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14 *Counsel to Plaintiffs and the Proposed Classes*

15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

17 SHADI HAYDEN, WILLIAM  
18 HANNUM, MICHAEL MURPHY,  
SEAN FREDERICK, OLGA  
19 MARYAMCHIK, VICTORIA  
CARUSO-DAVIS, ERIC GILBERT,  
20 SUSANA GUEVARA, JACQUELINE  
SMITH, CAROL JULIAN-MOYE,  
21 CHRISTINE ALIRE, JERRY HO, and  
CAROL LLOYD individually and on  
22 behalf of all others similarly situated,

23 Plaintiffs,

24 v.

25 THE RETAIL EQUATION, INC.,  
SEPHORA USA, INC., ADVANCE  
26 AUTO PARTS, INC., BED BATH &  
BEYOND INC., BEST BUY CO.,  
INC., BUY BUY BABY, INC.,  
27 CALERES, INC., CVS HEALTH  
CORPORATION, DICK'S SPORTING  
GOODS, INC., L BRANDS, INC.,  
28 STEIN MART, INC., THE GAP, INC.,

Case No. 8:20-cv-01203-DOC-DFM

FIRST AMENDED CLASS ACTION  
COMPLAINT

DEMAND FOR JURY TRIAL

1 THE HOME DEPOT, INC., and THE  
2 TJX COMPANIES, INC.,

3  
4 Defendants.



5 Plaintiffs, individually and on behalf of all others similarly situated, allege on  
6 personal knowledge, investigation of counsel, and on information and belief as follows:

7 **BRIEF SUMMARY OF THE CASE**

8 1. This case involves the unlawful sharing, receipt, and use of consumer data  
9 – specifically, non-anonymized, individual Consumer Commercial Activity Data and  
10 Consumer ID Data (as defined below).

11 2. Without the consent or knowledge of their consumers, Defendant Sephora  
12 USA, Inc., Defendant Advance Auto Parts, Inc., Defendant Bed Bath & Beyond Inc.,  
13 Defendant Best Buy Co., Inc., Defendant Buy Buy Baby, Inc., Defendant Caleres, Inc.,  
14 Defendant CVS Health Corporation, Defendant Dick’s Sporting Goods, Inc., Defendant  
15 L Brands, Inc., Defendant Stein Mart, Inc., Defendant The Gap, Inc., Defendant The  
16 Home Depot, Inc., and Defendant The TJX Companies, Inc., (collectively “Retail  
17 Defendants”) share with Defendant The Retail Equation, Inc. (“TRE”) data collected  
18 from Retail Defendants’ consumers. TRE processes the shared consumer data to generate  
19 a consumer report and a “risk score” for each of Retail Defendants’ consumers. The “risk  
20 score” is then used as a pretext to advise Retail Defendants that attempted product returns  
21 and exchanges are fraudulent and abusive. Plaintiffs and Class members, defined below,  
22 are harmed by a) the sharing of their Consumer Commercial Activity Data and Consumer  
23 ID Data by Retail Defendants, b) the receipt of their Consumer Commercial Activity Data  
24 and Consumer ID Data by TRE, and c) the use of their Consumer Commercial Activity  
25 Data and Consumer ID Data by all Defendants. Furthermore, as a result of the practices  
26 described herein, Retail Defendants deny valid returns and exchanges.

27 3. This is a class action against Defendants for invasion of privacy, violations  
28 of California’s unfair competition law, defamation per se, violations of the Fair Credit  
Reporting Act, unjust enrichment, and violations of the California Consumer Privacy Act.

1 **JURISDICTION AND VENUE**

2 4. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because  
3 Plaintiffs bring a claim under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§  
4 1681e, *et seq.*

5 5. This Court has subject matter jurisdiction over this matter pursuant to 28  
6 U.S.C. § 1332(d)(2) because the amount in controversy exceeds \$5,000,000 (exclusive  
7 of interests and costs), because in the aggregate the proposed nationwide Class is believed  
8 to number at least in the hundreds of thousands, and because at least one member of the  
9 Class is a citizen of a State different from Defendants.

10 6. This Court has personal jurisdiction over all Defendants because they are  
11 authorized to do business and regularly conduct business in California. Defendant The  
12 Retail Equation, Inc. has its headquarters and principal place of business in California, is  
13 authorized to do business in California, and regularly conducts business in California.  
14 Defendant Sephora USA, Inc. has its headquarters and principal place of business in  
15 California, is authorized to do business in California, and regularly conducts business in  
16 California. Defendant The Gap, Inc. has its headquarters and principal place of business  
17 in California, is authorized to do business in California, and regularly conducts business  
18 in California.

19 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the  
20 headquarters and principal place of business of Defendant The Retail Equation, Inc. is in  
21 this District and a substantial part of the events, acts, and omissions giving rise to  
22 Plaintiffs’ claims occurred in this District. All Retail Defendants also maintain retail  
23 locations in this District and regularly conduct business in this District.

