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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/18/2018 at 11:20:39 AM
Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

17 JOSEPH CARLOS VALESQUEZ, on behalf)
18 of himself and all others similarly situated,)
19 Plaintiff,)
20 v.)
21 WALMART, INC., a Delaware corporation,)
22 and DOES 1 through 20, inclusive,)
23 Defendant.)

Case No: 37-2018-00019280-CU-MC-CTL

CLASS ACTION

[E-FILE]

**COMPLAINT FOR VIOLATIONS OF THE
SONG-BEVERLY CREDIT CARD ACT
(Cal. Civ. Code §1747.08)**

24 Plaintiff Joseph Carlos Valesquez, (“Plaintiff”), on behalf of himself and all others similarly
25 situated, complains and alleges upon information and belief, among other things, upon the investigation
26 made by Plaintiff by and through his attorneys, as follows:
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1 NATURE OF THE CASE

2 1. Plaintiff brings this cause of action against Defendant Walmart, Inc. (“Defendant” or
3 “Walmart”) for its failure to comply with the Song-Beverly Credit Card Act, Civil Code section
4 1747.08, *et seq.*, (“Song-Beverly”), in that it utilizes a video camera at its self-check-out kiosks that
5 records an up-close image of the customer’s personal identification information, *to wit*, his personal
6 likeness including his eye color, hair color, and facial features, throughout the entire duration of the
7 customer’s credit card transaction. By employing this video recording practice in conjunction with
8 credit card transactions, Defendant intentionally violates section 1747.08(a)(2) of Song-Beverly.

9 2. The California legislature enacted this statute in response to the recognized dangers
10 associated with permitting retailers to collect and maintain consumers' personal identification
11 information, finding that the practice put the physical safety of consumers at risk and jeopardized
12 consumers' financial security and credit rating, due to identity theft and fraud.

13 3. The California Court of Appeals has recognized that Song-Beverly was enacted as a
14 "response to two principle privacy concerns." (*Florez v. Linens 'N Things*, (2003) 108 Cal.App.4th 447,
15 452-53.) One concern was that "with the increased use of computer technology, very specific and
16 personal information about a consumer's spending habits was being made available to anyone willing to
17 pay for it." (*Ibid.*) The second concern motivating the Legislature was that "acts of harassment and
18 violence were being committed by store clerks who obtained customers' phone numbers and addresses."
19 (*Ibid.*)

20 4. Thus, Song-Beverly prohibits a retail from “[r]equest[ing], or requir[ing] as a condition
21 to accepting the credit card as payment in full or in part for goods or services, the cardholder to provide
22 personal identification information, which the person, firm, partnership, association, or corporation
23 accepting the credit card writes, causes to be written, or otherwise records upon the credit card
24 transaction form or otherwise. (Civ. Code § 1747.08(a)(2).)

25 5. “Personal Identification Information” is defined as “information concerning the
26 cardholder, other than information set forth on the credit card, and including, *but not limited to*, the
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1 cardholder's address or telephone number. (Civ. Code, §1747.08(b) (emphasis added).) Plaintiff's
2 personal likeness and facial features constitute "personal identification information" under the statute.

3 6. Defendant operates over 300 locations in the State of California, including the Walmart
4 store at which Plaintiff completed his credit card transaction, located at 1231 S. Sanderson Ave., Hemet,
5 California 92545.

6 7. Defendant routinely utilizes a video camera recording device at its self-check-out kiosks
7 that records an up-close image of the customer's personal identification information, *to wit*, his personal
8 likeness including his eye color, hair color, and facial features, throughout the entire duration of the
9 customer's credit card transaction. This camera is utilized to capture information about the cardholder;
10 separate and apart from traditional security cameras that are present throughout the store. Simply stated,
11 the cameras utilized at the self-check-out kiosks are not used exclusively for security purposes, but
12 instead provide Defendant with valuable biometric data concerning Plaintiff and members of the class
13 and/or retain the ability to do so.

14 8. Thus, Defendant systematically and uniformly violates Song-Beverly at each of its
15 California locations by utilizing this video camera recording device at its self-check-out kiosks to record
16 the customer's personal identification information in conjunction with a credit card transaction.

17 JURISDICTION AND VENUE

18 9. This Court has jurisdiction over Defendant and the claims set forth below pursuant to
19 Code of Civil Procedure §410.10 and the California Constitution, Article VI §10, because this case is a
20 cause not given by statute to other trial courts.

21 10. Venue is proper in the Superior Court for the County of San Diego, State of California,
22 because Defendant has accepted credit cards for the transaction of business throughout California,
23 including the County of San Diego, which has caused both obligations of liability of Defendant to arise
24 in the County of San Diego.

25 11. The amount in controversy exceeds the jurisdictional minimum of this Court.

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1 PARTIES

2 Plaintiff

3 12. Plaintiff Joseph Carlos Valesquez is a resident of Riverside County in the State of
4 California. On or about March 21, 2018, Plaintiff made a purchase with a Capital One payment card at a
5 self-check-out kiosk at a Walmart retail store located in Hemet, California. Throughout the entire
6 duration of Plaintiff's purchase transaction, Plaintiff was recorded by a video camera affixed to the cash
7 register at the self-check-out kiosk. Defendant's video recording captured a high-quality image of
8 Plaintiff's face and upper body, recording distinguishing features of his personal likeness, such as his
9 eye color, hair color, and facial features to a granular, accurately-detailed degree. Defendant's recording
10 of Plaintiff at the point-of-sale impermissibly captures Plaintiff's personal identification information in
11 conjunction with a credit card transaction and is in direct violation of Civil Code section 1747.08(a)(2).

