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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**ANDREW STAVELEY,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**EXPRESS FASHION APPAREL,
LLC,**

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
VIOLATION OF THE SONG-
BEVERLY CREDIT CARD ACT OF
1971, CAL. CIV. CODE § 1747, ET
SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. California Civil Code §1747.08 generally states that when a merchant is engaged in a retail transaction with a customer, the merchant may neither (1) request personal identification information from a customer paying for goods with a credit card, and then record that personal identification information upon the credit card transaction form or elsewhere; nor (2) require the cardholder, as a condition to accepting the credit card as payment, to provide the customer’s personal identification information, which the retailer then causes to be written, or otherwise records it upon the credit card transaction form or elsewhere.
2. Defendant EXPRESS FASHION APPAREL, LLC (“Defendant”) operates retail stores throughout the United States, including in the State of California. Defendant currently is utilizing a policy whereby Defendant’s cashiers both request and record credit card numbers and personal identification information from customers using credit cards at the point-of-sale in Defendant’s retail establishments, in violation of California Civil Code §1747.08. Defendant’s acts and practices, as described herein, were at all times intentional.
3. Plaintiff ANDREW STAVELEY (“Plaintiff”) is informed and believes, and thereon alleges, that Defendant uses personal identification information obtained from the cardholder to acquire additional personal information, by pairing such personal identification information with the cardholder’s name obtained from the credit card used by such cardholders. Such conduct is performed intentionally and without the knowledge or consent of the cardholder, and is of potentially great benefit to Defendant.

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1 4. Plaintiff does not seek any relief greater than or different from the relief sought
2 for the class of which Plaintiff is a member. If successful, this action will
3 enforce an important right affecting the public interest and will confer
4 significant benefits, both pecuniary and non-pecuniary, on a large class of
5 persons. Private enforcement is necessary and places a disproportionate
6 financial burden on Plaintiff in relation to Plaintiff’s stake in the matter.

7
8 **JURISDICTION AND VENUE**

9 5. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident
10 of the State of California, seeks relief on behalf of a California class, which will
11 result in at least one class member belonging to a different state than that of
12 Defendant, a company whose principal place of business is in the State of Ohio
13 and State of Incorporation are in the State of Delaware. Plaintiff is also
14 informed and believes that damages will exceed the \$5,000,000 threshold for
15 federal court jurisdiction because Plaintiff seeks \$1,000 for Plaintiff and each
16 member of the class. Therefore, both diversity jurisdiction and the damages
17 threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present,
18 and this Court has jurisdiction.

19 6. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
20 Plaintiff resides in the County of San Luis Obispo, State of California which is
21 within this judicial district; (ii) the conduct complained of herein occurred
22 within this judicial district; and, (iii) Defendant conducted business within this
23 judicial district at all times relevant.

24 **PARTIES**

25 7. Plaintiff is a resident of the County of San Luis Obispo, State of California, and
26 entered into a retail transaction with Defendant at one of Defendant’s California
27 stores.

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1 8. Plaintiff brings this class action against Defendant, pursuant to Rule 23 of the
2 Federal Rules of Civil Procedure, on behalf of the class of persons hereinafter
3 defined (herein referred to as the “Class”).

4 9. Defendant is a Delaware corporation with a principal place of business is
5 located in the State of Ohio. Defendant operates retail stores throughout
6 California, including stores in San Luis Obispo County.

7 **FACTUAL ALLEGATIONS**

8 10. In or about June 2014, Plaintiff went to Defendant’s retail store located in San
9 Luis Obispo County, California.

10 11. Plaintiff entered Defendant’s store and proceeded to select merchandise that
11 Plaintiff intended to purchase from the store.

12 12. After selecting the merchandise, Plaintiff proceeded to the cashiers’ section of
13 Defendant’s store to pay for the selected merchandise through the use of a
14 credit card.

15 13. Defendant’s employee saw that Plaintiff had selected products that Plaintiff
16 wished to purchase from Defendant and, as part of Defendant’s uniform policy,
17 then requested personal identification information in the form of a telephone
18 number and e-mail address from Plaintiff, without informing Plaintiff of the
19 consequences if Plaintiff did not provide Defendant’s employee with Plaintiff’s
20 requested personal identification information.

21 14. Plaintiff, believing that he was required to provide his telephone number and e-
22 mail address to complete the transaction and receive his receipt, told
23 Defendant’s employee Plaintiff’s telephone number and e-mail address.

24 15. Defendant’s employee then typed and recorded Plaintiff’s personal
25 identification information into an electronic cash register at the checkout
26 counter adjacent to both the employee and Plaintiff.

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1 16. Defendant's employee informed Plaintiff of the amount due to Defendant for
2 the merchandise Plaintiff had selected. Plaintiff then utilized a credit card to
3 complete the transaction. At this point in the transaction, Defendant had
4 Plaintiff's credit card number, name, telephone number and e-mail address
5 recorded in its databases.

6 17. Defendant's employee made no attempt to erase, strikeout, eliminate, or
7 otherwise delete Plaintiff's personal identification information from the
8 electronic cash register after Plaintiff's credit card number was recorded.

9 18. Defendant's employee and Plaintiff completed the transaction and Plaintiff left
10 Defendant's store with his purchased merchandise.

11 19. Shortly thereafter, Plaintiff received an e-mail from Defendant promoting
12 Defendant's merchandise.