24 **STATEMENT OF FACTS**

25 **Retail Defendants**

26 8. Defendant Sephora USA, Inc. is a Delaware corporation with its principal  
27 place of business and headquarters in San Francisco, California. Sephora describes itself  
28

1 as “a leader in global prestige retail.” Sephora operates approximately 1000 retail  
2 locations in the United States; of which approximately 150 are located in California.

3 9. Defendant Advance Auto Parts, Inc. is a Delaware corporation with its  
4 principal place of business and headquarters in Raleigh, North Carolina. Advance Auto  
5 Parts describes itself as “a leading automotive aftermarket parts provider that serves both  
6 professional installer and do-it-yourself customers.” Across brands, Advance Auto Parts  
7 operates approximately 5,600 retail locations in the United States; of which  
8 approximately 110 are located in California.

9 10. Defendant Bed Bath & Beyond Inc. is a New York corporation with its  
10 principal place of business and headquarters in Union, New Jersey. Bed Bath & Beyond  
11 describes itself as “an omnichannel retailer that makes it easy for our customers to feel at  
12 home.” Across brands, Bed Bath & Beyond operates approximately 1,500 retail locations  
13 in the United States; of which approximately 170 are located in California. Defendant  
14 Buy Buy Baby, Inc. is a subsidiary of Bed Bath & Beyond Inc.

15 11. Defendant Best Buy Co., Inc. is a Minnesota corporation with its principal  
16 place of business and headquarters in Richfield, Minnesota. Best Buy is the largest  
17 consumer electronics retailer in the United States. Best Buy operates approximately 1,030  
18 retail locations in the United States; of which approximately 140 are located in California.

19 12. Defendant Buy Buy Baby, Inc. is a Delaware corporation with its principal  
20 place of business and headquarters in Union, New Jersey. Buy Buy Baby (a subsidiary of  
21 Defendant Bed Bath & Beyond Inc.) is a retail concern specializing in merchandise for  
22 infants and young children. Buy Buy Baby operates approximately 125 retail locations in  
23 the United States; of which approximately 15 are located in California.

24 13. Defendant Caleres, Inc. is a New York corporation with its principal place  
25 of business and headquarters in St. Louis, Missouri. Caleres, originally founded as Brown  
26 Shoe Company in 1878, is a global footwear company with annual net sales of \$2.9  
27 billion. Famous Footwear is a division of Caleres and operates approximately 900 retail  
28 locations in the United States, of which approximately 100 are located in California.

1 14. Defendant CVS Health Corporation is a Delaware corporation with its  
2 principal place of business and headquarters in Woonsocket, Rhode Island. CVS  
3 describes itself as “the nation’s premier health innovation company helping people on  
4 their path to better health.” CVS operates approximately 9,900 retail locations in the  
5 United States, of which approximately 1,100 are located in California.

6 15. Defendant Dick’s Sporting Goods, Inc. is a Delaware corporation with its  
7 principal place of business and headquarters in Coraopolis, Pennsylvania. Dick’s  
8 Sporting Goods describes itself as “a leading omni-channel sporting goods retailer  
9 offering an extensive assortment of authentic, high-quality sports equipment, apparel,  
10 footwear and accessories through its dedicated teammates, in-store services and unique  
11 specialty shop-in-shops.” Dick’s Sporting Goods operates approximately 950 retail  
12 locations in the United States, of which approximately 60 are located in California.

13 16. Defendant L Brands, Inc. is a Delaware corporation with its principal place  
14 of business and headquarters in Columbus, Ohio. L Brands describes itself as “a segment  
15 leader focused on women’s intimate and other apparel, personal care, beauty and home  
16 fragrance products.” Victoria’s Secret Stores, LLC is a Delaware limited liability  
17 company with its principal place of business and headquarters in Reynoldsburg, Ohio.  
18 Victoria’s Secret is a subsidiary of L Brands, Inc. Across brands, L Brands operates  
19 approximately 2700 retail locations in the United States, of which a large number are  
20 located in California.

21 17. Defendant Stein Mart, Inc. is a Florida corporation with its principal place  
22 of business and headquarters in Jacksonville, Florida. Stein Mart describes itself as “a  
23 national specialty omnichannel off-price retailer offering designer and name-brand  
24 fashion apparel, home décor, accessories and shoes at everyday discount prices.” Stein  
25 Mart operates approximately 280 retail locations in the United States, of which  
26 approximately 25 are located in California.

27 18. Defendant The Gap, Inc. is a Delaware corporation with its principal place  
28 of business and headquarters in San Francisco, California. Gap describes itself as “a

1 leading global apparel retail company.” Athleta LLC is a Delaware limited liability  
2 company with its principal place of business and headquarters in San Francisco,  
3 California. Athleta is a subsidiary of The Gap, Inc. Across brands, Gap operates  
4 approximately 2,700 retail locations in the United States, of which a large number are  
5 located in California.