12 13. Plaintiff brings this class action against Defendant, pursuant to California Code of Civil
13 Procedure Section 382, on behalf of himself and all others similarly situated California customers who
14 engaged in a credit card transaction with Defendant Walmart, for which Defendant utilized a video
15 camera at its self-check-out kiosks to record an up-close image of the customer's personal identification
16 information, *to wit*, facial features, from April 18, 2017 through the date of trial (the "Class"). Excluded
17 from the Class is Defendant, its corporate parents, subsidiaries and affiliates, officers and directors, and
18 any entity in which Defendant has a controlling interest, and the legal representatives, successors or
19 assigns of any such excluded persons or entities. Also excluded from the Class is Plaintiff's counsel, the
20 assigned Judge, and the Judge's family.

21 Defendant

22 14. Plaintiff is informed and believes and based thereon alleges that Defendant Walmart, Inc.
23 is a Delaware Corporation, with its principal place of business located at 702 SW 8th Street,
24 Bentonville, AR 72716. Defendant operates discount stores, retail supercenters, and grocery
25 supermarkets throughout the world.

26 15. At all times hereinafter mentioned, Defendant owns, operates, and maintains over 5,300
27 locations nationwide, including over 300 locations within the State of California.

1 his image being recorded, as Walmart requires that each customer be recorded on this video when they
2 utilize the self-check-out kiosk.

3 **Walmart Subjects its Customers to the Very Danger**
4 **the Legislature Sought to Avoid in Enacting Song-Beverly**

5 22. Defendant's video recording at its self-check-out kiosks captures customers' personal
6 identification information, *to wit*, their eye color, hair color, and facial features, in conjunction with a
7 credit card transaction. In so doing, Defendant puts its customers at risk of the very dangers the
8 Legislature sought to avoid.

9 23. Defendant's video recording subjects consumers, including Plaintiff, to the potential
10 threat of onerous harassment, including but not limited to, identity theft, marketing campaigns, and
11 unwelcome, distasteful, or otherwise threatening communications.

12 **CLASS ALLEGATIONS**

13 24. This lawsuit is brought on behalf of Plaintiff and an ascertainable class to recover the
14 maximum statutory penalty permitted by Civil Code section 1747.08(e) for Defendant's repeated
15 violations of Song-Beverly as alleged herein. Plaintiff seeks certification of a Class pursuant to Code of
16 Civil Procedure section 382, which Class is defined as follows:

17 All California consumers who engaged in a credit card transaction with Defendant
18 Walmart, for which Defendant utilized a video camera at its self-check-out kiosks to
19 record an up-close image of the customer's personal identification information, *to wit*,
20 their facial features, from April 18, 2017 through the date of trial (the "Class").

21 25. Excluded from the Class is Defendant, its corporate parents, subsidiaries and affiliates,
22 officers and directors, and any entity in which Defendant has a controlling interest, and the legal
23 representatives, successors or assigns of any such excluded persons or entities. Also excluded from the
24 Class is Plaintiff's counsel, the assigned Judge, and the Judge's family.

25 26. The members of this Class are so numerous that joinder of all members is impractical.
26 While the exact number of Class members is unknown to Plaintiff at this time, such information can be
27 ascertained through appropriate discovery from records obtained from Defendant and its agents.

28 27. A class action is superior to other available methods for the fair and efficient adjudication
of this controversy because the likelihood of individual Class members prosecuting separate claims is

1 remote and individual Class members do not have a significant interest in individually controlling the
2 prosecution of separate actions.

3 28. The disposition of Plaintiff's and Class Members' claims through the class action device
4 will provide substantial judicial economy and benefits both the parties and the Court. Further, the
5 statutory damages for which the individual class members are entitled are relatively small and the
6 burden and expense of individual litigation makes it substantially difficult and unlikely that Class
7 Members will individually seek redress of Defendant's wrongs. Without the class action procedural
8 device, Defendant's unlawful conduct will continue unabated.

9 29. This action will promote an orderly and expeditious adjudication of the Class claims, and
10 will promote and foster the uniformity of decision.

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

15 31. The common questions of law and fact, which arise from Defendant's uniform pattern
16 and practice of prohibited conduct, predominate over any individual issues affecting the members of the
17 Class. Thus, among the questions of law and fact common to the Class are as follows:

- 18 a. Whether each Class member engaged in a credit card transaction with Defendant;
- 19 b. Whether Defendant had or has a corporate policy and/or procedure to utilize a video
20 camera at its self-check-out kiosks to record an up-close image of the customer's
21 personal identification information;
- 22 c. Whether Defendant's use of the video camera recording in conjunction with a credit
23 card transaction violates the Song-Beverly Credit Card Act, section 1747.08(a)(2);
24 and
- 25 d. Whether Plaintiff and the Class are entitled to an award of civil penalties and the
26 proper amount of civil penalties to be paid to the Class pursuant to Civil Code
27 section 1747.08(e);

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- D. For an award of attorneys’ fees as authorized by statute, including but not limited to, the provisions of Code of Civil Procedure section 1021.5, and as authorized under the “common fund” doctrine;
- E. For costs of the suit;
- F. For prejudgment interest at the legal rate;
- G. And for such other relief as the Court may deem proper.

Dated: April 18, 2018

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