17. Codified at 15 U.S.C. § 1681c(g), this provision states the following:

15 *Except as otherwise provided in this subsection, no person that accepts*
16 *credit cards or debit cards for the transaction of business shall print more*
17 *than the last 5 digits of the card number or the expiration date upon any*
18 *receipt provided to the cardholder at the point of sale or transaction.*

19 15 U.S.C. § 1681c(g) (the “Receipt Provision”).

20 18. The requirement was widely publicized among retailers and the FTC. For
21 example, on March 6, 2003, in response to earlier state legislation enacting similar truncation
22 requirements, then-CEO of Visa USA, Carl Pascarella, explained that,

23 “Today, I am proud to announce an additional measure to combat identity
24 theft and protect consumers. Our new receipt truncation policy will soon
25 limit cardholder information on receipts to the last four digits of their
26 accounts. The card’s expiration date will be eliminated from receipts
27
28

1 altogether . . . The first phase of this new policy goes into effect July 1,
2 2003 for all new terminals.”²

3 Within 24 hours, MasterCard and American Express announced they were imposing similar
4 requirements.

5 19. Card-issuing organizations proceeded to require compliance with FACTA by
6 contract, in advance of FACTA’s mandatory compliance date. For example, the publication,
7 ~~*Rules for Visa Merchants*~~, which is distributed to and binding upon all merchants that accept
8 Visa cards, expressly requires that “only the last four digits of an account number should be
9 printed on the customer’s copy of the receipt” and “the expiration date should not appear at all.”³
10

11 20. However, because of apparent confusion surrounding the otherwise
12 straightforward requirements of FACTA, a handful of large retailers failed to comply with their
13 contractual obligations to the card companies and with FACTA. Accordingly, Congress passed
14 *The Credit and Debit Card Receipt Clarification Act of 2007*, extending the compliance date to
15 June 3, 2008, and making allowances to the definition of willful noncompliance with respect to
16 violations involving the printing of an expiration date on certain credit and debit card receipts
17 before the date of the enactment of this Act.⁴ Importantly, the Clarification Act did not amend
18 FACTA to allow disclosure of a credit or debit card’s expiration date, nor did it excuse violations
19 for printing more than the last five digits of a card’s account number. Instead, it simply provided
20
21
22

23
24
25 ² Source: <https://www.finextra.com/newsarticle/8206/visa-to-hide-card-numbers-in-bid-to-cut-identity-theft> (Last viewed: April 15, 2022).

26 ³ Source: https://www.runtogold.com/images/rules_for_visa_merchants.pdf (Last viewed: April 15,
27 2022).

28 ⁴ Source: <https://www.govinfo.gov/content/pkg/BILLS-110hr4008enr/pdf/BILLS-110hr4008enr.pdf> (Last viewed: April 15, 2022).

1 amnesty to past violators in connection with the printing of expiration dates only, up to June 3,
2 2008.

3 21. Meanwhile, card processing companies continued to alert their merchant clients,
4 including Defendant, of FACTA's requirements. According to a Visa Best Practice Alert in
5 2010:
6

7 Some countries already have laws mandating PAN truncation and the
8 suppression of expiration dates on cardholder receipts. For example, the
9 United States Fair and Accurate Credit Transactions Act (FACTA) of
10 2006 prohibits merchants from printing more than the last five digits of
11 the PAN or the card expiration date on any cardholder receipt. (Please
12 visit <http://www.ftc.gov/os/statutes/fcrajump.shtm> for more information
13 on the FACTA).

14 To reinforce its commitment to protecting consumers, merchants, and the
15 overall payment system, Visa is pursuing a global security objective that
16 will enable merchants to eliminate the storage of full PAN and expiration
17 date information from their payment systems when not needed for specific
18 business reasons. To ensure consistency in PAN truncation methods, Visa
19 has developed a list of best practices to be used until any new global rules
20 go into effect.

21 *Visa Best Practices for Primary Account Number Storage and Truncation.*⁵

22 22. As noted above, the processing companies have required that credit card or debit
23 card expiration dates not be shown since 2003 and still require it. For example, American
24 Express requires:
25

26 Pursuant to Applicable Law, truncate the Card Number and do not print
27 the Card's Expiration Date on the copies of Charge Records delivered to
28 Card Members. Truncated Card Number digits must be masked with
replacement characters such as "x," "*", or "#," and not blank spaces or
numbers.

⁵ Source: <https://www.visa.com.hk/content/dam/VCOM/global/support-legal/documents/bulletin-pan-truncation-best-practices.pdf> (Last viewed: April 15, 2022).

1 *American Express Merchant Regulations.*⁶

2 23. Similarly, MasterCard required in a section entitled Primary Account Number
3 (PAN) truncation and Expiration Date Omission:

4 A Transaction receipt generated by an electronic POI Terminal, whether
5 attended or unattended, must not include the Card expiration date. In
6 addition, a Transaction receipt generated for a Cardholder by an electronic
7 POI Terminal, whether attended or unattended, must reflect only the last
8 four digits of the primary account number (PAN). All preceding digits of
the PAN must be replaced with fill characters, such as "X," "*", or "#,"
that are neither blank spaces nor numeric characters.