13 **CLASS ALLEGATIONS**

14 20. The proposed Class is defined as: all persons in California from whom
15 Defendant requested and recorded personal identification information in
16 conjunction with a credit card transaction within one (1) year of the filing of
17 this case.

18 21. Excluded from the Class are Defendant, its corporate parents, subsidiaries and
19 affiliates, officers and directors, any entity in which Defendant has a controlling
20 interest, and the legal representatives, successors or assigns of any such
21 excluded persons or entities.

22 22. The members of the Class are so numerous that joinder of all members is
23 impracticable. While the exact number of Class members is unknown to
24 Plaintiff at this time, such information can be ascertained through appropriate
25 discovery, from records maintained by Defendant and its agents.

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1 23. A class action is superior to other available methods for the fair and efficient
2 adjudication of this controversy because joinder of all members is
3 impracticable, the likelihood of individual Class members prosecuting separate
4 claims is remote, and individual Class members do not have a significant
5 interest in individually controlling the prosecution of separate actions.
6 Prosecuting hundreds of identical, individual lawsuits statewide does not
7 promote judicial efficiency or equity and consistency in judicial results. Relief
8 concerning Plaintiff's rights under the law alleged herein and with respect to the
9 Class as a whole would be appropriate. Plaintiff knows of no difficulty to be
10 encountered in the management of this action that would preclude its
11 maintenance as a class action.

12 24. There is a well-defined community of interest among the members of the Class
13 because common questions of law and fact predominate, Plaintiff's claims are
14 typical of the members of the Class, and Plaintiff can fairly and adequately
15 represent the interests of the Class.

16 25. Common questions of law and fact exist as to all members of the Class and
17 predominate over any questions affecting solely individual members of the
18 Class. Among the questions of law and fact common to the Class are:

- 19 a. Whether each Class member engaged in a credit card transaction with
20 Defendant;
- 21 b. Whether Defendant requested the cardholder to provide personal
22 identification information and recorded the personal identification of the
23 cardholder, during credit card transactions with Class members;
- 24 c. Whether Defendant's conduct of requesting the cardholder to provide
25 personal identification information during credit card transactions and
26 recording the personal identification information of the cardholder
27 constitutes violations of California Civil Code §1747.08;

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1 d. Whether Plaintiff and the Class members are entitled to civil penalties
2 pursuant to California Civil Code §1747.08(e), and the proper measure of
3 such penalties.

4 e. Whether Defendant’s conduct was knowing and/or willful;

5 f. Whether Plaintiff and the Class Members were damaged thereby; and,

6 g. Whether Defendant and its agents should be enjoined from engaging in
7 such conduct in the future.

8 26.Plaintiff’s claims are typical of those of the other Class members because
9 Plaintiff and every other Class member was exposed to virtually identical
10 conduct, and each is entitled to civil penalties in amounts of up to one thousand
11 dollars (\$1,000) per violation pursuant to California Civil Code §1747.08(e).

12 27.Plaintiff can fairly and adequately represent the interests of the Class; he has no
13 conflicts of interest with other Class members, and he has retained counsel
14 competent and experienced in class action and civil litigation.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATIONS OF CALIFORNIA CIVIL CODE § 1747, SONG-BEVERLY CREDIT CARD**

17 **ACT OF 1971**

18 28.Plaintiff refers to and incorporates by reference as though set forth fully herein
19 each of the paragraphs above.

20 29.California Civil Code §1747.08 prohibits any corporation that accepts credit
21 cards for the transaction of business from requesting the cardholder to provide
22 personal identification information, which the corporation then records in
23 conjunction with a credit card transaction.

24 30.Defendant is a corporation that accepts credit cards for the transaction of
25 business.

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1 31. During credit card transactions entered into at Defendant's stores on each and
2 every day during the one-year period preceding the filing of this Class Action
3 Complaint through the present, Defendant utilized a policy whereby
4 Defendant's cashiers both request and record personal identification
5 information in conjunction with credit card transactions at the point-of-sale in
6 Defendant's retail establishments.

7 32. It is, and was, Defendant's routine business practice to intentionally engage in
8 the conduct described in this cause of action with respect to every person who,
9 while using a credit card, purchases and product from any of Defendant's stores
10 in the State of California.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff and the Class Members pray for judgment against
13 Defendant as follows:

- 14 • An Order certifying this action to be a proper class action pursuant to
15 Federal Rule of Civil Procedure 23, establishing an appropriate Class and
16 any Subclasses the Court deems appropriate, finding that Plaintiff is a
17 proper Class representative, and appointing the lawyers and law firms
18 representing Plaintiff as counsel for the Class;
- 19 • An award of statutory damages of \$1,000 to Plaintiff and the Class Members
20 pursuant to Cal. Civ. Code § 1747.08(e);
- 21 • An award of attorneys' fees as authorized by statute including, but not
22 limited to, the provisions of California Code of Civil Procedure §1021.5, and
23 as authorized under the "common fund" doctrine, and as authorized by the
24 "substantial benefit" doctrine;
- 25 • For costs of the suit;
- 26 • For prejudgment interest at the legal rate; and,
- 27 • For such other relief as the Court may deem just and proper.

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TRIAL BY JURY

33. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: July 7, 2014

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR PLAINTIFF

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