6 19. Defendant The Home Depot, Inc. is a Delaware corporation with its  
7 principal place of business and headquarters in Atlanta, Georgia. Home Depot describes  
8 itself as “the world’s largest home improvement retailer”. Home Depot operates  
9 approximately 2,000 retail locations in the United States; of which approximately 230 are  
10 located in California.

11 20. Defendant The TJX Companies, Inc. is a Delaware corporation with its  
12 principal place of business and headquarters in Farmington, Massachusetts. TJX  
13 describes itself as “the leading off-price apparel and home fashions retailer in the United  
14 States and worldwide.” TJ Maxx and Marshalls together form the Marmaxx division of  
15 The TJX Companies, Inc. Across brands, TJX operates approximately 3,100 retail  
16 locations in the Unites States; of which approximately 360 are located in California.

### 17 **The Retail Equation**

18 21. Defendant The Retail Equation, Inc. is a Delaware corporation with its  
19 principal place of business and headquarters in Irvine, California. The Retail Equation,  
20 also operating under the moniker Appriss Retail, describes itself as “the industry leader  
21 in retail transaction optimization solutions at the point of sale and point of return.”<sup>1</sup> TRE’s  
22 technology “uses statistical modeling and analytics to detect fraudulent and abusive  
23 behavior when returns are processed at retailers’ return counters.”<sup>2</sup> TRE’s parent  
24 company, Appriss, Inc., “provides artificial intelligence-based solutions to help retailers  
25

26  
27 <sup>1</sup> <https://www.theretailequation.com/frequently-asked-questions/> (last visited July 2, 2020).

28 <sup>2</sup> *Id.*

1 protect margin, unlock sales, and cut shrink.”<sup>3</sup> Appriss “optimizes retailers’ revenue and  
2 margin by shaping behavior in every consumer transaction. The company’s solutions use  
3 predictive analytics to turn each individual shopper’s purchase or return into a more  
4 profitable experience.”<sup>4</sup> Appriss claims that its “solutions create sizable new sales at the  
5 return counter, while also building customer loyalty, and prevent fraudulent and abusive  
6 returns, reducing return rates, and improving shrink.”<sup>5</sup> Appriss further declares that it  
7 “yields immediate financial payback, increasing store comps by as much as 2 percent,  
8 with significant return on investment.”<sup>6</sup>

9 22. Discussing Appriss’ acquisition of TRE in 2015, Appriss CEO Mike Davis  
10 said: “We are excited to partner with The Retail Equation as we strengthen our strategy  
11 to combat organized crime and fraud in all industries.”<sup>7</sup> Deven Parekh, chairman of the  
12 board for Appriss, further stated: “We believe that Appriss and The Retail Equation have  
13 unique capabilities that, together, provide a powerful improvement to the shopping  
14 experience by identifying and curbing employee dishonesty, consumer fraud and  
15 organized crime within retail.”<sup>8</sup> Commenting on Appriss’ acquisition and merger of  
16 Sysrepublic with TRE in 2016, TRE President Mark Hammond echoed Mr. Parekh’s  
17 sentiment: “We believe that Appriss, The Retail Equation, and Sysrepublic all bring  
18 unique capabilities that, together, provide a powerful improvement to the shopping  
19  
20  
21

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22 <sup>3</sup> <https://apprissretail.com/about/overview/> (last visited July 2, 2020).

23 <sup>4</sup> *Id.*

24 <sup>5</sup> *Id.*

25 <sup>6</sup> *Id.*

26 <sup>7</sup> *Appriss Acquires The Retail Equation To Strengthen Efforts In Fighting Fraud And Mitigating Risk*,  
27 RETAIL SUPPLY CHAIN INSIGHTS (Aug. 19, 2015),  
[https://www.retailsupplychaininsights.com/doc/appriss-acquires-retail-equation-strengthen-fighting-  
28 fraud-mitigating-risk-0001](https://www.retailsupplychaininsights.com/doc/appriss-acquires-retail-equation-strengthen-fighting-fraud-mitigating-risk-0001) (last visited July 2, 2020).

<sup>8</sup> *Id.*

1 experience by identifying and curbing employee dishonesty, consumer fraud, and  
2 organized crime within retail.”<sup>9</sup>

### 3 **Defendants’ Data Collection, Sharing and Use**

4 23. Without the knowledge or consent of consumers, Defendant Retailers  
5 continuously collect large amounts of data about their consumers and share the collected  
6 data with TRE. Although present elsewhere, Defendant Retailers’ data collection efforts  
7 are most prevalent at the point of sale and point of return & exchange. Consumer data  
8 collected by Defendant Retailers and shared with TRE falls broadly within two  
9 categories: “Consumer Commercial Activity Data” and “Consumer ID Data”.