9 *Mastercard Acceptance Procedures.*⁷

10 24. Despite FACTA, however, identity theft remains a serious issue affecting both
11 consumers and businesses. In 2018, a Harris Poll revealed that nearly 60 million Americans have
12 been affected by identity theft.⁸ There were 16.7 million victims of identity theft in 2017, and
13 account takeovers (when a thief opens a credit card or other financial account using a victim's
14 name and other stolen information) tripled in 2017 from 2016, causing \$5.1 billion in losses.

15 25. So problematic is the crime of identity theft that the three main credit reporting
16 agencies, Experian, Equifax, and Transunion, joined to set-up a free website
17 (<http://www.annualcreditreport.com>) in order to comply with FACTA requirements and to
18 provide the citizens of this country with a means of monitoring their credit reports for possible
19
20
21

22
23
24 ⁶ Source: https://www.aexp-static.com/cdaas/merchant-interactive-content/infopros/weboutput-international-Regs-latest/index.html#t=Topics%2F2_General-Policies-6.htm (Last viewed: April 15, 2022).

25
26 ⁷ Source: https://www.aibms.com/wpcontent/uploads/2014/12/Transaction_Processing_Rules_13_December_2013.pdf (Last viewed: April 15, 2022).

27
28 ⁸ Source: <https://lifelock.com/learn-identity-theft-resources-how-common-is-identity-theft.html> (Last viewed: April 15, 2022).

1 identity theft.

2 26. FACTA clearly prohibits the printing of more than the last five (5) digits of the
3 card number, to protect persons from identity theft.
4

5
6 **Defendants' Corporate Structure and Operations**

7 27. Through byzantine corporate structures, shared resources, and the primary use of
8 the names Hibbett Sports and City Gear, Plaintiff asserts that Defendants operate their retail
9 athletic-inspired fashion business as a unitary enterprise throughout the United States.
10

11 28. Founded in 1945 under the name Dixie Supply Co., Defendants' brand has
12 numerous permutations, including: Hibbett & Company, LLC; Hibbett & Sons Sporting Goods,
13 Inc.; Hibbett Digital Management, LLC; Hibbett Holdings, LLC; Hibbett Team Sales, Inc.;
14 Hibbett Wholesale, Inc.; Hibbett Wholesale Warehouse, Inc Hibbett Sporting Goods, Inc.;
15 Hibbett Sports, Inc.⁹
16

17 29. To add to this seemingly purposeful confusion, Defendant Hibbett, a publicly
18 traded Delaware corporation, was until recently known as Hibbett Sports, Inc.¹⁰ and Defendant
19 Hibbett Retail, a privately held Delaware corporation, was formerly known as Hibbett Sporting
20 Goods, Inc.¹¹ Further, City Gear, LLC is a privately held Tennessee limited liability company
21 and was formed sometime in 2006.¹²
22

23
24
25 ⁹ Sources: <https://arc-sos.state.al.us/cgi/corpname.mbr/output> (Alabama Secretary of State, Division
26 of Corporations website) (Last viewed: April 15, 2022); <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (Delaware Secretary of State, Division of Corporations website) (Last
viewed: April 15, 2022).

27 ¹⁰ See Exhibit 'B'- Hibbett Sports, Inc. Form 8-K dated June 23, 2021.

28 ¹¹ Source: <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (Delaware Secretary
of State, Division of Corporations website) (Last viewed: April 15, 2022).

¹² Source: <https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=1540100541250262>

1 30. When transacting business throughout the country, Defendants primarily use the
2 names “Hibbett Sports” and “City Gear”, which are owned by Hibbett Holdings, LLC and City
3 Gear, LLC respectively.¹³

4 31. Defendant Hibbett openly refers to itself in public filings with the Securities and
5 Exchange Commission as a leading athletic wear retailer with over 1,000 retail stores under the
6 Hibbett Sports and City Gear names.¹⁴ Specifically, Defendant Hibbett discloses that as of
7 January 30, 2021, it operated 882 Hibbett Stores, 167 City Gear stores, and 18 Sports Addition
8 stores.¹⁵ Many of the aforementioned retail stores operated by Defendants are located in the state
9 of California.¹⁶

10 32. Through information and belief, Plaintiff avers, when a consumer transacts
11 business at one of Defendants’ retail stores using a credit or debit card, the name “Hibbett Sports”
12 appears as the billing descriptor on the consumer’s monthly statement.

13 33. Defendants share common corporate officers, including without limitation,
14 Michael Longo, Robert Volke, and David Benck.¹⁷ Moreover, the Chairman of the Board of
15

16
17
18
19
20 18059048153119228063240247080027 (Tennessee Secretary of State, Division of Corporations
21 website) (Last viewed: April 15, 2022).

22 ¹³ Source: <https://tmsearch.uspto.gov/bin/showfield?f=doc&state=4801:w9310d.2.4> (U.S. Patent and
23 Trademark Office website) (Last viewed: April 15, 2022).

