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7 Attorneys for Plaintiff GILLIAN BROWN, on behalf of herself and others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 GILLIAN BROWN, on behalf of herself and all
12 others similarly situated,

13 Plaintiff,

14 v.

15 22ND DISTRICT AGRICULTURAL
16 ASSOCIATION, a State entity; and DOES 1
through 10, inclusive,

17 Defendants.
18

Case No.: 37-2015-00033027-CU-MC-CTL

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Filed By FAX
RIVER CITY PROCESS SERVICE

19
20 Plaintiff GILLIAN BROWN (“Brown” or “Plaintiff”), on behalf of herself and all others
21 similarly situated (the “Class” or “Plaintiff Class”), complains of Defendants, and each of them,
22 as follows:

23 **I.**

24 **INTRODUCTION**

25 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
26 Plaintiff and other individuals who used credit or debit cards to make purchases from a business
27 owned and/or operated by Defendant 22ND DISTRICT AGRICULTURAL ASSOCIATION, a
28 State entity, and any subsidiaries or affiliated entities (hereinafter, collectively “Defendants”).

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2. In 2003, Congress passed the Fair and Accurate Credit Transaction Act (“FACTA”) to assist in the prevention of identity theft and credit and debit card fraud.

3. A main provision of FACTA (codified as 15 U.S.C. § 1681c(g) of the Fair Credit Reporting Act) provides that:

“No person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.”

4. Defendants have willfully violated this law and failed to protect Plaintiff and others similarly situated against identity theft and credit card and debit card fraud by printing the expiration date of the credit or debit card number on receipts provided to debit card and credit card cardholders transacting business with Defendants.

5. Plaintiff, on behalf of herself and all others similarly situated, brings this action against Defendants based on Defendants’ violation of 15 U.S.C. §§ 1681 *et seq.*

6. Plaintiff seeks, on behalf of herself and the class, statutory damages, costs and attorneys’ fees, all of which are expressly made available by statute at 15 U.S.C. §§ 1681 *et seq.*, and a permanent injunction enjoining Defendants from continuing their unlawful practice of willfully violating FACTA’s provisions intended to safeguard against identity theft and credit and debit card fraud.

7. On July 22, 2015, Plaintiff complied with the California Tort Claims Act, California Government Code sections 810-996.6, by submitting a claim to Defendants, designated claim number G625954. On August 11, 2015, Defendants sent a letter to Plaintiff initially denying the claim, based on the potential existence of private insurance. On September 25, 2015, Defendants sent a letter to Plaintiff formally rejecting Plaintiff’s claim. Therefore, Plaintiff may commence this action.

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II.

PARTIES

8. Plaintiff Gillian Brown is, and at all times relevant hereto was, a resident of the State of California, County of San Diego.

9. Defendant 22nd District Agricultural Association is, and at all times relevant hereto was, a State entity, with its principal place of business in the State of California, County of San Diego.

10. The violations alleged herein occurred in the County of San Diego. Venue as to each Defendant is therefore proper in this judicial district pursuant to Code of Civil Procedure § 395.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

III.

FACTUAL BACKGROUND

13. Plaintiff is informed and believes, and based thereon alleges, that at all times since at least July 2, 2010, Defendants have managed and operated the Del Mar Fairgrounds, the Horsepark, and other State owned properties, on behalf of the State of California. The

1 Fairgrounds and Horsepark are the sites of nearly 350 events each year, including the San Diego
2 County Fair.

3 14. Based on information and belief, Plaintiff alleges that Defendants accept credit
4 and debit cards from customers to pay for goods and services at Defendants' events, including
5 the San Diego County Fair.

6 15. Plaintiff used a debit or credit card to make a purchase at the San Diego County
7 Fair on July 2, 2015. The expiration date of her credit or debit card number was printed on the
8 receipt generated and provided to her at the point of sale.

9 16. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 printed the expiration date of the credit or debit card number on receipts provided to their
11 customers for credit and debit card transactions for some or all of the time period since at least
12 July, 2015.