10 24. As used herein, “Consumer Commercial Activity Data” collected by  
11 Defendant Retailers and shared with TRE may include the unique purchase, return, and/or  
12 exchange histories of individual consumers, *i.e.*, what a consumer buys, when a consumer  
13 buys, where a consumer buys, how much a consumer buys, how often a consumer buys,  
14 what form of payment a consumer uses, etc. The same, or similar, data is also collected  
15 for returns and exchanges.

16 25. As used herein, “Consumer ID Data” collected by Defendant Retailers and  
17 shared with TRE may include the unique identification information contained on or  
18 within a consumer’s driver’s license, government-issued ID card, and/or passport. Unique  
19 identification information contained on or within a consumer’s driver’s license,  
20 government-issued ID card, and/or passport includes, but is not necessarily limited to, the  
21 consumer’s name, date of birth, race, sex, photograph, complete street address, and zip  
22 code.

23 26. The Consumer Commercial Activity Data and Consumer ID Data collected  
24 by Defendant Retailers and shared with TRE are non-anonymized and individual data  
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26 <sup>9</sup> *Appriss Acquires Sysrepublic; Further Enhances Efforts To Fight Retail Fraud, Protect Profits and*  
27 *Mitigate Risk*, LOSS PREVENTION INSIGHTS (Apr. 13, 2016),  
28 <https://www.losspreventioninsights.com/doc/appriss-acquires-sysrepublic-further-fight-mitigate-risk-0001> (last visited July 2, 2020).



1 sets, as opposed to anonymized and collective data sets. The Consumer Commercial  
2 Activity Data and Consumer ID Data collected by Defendant Retailers and shared with  
3 TRE have not been sanitized and personally identifiable information has not been  
4 removed. The Consumer Commercial Activity Data and Consumer ID Data includes  
5 personal information, as defined in California Civil Code section 1798.81.5(A)(1)(d).

6 27. Without the consent or knowledge of consumers, TRE processes the shared  
7 Consumer Commercial Activity Data and Consumer ID Data with its “statistical  
8 modeling and analytics” to create a consumer report and generate a “risk score” for each  
9 of Defendant Retailers’ consumers. The inequity and harm resulting from using data  
10 found on a consumer’s ID – name, date of birth, race, sex, photograph, street address, zip  
11 code, etc. – to generate a consumer’s “risk score” cannot be overstated.

#### 12 **Attempted Return or Exchange Process**

13 28. Every time a consumer purchases goods from Defendant Retailers, included  
14 in the bargain is the ability to return or exchange the purchased goods within a specified  
15 period of time.

16 29. When a consumer attempts to make a return or exchange, Defendant  
17 Retailers swipe or scan the consumer’s driver’s license, government-issued ID card, or  
18 passport and/or scans the original sales transaction receipt (if present), thereby identifying  
19 the consumer and the consumer’s unique purchase, return, and exchange behavior. New  
20 Consumer Commercial Activity Data and Consumer ID Data are also generated at this  
21 time.

22 30. Without the consent or knowledge of consumers, Defendant Retailers  
23 transmit to and share with TRE the Consumer Commercial Activity Data and Consumer  
24 ID Data they collect from consumers when consumers attempt to make a return or  
25 exchange. This process personally identifies the consumer attempting to make the return  
26 or exchange and the identified consumer’s “risk score” is generated and accessed.

27 31. If a consumer’s “risk score” does not meet the score requirement for that  
28 consumer, TRE automatically identifies the attempted return or exchange as fraudulent

1 and abusive. Then, using the consumer’s “risk score” as a pretext, TRE notifies the  
2 Defendant Retailer that the attempted returns is “fraudulent and abusive” and should  
3 therefore be denied.

4 32. Defendant Retailer informs the consumer that the attempted return or  
5 exchange is denied and refuses to process the return or exchange – even when the return  
6 or exchange is valid.

7 33. Based upon TRE’s data analytics and TRE’s statement to Defendant  
8 Retailers that certain attempted returns and exchanges are fraudulent and abusive and  
9 should be denied, Defendant Retailers deny valid returns and exchanges.

10 **Plaintiff Hayden**

11 34. Plaintiff Shadi Hayden is an individual residing in Campbell, California.

12 35. On or about July 9, 2019, Plaintiff Hayden attempted to return or exchange  
13 merchandise previously purchased from Sephora.

14 36. Sephora’s sales associate entered Plaintiff Hayden’s transaction information  
15 into Sephora’s computer system.

16 37. Sephora transmitted Plaintiff Hayden’s transaction information to TRE.

17 38. Sephora’s sales associate did not notify Plaintiff Hayden that her transaction  
18 information was being transmitted to TRE.

19 39. Plaintiff Hayden did not know her transaction information was being  
20 transmitted to TRE.

21 40. Sephora’s sales associate did not notify Plaintiff Hayden that her transaction  
22 information transmitted to TRE was being used by TRE to generate a “risk score” for her  
23 from which TRE would then make a fraud determination and generate an approval or  
24 denial of the attempted return or exchange.