24 ¹⁴ See 2022 Annual Report (Our Company, p. 6: “Hibbett, headquartered in Birmingham, Alabama,
25 is a leading athletic-inspired fashion retailer with approximately 1,100 stores under the Hibbett Sports
26 and City Gear banners, primarily located in underserved communities”).

27 ¹⁵ See *Id.* (Our Store Brands, p. 6).

28 ¹⁶ See *Id.* (Item 2. Properties, p. 27).

¹⁷ See *Id.* (Information about our Executive Officers, p. 9); see also <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&SearchNameOrder=HIBBETTRETAIL%20F960000051442&aggregateId=forp-f96000005144-5e90b765-631e-4d66-a85b9fee5f1fae3&searchTerm=hibbett&listNameOrder=HIBBETTRETAIL%20F960000051442> (Florida Secretary of State, Division of Corporations website) (Last viewed: April 15, 2022).

1 Directors for Defendant Hibbett, Anthony Crudele, also serves as the Chief Executive Officer
2 for Defendant Hibbett Retail.¹⁸

3 34. According to the 2022 Annual Report and other publicly available corporate
4 filings, Defendants also share the business address of 2700 Milan Court, Birmingham, Alabama
5 35211.¹⁹

6
7 35. Lastly, Defendants share several integrated resources in pursuit of a single
8 business purpose, including without limitation, a line of business credit between Defendant
9 Hibbett and Regions Bank.²⁰

10 **Alter Ego Liability**

11
12 36. Ordinarily a corporation is considered a separate legal entity, distinct from its
13 stockholders, officers and directors, with separate and distinct liabilities and obligations. *Sonora*
14 *Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538 [99 Cal. Rptr. 2d 824].
15 However, courts may disregard this notion “when [a corporation] is used to perpetrate a fraud,
16 circumvent a statute, or accomplish some other wrongful or inequitable purpose.” *Id.*

17
18 37. “A court may also disregard the corporate form in order to hold one corporation
19 liable for the debts of another affiliated corporation when the latter is so organized and controlled,
20 and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit, or
21 adjunct of another corporation.” *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013)

22
23
24
25 ¹⁸ See 2022 Annual Report (Signatures, p. 75).

26 ¹⁹ See *Id.* (p. 1).

27 ²⁰ See **Exhibit ‘C’** - Hibbett, Inc. Form 8-K dated April 7, 2022; (Source: <https://app.quotemedia.com/data/downloadFiling?webmasterId=90423&ref=116616910&type=PDF&symbol=HIBB&companyName=Hibbett+Inc.&formType=8K&formDescription=Current+report+pursuant+to+Section+13+or+15+%28d%29&dateFiled=2022-04-12&CK=1017480>).

1 217 Cal.App.4th 1096, 1107 [159 Cal.Rptr.3d 469, 479] (internal quotations omitted).

2 38. “[W]here there is ‘such domination of finances, policies and practices that the
3 controlled corporation has, so to speak, no separate mind, will or existence of its own and is but
4 a business conduit for its principal’ (1 Fletcher Cyc. Corp. § 43), the affiliated corporations may
5 be deemed to be a single business enterprise, and the corporate veil pierced. ‘Under the “single
6 business enterprise” doctrine, separate corporations may operate with integrated resources in
7 pursuit of a single business purpose.’ (Ibid.) ‘The “single-business-enterprise” theory is an
8 equitable doctrine applied to reflect partnership-type liability principles when corporations
9 integrate their resources and operations to achieve a common business purpose.’” *Id.* At 1107–
10 1108.

13 39. “California courts have recognized that ‘it would be unjust to permit those who
14 control companies to treat them as a single or unitary enterprise and then assert their corporate
15 separateness in order to commit frauds and other misdeeds with impunity.’” *DEPCOM Power,*
16 *Inc. v. CSUN Solar, Inc.* (N.D. Cal., May 13, 2019, No. 18-CV-00729-JST) 2019 WL 2088480,
17 at *4 (quoting *Las Palmas Assocs. v. Las Palmas Ctr. Assocs.*, 235 Cal. App. 3d 1220, 1249
18 (1991)). “Accordingly, ‘under the single-enterprise rule, [alter ego] liability can be found
19 between sister companies.’ *Id.* (quoting *Greenspan v. LADT, LLC*, 191 Cal. App. 4th 486, 512
20 (2010)

23 40. “The essence of the alter ego doctrine is that justice be done. What the formula
24 comes down to, once shorn of verbiage about control, instrumentality, agency, and corporate
25 entity, is that liability is imposed to reach an equitable result.” *Mesler v. Bragg Management*
26 *Co., supra*, 39 Cal.3d 290, 301 [216 Cal. Rptr. 443, 702 P.2d 601] (internal quotations omitted).