13 IV.

14 CLASS ALLEGATIONS

15 17. Plaintiff brings this class action pursuant to California Code of Civil Procedure §
16 382. Plaintiff seeks to certify a Class composed of and defined as follows:

17 "All individuals who were issued an electronically printed debit
18 and/or credit card receipt at the Del Mar Fairgrounds in the City of
19 Del Mar that did not comply with FACTA at any time between July 2,
20 2010 and the present."

21 A. Numerosity

22 18. The Class is so numerous that joinder of all individual members in one action
23 would be impracticable. The disposition of the individual claims of the respective class members
24 through this class action will benefit both the parties and this Court.

25 19. Plaintiff is informed and believes, and thereon alleges, that there are, at minimum,
26 fifty members of the Plaintiff Class.

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1 20. The exact size of the Plaintiff Class and the identities of the individual members
2 thereof are ascertainable through Defendants' records, including, but not limited to, Defendants'
3 sales and transaction records.

4 **B. Typicality**

5 21. Plaintiff's claims are typical of the claims of the Class. The claims of the Plaintiff
6 and the Class are based on the same legal theories and arise from the same unlawful conduct.

7 22. Plaintiff and the Class members were customers of Defendants, each having made
8 a purchase from, or transacted other business with, Defendants using a credit card and/or debit
9 card. At the point of such sale or transaction with Plaintiff and Class members, Defendants
10 provided to Plaintiff and each Class member a receipt which violated 15 U.S.C. § 1681c(g).

11 **C. Common Questions of Fact and Law**

12 23. There is a well-defined community of interest and common questions of fact and
13 law affecting the Class members.

14 24. The questions of fact and law common to the Class predominate over questions
15 which may affect individual members and include the following:

16 (a) Whether Defendants' conduct of providing Plaintiff and the Class members
17 with a sales or transaction receipt whereon Defendants printed the expiration
18 date of the credit or debit card number violated FACTA, 15 U.S.C. §§ 1681 *et*
19 *seq.*;

20 (b) Whether Defendants' conduct was willful;

21 (c) Whether Plaintiff and Class members are entitled to statutory damages, costs
22 and/or attorneys' fees for Defendants' acts and conduct; and

23 (d) Whether Plaintiff and Class members are entitled to a permanent injunction
24 enjoining Defendants from continuing to engage in their unlawful conduct.

25 **D. Adequacy of Representation**

26 25. Plaintiff is an adequate representative of the Class because her interests do not
27 conflict with the interests of the Class. Plaintiff will fairly, adequately and vigorously represent
28 and protect the interests of the Class members and has no interests antagonistic to the Class

1 members. Plaintiff has retained counsel who are competent and experienced in the prosecution
2 of class action litigation.

3 **E. Superiority**

4 26. A class action is superior to other available means for the fair and efficient
5 adjudication of the Class claims. The damages suffered by individual Class members are
6 relatively small. As a result, the expense and burden of individual litigation makes it
7 economically infeasible and procedurally impracticable for each Class member to individually
8 seek redress for the wrongs done to them. Plaintiff does not know of any other litigation
9 concerning this controversy already commenced by or against any Class member. The likelihood
10 of the individual Class members prosecuting separate claims is remote. Individualized litigation
11 would also present the potential for varying, inconsistent or contradictory judgments, and would
12 increase the delay and expense to all parties and the court system resulting from multiple trials of
13 the same factual issues. In contrast, the conduct of this matter as a class action presents fewer
14 management difficulties, conserves the resources of the parties and the court system, and would
15 protect the rights of each Class member. Plaintiff knows of no difficulty to be encountered in the
16 management of this action that would preclude its maintenance as a class action.

17 **F. Injunctive Relief**

18 27. Defendants have acted on grounds generally applicable to the Class members,
19 thereby making appropriate final injunctive relief with respect to the Class as a whole.

20 **V.**

21 **FIRST CAUSE OF ACTION**

22 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

23 **FOR VIOLATION OF 15 U.S.C. §§ 1681 *ET SEQ.***

24 28. Plaintiff hereby incorporates by reference all the allegations contained in
25 paragraphs 1 through 27, inclusive, of this Complaint as if fully set forth herein.

26 29. Plaintiff asserts this claim on behalf of herself and the Class against Defendants
27 and each of them.