25 41. Plaintiff Hayden did not know that her transaction information transmitted  
26 to TRE was being used by TRE to generate a “risk score” for her from which TRE would  
27 then make a fraud determination and generate an approval or denial of the attempted  
28 return or exchange.

1       42. After Sephora entered Plaintiff Hayden’s transaction information into its  
2 computer system, and transmitted that information to TRE, TRE communicated to  
3 Sephora’s sales associate that the attempted return or exchange was to be declined.

4       43. After entering Plaintiff Hayden’s transaction information into Sephora’s  
5 computer system and receiving the communication from TRE, Sephora’s sales associate  
6 communicated to Plaintiff Hayden that the return or exchange was declined based upon  
7 the recommendation of TRE.

8       44. Sephora’s sales associate presented Plaintiff Hayden a printout stating the  
9 return or exchange was declined and providing contact information for TRE.

10       45. Plaintiff Hayden was thereby prevented from completing the return or  
11 exchange.

12   **Plaintiff Hannum**

13       46. Plaintiff William Hannum is an individual residing in Point Pleasant, West  
14 Virginia.

15       47. On or about March 4, 2019, Plaintiff Hannum attempted to return or  
16 exchange merchandise previously purchased from Advance Auto Parts.

17       48. Advance Auto Parts’ sales associate entered Plaintiff Hannum’s transaction  
18 information into Advance Auto Parts’ computer system.

19       49. Advance Auto Parts transmitted Plaintiff Hannum’s transaction information  
20 to TRE.

21       50. Advance Auto Parts’ sales associate did not notify Plaintiff Hannum that his  
22 transaction information was being transmitted to TRE.

23       51. Plaintiff Hannum did not know his transaction information was being  
24 transmitted to TRE.

25       52. Advance Auto Parts’ sales associate did not notify Plaintiff Hannum that his  
26 transaction information transmitted to TRE was being used by TRE to generate a “risk  
27 score” for him from which TRE would then make a fraud determination and generate an  
28 approval or denial of the attempted return or exchange.

1 53. Plaintiff Hannum did not know that his transaction information transmitted  
2 to TRE was being used by TRE to generate a “risk score” for him from which TRE would  
3 then make a fraud determination and generate an approval or denial of the attempted  
4 return or exchange.

5 54. After Advance Auto Parts entered Plaintiff Hannum’s transaction  
6 information into its computer system, and transmitted that information to TRE, TRE  
7 communicated to Advance Auto Parts’ sales associate that the attempted return or  
8 exchange was to be declined.

9 55. After entering Plaintiff Hannum’s transaction information into Advance  
10 Auto Parts’ computer system and receiving the communication from TRE, Advance Auto  
11 Parts’ sales associate communicated to Plaintiff Hannum that the return or exchange was  
12 declined based upon the recommendation of TRE.

13 56. Advance Auto Parts’ sales associate presented Plaintiff Hannum a printout  
14 stating the return or exchange was declined and providing contact information for TRE.

15 57. Plaintiff Hannum was thereby prevented from completing the return or  
16 exchange.

17 **Plaintiff Murphy**

18 58. Plaintiff Michael Murphy is an individual residing in Bothell, Washington.

19 59. On or about July 13, 2020, Plaintiff Murphy attempted to return or exchange  
20 merchandise previously purchased from Bed Bath & Beyond.

21 60. Bed Bath & Beyond’s sales associate entered Plaintiff Murphy’s transaction  
22 information into Bed Bath & Beyond’s computer system.

23 61. Bed Bath & Beyond transmitted Plaintiff Murphy’s transaction information  
24 to TRE.

25 62. Bed Bath & Beyond’s sales associate did not notify Plaintiff Murphy that  
26 his transaction information was being transmitted to TRE.

27 63. Plaintiff Murphy did not know his transaction information was being  
28 transmitted to TRE.

1 64. Bed Bath & Beyond’s sales associate did not notify Plaintiff Murphy that  
2 his transaction information transmitted to TRE was being used by TRE to generate a “risk  
3 score” for him from which TRE would then make a fraud determination and generate an  
4 approval or denial of the attempted return or exchange.

5 65. Plaintiff Murphy did not know that his transaction information transmitted  
6 to TRE was being used by TRE to generate a “risk score” for him from which TRE would  
7 then make a fraud determination and generate an approval or denial of the attempted  
8 return or exchange.

9 66. After Bed Bath & Beyond entered Plaintiff Murphy’s transaction  
10 information into its computer system, and transmitted that information to TRE, TRE  
11 communicated to Bed Bath & Beyond’s sales associate that the attempted return or  
12 exchange was to be declined.

13 67. After entering Plaintiff Murphy’s transaction information into Bed Bath &  
14 Beyond’s computer system and receiving the communication from TRE, Bed Bath &  
15 Beyond’s sales associate communicated to Plaintiff Murphy that the return or exchange  
16 was declined based upon the recommendation of TRE.