27 41. At all relevant times, as alleged more fully herein, each Defendant acted as an agent,
28

1 servant, employee, alter-ego and/or joint venturer of the other Defendant, and in doing the things
2 alleged herein acted within the course and scope of such agency, employment, alter-ego and/or
3 in furtherance of the joint venture. Each of the Defendant's acts alleged herein was done with
4 the permission and consent of each of the other Defendant.
5

6 42. At all times relevant hereto, Defendant Hibbett Retail was the alter ego of Defendant
7 Hibbett and there exists, and at all times herein mentioned has existed, a unity of interest and
8 ownership between Defendants such that any separateness between them has ceased to exist in
9 that Defendant Hibbett completely controlled, dominated, managed, and/or operated the other
10 Defendant to suit its convenience.
11

12 43. Specifically, at all times relevant hereto, Plaintiff is informed and therefore avers
13 Defendant Hibbett: (1) controlled the business and affairs of Defendant Hibbett Retail including
14 any and all of its affiliates (the "Corporate Entities"); (2) disregarded legal formalities and failed
15 to maintain arm's length relationships among itself, Defendant Hibbett Retail, and the Corporate
16 Entities; (3) inadequately capitalized Defendant Hibbett Retail and/or the Corporate Entities; (4)
17 used the same office or business location as Defendant Hibbett Retail and the Corporate Entities;
18 (5) used Defendant Hibbett Retail and the Corporate Entities as a mere shells, instrumentalities
19 or conduits for its business; (6) used Defendant Hibbett Retail and/or the Corporate Entities to
20 procure labor, services or merchandise for its business; (7) manipulated the assets and liabilities
21 between Defendant Hibbett Retail and/or the Corporate Entities so as to concentrate certain
22 assets in some and certain liabilities in others; (8) used Defendant Hibbett Retail and the
23 Corporate Entities to conceal its ownership, management, operation, financial interests, and/or
24 business activities; (9) shared common corporate officers and directors with Defendant Hibbett
25 Retail and the Corporate Entities; (10) comingled financial assets and funding between itself,
26
27
28

1 Defendant Hibbett Retail, and/or the Corporate Entities; and/or (11) used Defendant Hibbett
2 Retail and the Corporate Entities to shield against liability, and in particular the liability as
3 alleged in this Complaint.
4

5 44. At all relevant times hereto, Defendants operated with integrated resources in
6 pursuit of a single business purpose so that they can be deemed to be a single business enterprise.

7 45. At all times relevant hereto, Defendant Hibbett Retail was not only influenced and
8 governed by Defendant Hibbett but there was such a unity of interest, operation, and ownership
9 that the individuality, or separateness, of Defendant Hibbett and Defendant Hibbett Retail ceased,
10 and that the facts are such that an adherence to the fiction of the separate existence of these
11 entities would, under the particular circumstances, allow for fraud or promote injustice.
12

13 46. Through information and belief, Plaintiff avers, that at all relevant times mentioned
14 herein, the acts of the business entities involved herein were performed by an employee(s),
15 agent(s), officer(s), servant(s) and/or representative(s) of Defendant Hibbett and Defendant
16 Hibbett Retail.
17

18 **Agency Liability**

19 47. Whenever in this complaint reference is made to any act or omission of a corporate
20 defendant, enterprise, or other entity, such allegations shall be deemed to mean that the directors,
21 officers, agents, employees, distributors, contractors, third-party vendors and/or representatives
22 of said corporate defendant, enterprise, or other entity, did authorize, ratify, and/or command,
23 expressly or impliedly, such act or omission while actively engaged in the management,
24 operation, control, and/or representation of the affairs of said corporate defendant, enterprise or
25 other entity, and while acting within the course and scope of their agency, contract, enterprise,
26 employment, representation, and/or capacity.
27
28

1 48. In their respective responsibilities, each Defendant is a person²¹ responsible for (1)
2 accepting, and does in fact accept, credit and debit cards for payment; (2) causing properly
3 truncated receipts to be provided to consumers; and (3) complying with federal law and data-
4 security standards, including FACTA.
5

6 49. At all times material hereto, Plaintiff alleges that each respective Defendant is
7 individually responsible for the occurrences alleged in this complaint, that each is the cause of
8 the harm alleged herein, and each is individually liable for the FACTA violations alleged herein.
9

10 50. To the extent that not every Defendant is individually responsible for the FACTA
11 violations and the proximate cause of the alleged violations, Plaintiff asserts that, at all times
12 material hereto, Defendants acted in concert, as an enterprise, as agents or subagents and
13 intended to and did participate in the events, acts, omissions, practices, and courses of conduct
14 alleged herein, and they were the proximate cause of the FACTA violations vis-à-vis Plaintiff
15 and the putative members of the Class.
16

17 51. To that end, at all times material hereto, Defendant Hibbett has directed, overseen,
18 and has the authority to control Defendant Hibbett Retail in the execution of its respective duties
19 on its behalf at retail locations throughout the country. Defendant Hibbett has the ultimate
20 authority, the ultimate control over, and the ultimate responsibility for the subject retail locations
21 throughout the Country, including the point-of-sale and the software systems that caused the
22 statutory violations alleged herein.
23

24 52. Defendant Hibbett has acknowledged, expressly or impliedly, that Defendant
25

26
27
28 ²¹ The term “person” means any natural person, corporation, partnership, limited liability company, firm, or association. Civ. Code, § 1798.3(f); *see also* 15 U.S.C. § 1681a(b).