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1 30. Title 15 U.S.C. § 1681c(g)(1) provides in relevant part that:

2 “...no person that accepts credit cards or debit cards for the
3 transaction of business shall print more than the last five digits of the
4 card number or the expiration date upon any receipt provided to the
5 cardholder at the point of sale or transaction.”

6 31. Defendants transact business in California and accept credit cards and/or debit
7 cards in the course of transacting business with persons such as Plaintiff and the Class members.
8 In transacting such business, Defendants use cash registers and/or other machines or devices that
9 electronically print receipts for credit card and/or debit card transactions.

10 32. Defendants, at the point of sale or transaction with Plaintiff, provided Plaintiff
11 with one or more electronically printed receipts on each of which Defendants printed the
12 expiration date of Plaintiff’s credit or debit card number.

13 33. Defendants, at the point of a sale or transaction with Class members, provided,
14 through use of a machine, each member of the Class with one or more electronically printed
15 receipts, each of which Defendants printed, for each respective Class member, the expiration date
16 of such member’s credit or debit card number.

17 34. Defendants’ actions were and continue to be willful. Defendants intentionally
18 printed the expiration date of the credit or debit card number on Plaintiff’s and Class members’
19 receipts. Defendants knew of, or should have known of, and were informed about the law,
20 including specifically FACTA’s requirements concerning the prohibition on printing the
21 expiration date of the credit or debit card number.

22 35. In addition, on information and belief, many companies such as VISA and
23 MasterCard devised and implemented policies well before the operative date of FACTA’s
24 requirements, wherein such companies as VISA and MasterCard and others required Defendants
25 (and informed Defendants of the FACTA requirements) to prevent the printing of the expiration
26 date of the credit or debit card number on receipts.

27 36. Despite knowing and being repeatedly informed about FACTA and the
28 importance of preventing the printing the expiration date of credit or debit card numbers on

1 receipts, Defendants and each of them willfully violated and continue to violate FACTA's
2 requirements by printing the expiration date of the credit or debit card number on the receipts
3 provided to Class members – persons with whom Defendants transact business.

4 37. Defendants willfully violated FACTA in conscious disregard of the rights of
5 Plaintiff and the Class members thereby exposing Plaintiff and the Class members to an
6 increased risk of identity theft and credit and/or debit card fraud.

7 38. As a result of Defendants' willful violations of FACTA, Defendants are liable to
8 Plaintiff and each Class member in the statutory damage amount of "not less than \$100 and not
9 more than \$1000" for each violation. 15 U.S.C. 1681n(a)(1)(A).

10 39. As a result of Defendants' willful violations of FACTA, Plaintiff and the Class
11 members are entitled to recover costs of suit and their reasonable attorneys' fees. 15 U.S.C.
12 1681n(a)(3).

13 40. Defendants' conduct is continuing and, unless restrained, Defendants will
14 continue to engage in their unlawful conduct.

15 VI.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of herself and the Class members, prays for:

18 1. An order certifying the Class and appointing Plaintiff as the representative of the
19 Class, and appointing Gaines & Gaines, APLC representing Plaintiff as counsel for the Class;

20 2. An award to Plaintiff and the Class members of statutory damages pursuant to 15
21 U.S.C. § 1681n(a)(1)(A) for Defendants' willful violations of FACTA;

22 3. Payment of costs of suit herein incurred pursuant to, *inter alia*, 15 U.S.C. §
23 1681n(a)(3);

24 4. Payment of reasonable attorneys' fees pursuant to, *inter alia*, 15 U.S.C. §
25 1681n(a)(3);

26 5. A permanent injunction enjoining Defendants and each of them from engaging in
27 their violations of FACTA; and

28 6. For other and further relief as the Court deems proper.

1 Dated: September 28, 2015

Respectfully submitted,

2 GAINES & GAINES, APLC

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4 By: 

DANIEL F. GAINES
ALEX P. KATOFISKY
Attorneys for Plaintiff

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7 **DEMAND FOR JURY TRIAL**

8 Plaintiff, on behalf of herself and the putative Class members, demands a trial by jury on
9 all claims and causes of action to which she is entitled to a jury trial.

10 Dated: September 28, 2015

Respectfully submitted,

11 GAINES & GAINES, APLC

12
13 By: 

DANIEL F. GAINES
ALEX P. KATOFISKY
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