17 68. Bed Bath & Beyond’s sales associate presented Plaintiff Murphy a printout  
18 stating the return or exchange was declined and providing contact information for TRE.

19 69. Plaintiff Murphy was thereby prevented from completing the return or  
20 exchange.

21 **Plaintiff Frederick**

22 70. Plaintiff Sean Frederick is an individual residing in Allison Park,  
23 Pennsylvania.

24 71. On or about March 19, 2018, Plaintiff Frederick attempted to return or  
25 exchange merchandise previously purchased from Best Buy.

26 72. Best Buy’s sales associate entered Plaintiff Frederick’s transaction  
27 information into Best Buy’s computer system.

28 73. Best Buy transmitted Plaintiff Frederick’s transaction information to TRE.

1 74. Best Buy’s sales associate did not notify Plaintiff Frederick that his  
2 transaction information was being transmitted to TRE.

3 75. Plaintiff Frederick did not know his transaction information was being  
4 transmitted to TRE.

5 76. Best Buy’s sales associate did not notify Plaintiff Frederick that his  
6 transaction information transmitted to TRE was being used by TRE to generate a “risk  
7 score” for him from which TRE would then make a fraud determination and generate an  
8 approval or denial of the attempted return or exchange.

9 77. Plaintiff Frederick did not know that his transaction information transmitted  
10 to TRE was being used by TRE to generate a “risk score” for him from which TRE would  
11 then make a fraud determination and generate an approval or denial of the attempted  
12 return or exchange.

13 78. After Best Buy entered Plaintiff Frederick’s transaction information into its  
14 computer system, and transmitted that information to TRE, TRE communicated to Best  
15 Buy’s sales associate that the attempted return or exchange was to be declined.

16 79. After entering Plaintiff Frederick’s transaction information into Best Buy’s  
17 computer system and receiving the communication from TRE, Best Buy’s sales associate  
18 communicated to Plaintiff Frederick that the return or exchange was declined based upon  
19 the recommendation of TRE.

20 80. Best Buy’s sales associate presented Plaintiff Frederick a printout stating the  
21 return or exchange was declined and providing contact information for TRE.

22 81. Plaintiff Frederick was thereby prevented from completing the return or  
23 exchange.

24 **Plaintiff Maryamchik**

25 82. Plaintiff Olga Maryamchik is an individual residing in Brooklyn, New York.

26 83. On or about December 24, 2019, Plaintiff Maryamchik attempted to return  
27 or exchange merchandise previously purchased from Buy Buy Baby.

28

1           84. Buy Buy Baby's sales associate entered Plaintiff Maryamchik's transaction  
2 information into Buy Buy Baby's computer system.

3           85. Buy Buy Baby transmitted Plaintiff Maryamchik's transaction information  
4 to TRE.

5           86. Buy Buy Baby's sales associate did not notify Plaintiff Maryamchik that her  
6 transaction information was being transmitted to TRE.

7           87. Plaintiff Maryamchik did not know her transaction information was being  
8 transmitted to TRE.

9           88. Buy Buy Baby's sales associate did not notify Plaintiff Maryamchik that her  
10 transaction information transmitted to TRE was being used by TRE to generate a "risk  
11 score" for her from which TRE would then make a fraud determination and generate an  
12 approval or denial of the attempted return or exchange.

13           89. Plaintiff Maryamchik did not know that her transaction information  
14 transmitted to TRE was being used by TRE to generate a "risk score" for her from which  
15 TRE would then make a fraud determination and generate an approval or denial of the  
16 attempted return or exchange.

17           90. After Buy Buy Baby entered Plaintiff Maryamchik's transaction  
18 information into its computer system, and transmitted that information to TRE, TRE  
19 communicated to Buy Buy Baby's sales associate that the attempted return or exchange  
20 was to be declined.

21           91. After entering Plaintiff Maryamchik's transaction information into Buy Buy  
22 Baby's computer system and receiving the communication from TRE, Buy Buy Baby's  
23 sales associate communicated to Plaintiff Maryamchik that the return or exchange was  
24 declined based upon the recommendation of TRE.

25           92. Buy Buy Baby's sales associate presented Plaintiff Maryamchik a printout  
26 stating the return or exchange was declined and providing contact information for TRE.

27           93. Plaintiff Maryamchik was thereby prevented from completing the return or  
28 exchange.

**Plaintiff Caruso-Davis**

1  
2 94. Plaintiff Victoria Caruso-Davis is an individual residing in South Plainfield,  
3 New Jersey.

4 95. On or about October 29, 2019, Plaintiff Caruso-Davis attempted to return or  
5 exchange merchandise previously purchased from Famous Footwear.

6 96. Famous Footwear's sales associate entered Plaintiff Caruso-Davis's  
7 transaction information into Famous Footwear's computer system.

8 97. Famous Footwear transmitted Plaintiff Caruso-Davis's transaction  
9 information to TRE.