1 Hibbett Retail will act on its behalf at the retail locations throughout the country, Defendant
2 Hibbett Retail has agreed to do so, and Defendant Hibbett has authority over Defendant Hibbett
3 Retail in performing its respective duties with respect to operation of the point-of-sale and
4 software systems at issue and the printing of receipts.
5

6 53. Plaintiff alleges that the acts complained of, and otherwise respectively attributable
7 to Defendant Hibbett were executed and performed by their agents or personnel who were acting
8 within the scope and with actual or implied authority, agency, and/or control of Defendant
9 Hibbett, making Defendant Hibbett liable for Defendant Hibbett Retail's conduct that resulted
10 in the statutory violations at the retail locations throughout the country. It is also alleged that
11 Defendant Hibbett and Defendant Hibbett Retail acted as a unitary enterprise with regard to the
12 statutory violations alleged herein.
13

14 54. To the extent any Defendant claims it bears no responsibility for printing the point-
15 of-sale receipts at issue or processing transactions at the subject retail locations throughout the
16 country, it would stand as a party to whom sensitive cardholder account information was
17 published without consent from the cardholder and was learned through the confidential
18 transactions with Plaintiff and the putative members of the Class.
19

20 **Defendants' Prior Knowledge of FACTA**

21 55. Defendants collect and retain personally identifiable information that its
22 customers provide to them when making purchases, including without limitation, names,
23 addresses, phone numbers, driver license numbers, email addresses, personally identifiable
24
25
26
27
28

1 information stored on electronic devices, and credit and debit card information.²²

2 56. Plaintiff is informed and believes, and thereupon alleges Defendants had actual
3 knowledge of FACTA's truncation requirement before they began failing to comply with said
4 requirement *en masse*.

5
6 57. There are numerous statutes that require Defendants to protect customer financial
7 information when operating their retail locations, such as the Song-Beverly Credit Card Act of
8 1971, which like FACTA, prohibits businesses from printing transaction receipts that disclose
9 credit and debit card expiration dates or any more than the last five digits of the card account
10 number. *See* Cal. Civ. Code § 1747.09.

11
12 58. Admittedly, in the 2022 Annual Report, Defendants state they are aware that they
13 must comply with these various federal, state, and local regulations relating to consumer
14 protection, data protection, and privacy. Defendants also explain they are aware that the
15 unauthorized disclosure of sensitive or confidential information may present substantial liability
16 to the company.²³

17
18 59. Defendants' knowledge and experience regarding federal, state, and local laws
19
20
21

22 ²² *See* 2022 Annual Report (Item 1A. Risk Factors, p. 18: "The protection of Company, customer and
23 employee data is critical to us. Through our sales, ...and use of third-party information, we collect and
24 retain certain personally identifiable information that our customers provide to purchase products, ..., or
25 otherwise communicate and interact with us. This may include, but is not limited to, names, addresses,
26 phone numbers, driver license numbers, email addresses, contact preferences, personally identifiable
27 information stored on electronic devices, and payment account information, including credit and debit
28 card information.").

²³ *See Id.* (Item 1A. Risk Factors, p. 17) ("We are subject to payment-related risks that could increase our
operating costs, subject us to potential liability"... "state, federal, and foreign governments are
increasingly enacting laws and regulations to protect consumers against identity theft and consumer
privacy."); (Item 1A. Risk Factors, p. 18: "As a retailer accepting debit and credit cards for payment, we
are subject to various industry data protection standards and protocols, such as payment network security
operating guidelines and the Payment Card Industry Data Security Standard.").

1 that govern financial transactions, no doubt translates to Defendants having intimate knowledge
2 of the requirements of FACTA.

3 60. Defendants further acquired knowledge of FACTA when they received a retail
4 trade publication from Retail Technologies Corporation which contained an entire section on
5 FACTA in the very same issue in which Retail Technologies Corporation boasted of counting
6 Defendants as its clients, who upon information and belief, received that and many other
7 publications provided by that particular vendor.²⁴

9 61. Another retail trade publication, this time an issue of Alabama Retail Quarterly,
10 spotlighted Mickey Newsome, the Chief Executive Officer of Hibbett Sports, Inc., in a section
11 titled “Featured Member.”²⁵ The “Featured Member” write-up appeared in the same issue as a
12 section discussing FACTA and the issue of identity theft.

14 62. Defendants’ knowledge about the requirement that it truncate credit and debit
15 card digits on transaction receipts is also evidenced by the fact that in the years prior to the illegal
16 conduct alleged herein, Defendants formerly truncated credit and debit card account numbers
17 on transaction receipts in compliance with FACTA.

19 63. Furthermore, Plaintiff is informed and believes, and thereupon alleges that
20 Defendants’ corporate officers have knowledge of FACTA’s truncation requirement.

21 64. For example, David M. Benck is a Senior Vice President and General Counsel
22 for Defendants. His biography states that he is a Certified Information Privacy Professional
23

24
25
26
27 ²⁴ Source: <https://www.rtc-group.com/pdf/Newsletter11-WinterSpring2008.pdf> (Last viewed: April 15,
2022).

28 ²⁵ Source: <https://alabamaretail.org/wp-content/uploads/Vol9No2.pdf> (Last viewed: April 15, 2022).

1 through the International Association of Privacy Professionals (“IAPP”).²⁶ As such, Mr. Benck
2 would be privy to articles published by the IAPP, which include notifications about FACTA.²⁷
3 Further, in order for him to have obtained his IAPP certification, Mr. Benck would have taken
4 multiple tests, several of which include questions and/or sections regarding FACTA compliance.
5 Some of the materials used to prepare for these certification tests include information on
6 FACTA.²⁸
7

8 65. Additionally, *The Privacy Advisor* is the official monthly newsletter of the IAPP.
9 All active association members, including Mr. Benck, automatically receive a subscription to
10 *The Privacy Advisor* as a membership benefit. Among the topics routinely addressed in the
11 aforementioned newsletter are liabilities faced by retailers who ignore the mandates of FACTA.
12

13 66. For example, from the May 2007 edition of *The Privacy Advisor*: “Companies
14 should review promptly their policies related to credit card receipts, . . . They also should begin
15 to review more aggressively the overall requirements of the FACTA law, including such broadly
16 applicable provisions as the ‘disposal rule’ related to the disposal of consumer report
17 information.”²⁹
18

19 67. Also, from the October 2007 edition of *The Privacy Advisor*: “Given these
20
21
22

23 ²⁶ Source: <https://investors.hibbett.com/websites/hibbett/English/4200/management-team.html> (Last
Viewed: April 15, 2022).

24 ²⁷ Source: <https://iapp.org/news/a/can-plaintiffs-lawyers-fill-the-role-of-a-dpa/> (Last Viewed: April 15,
2022).

25 ²⁸ Source: *See, Glossary of Privacy Terms*, IAAP, <https://iapp.org/resources/glossary/#factors-analysis-in-information-risk-fair-model> (including discussion of FACTA and links to additional information and
26 materials regarding FACTA); *U.S. Private-Sector Privacy Certification, Outline of the Body of
27 Knowledge for the Certified Information Privacy Professional*, IAAP, Sept. 1, 2021,
https://iapp.org/media/pdf/certification/CIPP_US_BoK_2.3.pdf (includes multiple sections on
28 FACTA).

²⁹ Source: https://iapp.org/media/pdf/publications/May07_Advisor.pdf (Last viewed: April 15, 2022).

1 circumstances, privacy professionals at consumer-oriented business, whether online or offline,
2 should investigate point-of-sale practices immediately and, if necessary, redact all but the last
3 five digits of the credit or debit card number and the expiration date from all electronically
4 printed customer receipts.”³⁰

6 68. Defendants were not only clearly informed not to print more than the last five
7 digits of credit or debit card account numbers on receipts provided to consumers at the point-of-
8 sale, but were contractually prohibited from doing so.

9 69. Defendants accept credit and debit cards from all major issuers, such as Visa,
10 MasterCard, American Express and Discover Card. Each of these companies sets forth
11 requirements that merchants such as (and including) Defendants must follow, including
12 FACTA’s redaction and truncation requirements found in the Receipt Provision. *See Operating*
13 *Engineers Pension Trust v. Gilliam*, 737 F.2d 1501, 1504 (9th Cir.1984) (“[one] who signs a
14 written agreement generally is bound by its terms, even though he neither reads it nor considers
15 the legal consequences of signing it.”) (applying California law); Restatement 2d Contracts §
16 23, Comments b, e (1981); *see also McClure v. Cerati*, 86 Cal.App.2d 74, 84-85, 194 P.2d 46
17 (1948) (party signing a contract should be charged with knowledge of its contents).

20 70. . According to figures released by the Federal Trade Commission in 2020, the
21 reporting of the crime of identity theft has tripled in the last few years.³¹ As such, companies
22 operating in the retail sector should apply extra care in preserving customers’ financial data and
23

25
26
27 ³⁰ Source: https://iapp.org/media/pdf/publications/Oct07_Advisor.pdf (Last viewed: April 15, 2022).

28 ³¹ Source: <https://www.aarp.org/money/scams-fraud/info-2021/ftc-fraud-report-identity-theft-pandemic.html> (Last viewed: April 15, 2022).

1 preventing identity theft.