10 98. Famous Footwear's sales associate did not notify Plaintiff Caruso-Davis that  
11 her transaction information was being transmitted to TRE.

12 99. Plaintiff Caruso-Davis did not know her transaction information was being  
13 transmitted to TRE.

14 100. Famous Footwear's sales associate did not notify Plaintiff Caruso-Davis that  
15 her transaction information transmitted to TRE was being used by TRE to generate a "risk  
16 score" for her from which TRE would then make a fraud determination and generate an  
17 approval or denial of the attempted return or exchange.

18 101. Plaintiff Caruso-Davis did not know that her transaction information  
19 transmitted to TRE was being used by TRE to generate a "risk score" for her from which  
20 TRE would then make a fraud determination and generate an approval or denial of the  
21 attempted return or exchange.

22 102. After Famous Footwear entered Plaintiff Caruso-Davis's transaction  
23 information into its computer system, and transmitted that information to TRE, TRE  
24 communicated to Famous Footwear's sales associate that the attempted return or  
25 exchange was flagged as potentially fraudulent and that future attempts by Plaintiff  
26 Caruso-Davis to return or exchange merchandise would be declined.

27 103. After entering Plaintiff Caruso-Davis's transaction information into Famous  
28 Footwear's computer system and receiving the communication from TRE, Famous



1 Footwear’s sales associate communicated to Plaintiff Caruso-Davis that the return or  
2 exchange was flagged as potentially fraudulent and that future attempts by Plaintiff  
3 Caruso-Davis to return or exchange merchandise would be declined based upon the  
4 recommendation of TRE.

5 104. Famous Footwear’s sales associate presented Plaintiff Caruso-Davis a  
6 printout stating the return or exchange was flagged as potentially fraudulent and that  
7 future attempts by Plaintiff Caruso-Davis to return or exchange merchandise would be  
8 declined and providing contact information for TRE.

9 105. Plaintiff Caruso-Davis was thereby prevented from making future returns or  
10 exchanges.

11 **Plaintiff Gilbert**

12 106. Plaintiff Eric Gilbert is an individual residing in Boca Raton, Florida.

13 107. On or about March 7, 2020, Plaintiff Gilbert attempted to return or exchange  
14 merchandise previously purchased from CVS.

15 108. CVS’s sales associate entered Plaintiff Gilbert’s transaction information into  
16 CVS’s computer system.

17 109. CVS transmitted Plaintiff Gilbert’s transaction information to TRE.

18 110. CVS’s sales associate did not notify Plaintiff Gilbert that his transaction  
19 information was being transmitted to TRE.

20 111. Plaintiff Gilbert did not know his transaction information was being  
21 transmitted to TRE.

22 112. CVS’s sales associate did not notify Plaintiff Gilbert that his transaction  
23 information transmitted to TRE was being used by TRE to generate a “risk score” for him  
24 from which TRE would then make a fraud determination and generate an approval or  
25 denial of the attempted return or exchange.

26 113. Plaintiff Gilbert did not know that his transaction information transmitted to  
27 TRE was being used by TRE to generate a “risk score” for him from which TRE would  
28

1 then make a fraud determination and generate an approval or denial of the attempted  
2 return or exchange.

3 114. After CVS entered Plaintiff Gilbert's transaction information into its  
4 computer system, and transmitted that information to TRE, TRE communicated to CVS's  
5 sales associate that the attempted return or exchange was to be declined.

6 115. After entering Plaintiff Gilbert's transaction information into CVS's  
7 computer system and receiving the communication from TRE, CVS's sales associate  
8 communicated to Plaintiff Gilbert that the return or exchange was declined based upon  
9 the recommendation of TRE.

10 116. CVS's sales associate presented Plaintiff Gilbert a printout stating the return  
11 or exchange was declined and providing contact information for TRE.

12 117. Plaintiff Gilbert was thereby prevented from completing the return or  
13 exchange.

#### 14 **Plaintiff Guevara**

15 118. Plaintiff Susana Guevara is an individual residing in Fairfax, Virginia.

16 119. On or about June of 2020, Plaintiff Guevara attempted to return or exchange  
17 merchandise previously purchased from Dick's Sporting Goods.

18 120. Dick's Sporting Goods' sales associate entered Plaintiff Guevara's  
19 transaction information into Dick's Sporting Goods' computer system.

20 121. Dick's Sporting Goods transmitted Plaintiff Guevara's transaction  
21 information to TRE.

22 122. Dick's Sporting Goods' sales associate did not notify Plaintiff Guevara that  
23 her transaction information was being transmitted to TRE.

24 123. Plaintiff Guevara did not know her transaction information was being  
25 transmitted to TRE.

26 124. Dick's Sporting Goods' sales associate did not notify Plaintiff Guevara that  
27 her transaction information transmitted to TRE was being used by TRE to generate a "risk  
28

1 score” for her from which TRE would then make a fraud determination and generate an  
2 approval or denial of the attempted return or exchange.