2 71. Plaintiff is informed and believes, and thereupon alleges, that it would take an
3 individual less than thirty seconds to run a test receipt in order to determine whether Defendants'
4 point-of-sale system that printed the FACTA violative receipts was in compliance with federal
5 law.
6

7 72. Most of Defendants' business peers and competitors currently and diligently
8 ensure their credit card and debit card receipt printing process remains in compliance with
9 FACTA by consistently verifying their card machines and devices comply with the Receipt
10 Provision. Defendants could very easily have done the same.
11

12 73. Given the numerous ways in which Defendants were informed about FACTA,
13 their own acknowledgment of the risks and liability posed by laws protecting consumer privacy
14 and combatting identity theft, their contractual prohibitions on printing more than the last five
15 digits of credit and debit card account numbers, and their extensive involvement and knowledge
16 in payment processing, Defendants were and are acutely aware of FACTA and the conduct it
17 prohibits.
18

19 74. At a minimum, Defendants were acting with reckless disregard of the FACTA
20 requirements and purpose when they printed the first six (6) along with the last four (4) digits of
21 credit and debit card account numbers on the subject point-of-sale receipts.
22

23 **Plaintiff's Factual Allegations**

24 75. On or about January 24, 2022, Plaintiff used his personal credit card to make a
25 purchase at a Hibbett Sports retail location in Fullerton, California.

26 76. After making his purchase, Plaintiff was presented with an electronically printed
27 receipt at the point-of-sale, which disclosed the first six (6) and the last four (4) digits of his
28

1 credit card account number.

2 77. As a direct and proximate result of the point-of-sale receipt disclosing a full ten
3 (10) digits of his payment card account number, Plaintiff was required to take steps to safeguard
4 the receipt.

5
6 78. The printing of the first six (6) and last four (4) digits of his payment card account
7 number invaded Plaintiff's privacy as it disclosed his personal financial information.

8 79. The printing of the first six (6) and last four (4) digits of his payment card account
9 numbers was also a breach of confidence and breach of an implied bailment.

10
11 **Defendants' Misdeeds**

12 80. At all times relevant herein, Defendants were acting by and through their
13 subsidiaries, agents, servants, representatives, and/or employees, each of which were acting
14 within the course and scope of their agency or employment, and under the direct supervision
15 and control of Defendants.

16
17 81. At all times relevant herein, the conduct of Defendants, as well as that of its
18 subsidiaries, agents, servants, representatives, and/or employees, was in willful, knowing, or
19 reckless disregard for federal law and the rights of the Plaintiff and other members of the Class.

20 82. Plaintiff is informed and believes, and thereupon alleges, Defendants implement,
21 oversee, and maintain control over the same uniform debit and credit card payment processing
22 policies, practices, and procedures for the transactions at issue in this case, including without
23 limitation, negotiating, entering into, and acting pursuant to various contracts and agreements
24 with the electronic payment processing company whose technology Defendants use to process
25 all such transactions at its retail locations throughout the country.

26
27 83. Upon information and belief, the point-of-sale system used by Defendants
28

1 maintains records of all payment transactions and has the ability to print duplicate copies of all
2 payment receipts provided to customers.

3 84. Notwithstanding its extensive knowledge of the requirements of FACTA and the
4 well-documented dangers imposed upon consumers through its failure to comply, Defendants
5 issued thousands of point-of-sale receipts containing the first six (6) and the last four (4) digits
6 of credit and debit card account numbers.
7

8 85. By ignoring the requirements of this important federal statute, in an environment
9 already ripe for identity theft, Defendants uniformly invaded Plaintiff's and the other putative
10 Class members' privacy. Defendants' conduct alleged herein resulted in the disclosure of
11 Plaintiff's and the Class members' personal financial information to the world, including to
12 persons who might find the receipts in the trash or elsewhere, identity thieves who thrive in
13 environments such as Defendants' various locations, as well Defendants' employees who
14 handled the receipts.
15

16 86. Simply put, by printing numerous transaction receipts in wholesale violation of
17 a well-known federal statute, Defendants have caused – to paraphrase the words of the
18 Honorable Judge Posner (Ret.) – “an unjustifiably high risk of harm that [wa]s either known or
19 so obvious that it should [have been] known” to Defendants. *Redman v. RadioShack Corp.*, 768
20 F.3d 622, 627 (7th Cir. 2014) (quoting *Farmer v. Brennan*, 511 U.S. 825, 836, 114 S.Ct. 1970,
21 128 L.Ed.2d 811 (1994)).
22
23

24 CLASS ACTION ALLEGATIONS

25 87. Plaintiff brings this class action on behalf of himself and all persons in the
26 United States who, within the time frame relevant to this action, engaged in one or more
27 transactions using a debit card or credit card at one or more of Defendants' retail locations in
28

1 the United States, and was thereupon provided an electronically printed receipt displaying the
2 first six (6) and last four (4) digits of the credit or debit card account number used in connection
3 with such transaction(s). Plaintiff is a member of this class. Excluded from the Class are the
4 Judge to whom this case is assigned, any members of the Judge's immediate family, and counsel
5 of record in this action.
6

7 88. Plaintiff also brings this following sub-class on behalf of themselves and all
8 persons in the United States who, within the time frame relevant to this action, engaged in one
9 or more transactions using a debit card or credit card at one or more of Defendants' retail
10 locations in the State of California and was thereupon provided an electronically printed receipt
11 displaying the first six (6) and last four (4) digits of the credit or debit card account number used
12 in connection with such transaction(s). Plaintiff is a member of this sub-class. Excluded from
13 the sub-class are the Judge to whom this case is assigned, any members of the Judge's immediate
14 family, and counsel of record in this action.
15

16 89. Members of the Class are so numerous that joinder of all members would be
17 impracticable.
18

19 90. There are questions of law and fact common to all the members of the Class that
20 predominate over any questions affecting only individual members.
21

22 91. Plaintiff's claims are typical of the claims of other class members of the Class.
23 Plaintiff has no interests antagonistic to those of the Class and Defendants have no defenses
24 unique to Plaintiff.

25 92. Plaintiff will fairly and adequately protect the interests of the Class, and have
26 retained attorneys experienced in class and complex litigation.
27

28 93. A class action is superior to all other available methods for this controversy

1 because: (1) the prosecution of separate actions by the members of the Class would create a risk
2 of adjudications with respect to individual members of the Class that would, as a practical matter,
3 be dispositive of the interests of the other members not parties to the adjudications, or
4 substantially impair or impede their ability to protect their interests; (2) the prosecution of
5 separate actions by the members of the Class would create a risk of inconsistent or varying
6 adjudications with respect the individual members of the Class, which would establish
7 incompatible standards of conduct for Defendants; (3) Defendants acted or refused to act on
8 grounds generally applicable to the Class; and (4) questions of law and fact common to members
9 of the Class predominate over any questions affecting only individual members, and a class
10 action is superior to other available methods for the fair and efficient adjudication of the
11 controversy.
12

13
14 94. Plaintiff does not anticipate any difficulty in the management of this litigation.

15 95. The questions of law and fact to the class predominate over questions that may
16 affect individual Class members, including the following:
17

18 a. Whether, within the two (2) years prior to the filing of this Complaint, Defendants
19 and/or their agents completed transactions by credit or debit card from any consumer and
20 subsequently gave that consumer a printed receipt which displayed the first six (6) and last four
21 (4) digits of the debit or credit card account number;

22 b. Whether Defendants' conduct was knowing or reckless; and

23 c. Whether Defendants are liable for damages, and the extent of statutory damages
24 for each such violation.
25

26 **COUNT I – VIOLATIONS OF 15 U.S.C. § 1681(c)(g)**

27 96. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.
28

1 97. 15 U.S.C. §1681c(g) states as follows:

2 *Except as otherwise provided in this subsection, no person that*
3 *accepts credit cards or debit cards for the transaction of business*
4 *shall print more than the last 5 digits of the card number or the*
5 *expiration date upon any receipt provided to the cardholder at*
6 *the point of sale or transaction.*

7 98. This section applies to any “device that electronically prints receipts” (hereinafter
8 “Devices”) at point of sale or transaction. 15 U.S.C. §1681c(g)(3).

9 99. Defendants employ the use of said Devices for point-of-sale transactions at its
10 retail locations in California and throughout the United States.

11 100. On or before the date on which this complaint was filed, Defendants provided
12 Plaintiff and members of the Class with receipts that failed to comply with the Receipt Provision.

13 101. At all times relevant to this action, Defendants were aware, or should have been
14 aware, of both the Receipt Provision as well as the requirement to comply with said provision.

15 102. Notwithstanding the three-year period to comply with FACTA and its
16 accompanying provisions, nor the subsequent years since FACTA became effective; and having
17 knowledge of the Receipt Provision and FACTA as a whole; Defendants knowingly, willfully,
18 intentionally, and/or recklessly violated, and likely continues to violate, the FCRA and the
19 Receipt Provision.
20

21 103. By printing the first six (6) and last four (4) digits of Plaintiff’s card account
22 number on their transaction receipts, Defendants caused Plaintiff to suffer a heightened risk of
23 identity theft, exposed Plaintiff’s personal financial information to those of Defendants’
24 employees who handled the receipts and other third-parties, invaded Plaintiff’s legally protected
25 privacy interest, and forced Plaintiff to take action to prevent further disclosure of the private
26 information displayed on the receipts.
27
28

1 104. As a result of Defendants' willful violations of the FCRA, Plaintiff and members
2 of the Class continue to be exposed to an elevated risk of identity theft.

3 105. Defendants are liable to Plaintiff and members of the Class pursuant to 15 U.S.C.
4 § 1681n for statutory damages, punitive damages, attorney's fees and costs.
5

6 * * *

7 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in
8 his favor and favor of the Class against Defendants, jointly and severally, as follows:


- 9 a. Granting certification of the Class;
10 b. Appointing the undersigned as counsel for the Class;
11 b. Awarding statutory damages;
12 c. Awarding punitive damages;
13 e. Awarding attorneys' fees, litigation expenses and costs of suit; and
14 f. Awarding such further relief as the Court deems proper under the circumstances.
15

16 **JURY DEMAND**

17 Plaintiff demands a trial by jury on all issues so triable.
18

19 Dated: April 29, 2022.
20

21 Respectfully submitted,

22 
23 _____
24 John R. Habashy (SBN 236708)
25 LEXICON LAW
26 633 W. 5th St., 28th Floor
27 Los Angeles, CA 90071
28 Telephone: (213) 223-5900

Scott D. Owens (FL 0597651)
(pending admission *pro hac vice*)

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