3 125. Plaintiff Guevara did not know that her transaction information transmitted  
4 to TRE was being used by TRE to generate a “risk score” for her from which TRE would  
5 then make a fraud determination and generate an approval or denial of the attempted  
6 return or exchange.

7 126. After Dick’s Sporting Goods entered Plaintiff Guevara’s transaction  
8 information into its computer system, and transmitted that information to TRE, TRE  
9 communicated to Dick’s Sporting Goods’ sales associate that the attempted return or  
10 exchange was to be declined.

11 127. After entering Plaintiff Guevara’s transaction information into Dick’s  
12 Sporting Goods’ computer system and receiving the communication from TRE, Dick’s  
13 Sporting Goods’ sales associate communicated to Plaintiff Guevara that the return or  
14 exchange was declined based upon the recommendation of TRE.

15 128. Dick’s Sporting Goods’ sales associate presented Plaintiff Guevara a  
16 printout stating the return or exchange was declined and providing contact information  
17 for TRE.

18 129. Plaintiff Guevara was thereby prevented from completing the return or  
19 exchange.

20 **Plaintiff Smith**

21 130. Plaintiff Jacqueline Smith is an individual residing in Santa Ana, California.

22 131. On or about July 20, 2018, Plaintiff Smith attempted to return or exchange  
23 merchandise previously purchased from Victoria’s Secret.

24 132. Victoria’s Secret’s sales associate entered Plaintiff Smith’s transaction  
25 information into Victoria’s Secret’s computer system.

26 133. Victoria’s Secret transmitted Plaintiff Smith’s transaction information to  
27 TRE.

1 134. Victoria's Secret's sales associate did not notify Plaintiff Smith that her  
2 transaction information was being transmitted to TRE.

3 135. Plaintiff Smith did not know her transaction information was being  
4 transmitted to TRE.

5 136. Victoria's Secret's sales associate did not notify Plaintiff Smith that her  
6 transaction information transmitted to TRE was being used by TRE to generate a "risk  
7 score" for her from which TRE would then make a fraud determination and generate an  
8 approval or denial of the attempted return or exchange.

9 137. Plaintiff Smith did not know that her transaction information transmitted to  
10 TRE was being used by TRE to generate a "risk score" for her from which TRE would  
11 then make a fraud determination and generate an approval or denial of the attempted  
12 return or exchange.

13 138. After Victoria's Secret entered Plaintiff Smith's transaction information into  
14 its computer system, and transmitted that information to TRE, TRE communicated to  
15 Victoria's Secret's sales associate that the attempted return or exchange was to be  
16 declined.

17 139. After entering Plaintiff Smith's transaction information into Victoria's  
18 Secret's computer system and receiving the communication from TRE, Victoria's  
19 Secret's sales associate communicated to Plaintiff Smith that the return or exchange was  
20 declined based upon the recommendation of TRE.

21 140. Victoria's Secret's sales associate presented Plaintiff Smith a printout  
22 stating the return or exchange was declined and providing contact information for TRE.

23 141. Plaintiff Smith was thereby prevented from completing the return or  
24 exchange.

25 **Plaintiff Julian-Moye**

26 142. Plaintiff Carol Julian-Moye is an individual residing in Greer, South  
27 Carolina.

1           143. On or about January 2, 2019, Plaintiff Julian-Moye attempted to return or  
2 exchange merchandise previously purchased from Stein Mart.

3           144. Stein Mart's sales associate entered Plaintiff Julian-Moye's transaction  
4 information into Stein Mart's computer system.

5           145. Stein Mart transmitted Plaintiff Julian-Moye's transaction information to  
6 TRE.

7           146. Stein Mart's sales associate did not notify Plaintiff Julian-Moye that her  
8 transaction information was being transmitted to TRE.

9           147. Plaintiff Julian-Moye did not know her transaction information was being  
10 transmitted to TRE.

11           148. Stein Mart's sales associate did not notify Plaintiff Julian-Moye that her  
12 transaction information transmitted to TRE was being used by TRE to generate a "risk  
13 score" for her from which TRE would then make a fraud determination and generate an  
14 approval or denial of the attempted return or exchange.

15           149. Plaintiff Julian-Moye did not know that her transaction information  
16 transmitted to TRE was being used by TRE to generate a "risk score" for her from which  
17 TRE would then make a fraud determination and generate an approval or denial of the  
18 attempted return or exchange.

19           150. After Stein Mart entered Plaintiff Julian-Moye's transaction information  
20 into its computer system, and transmitted that information to TRE, TRE communicated  
21 to Stein Mart's sales associate that the attempted return or exchange was to be declined.

22           151. After entering Plaintiff Julian-Moye's transaction information into Stein  
23 Mart's computer system and receiving the communication from TRE, Stein Mart's sales  
24 associate communicated to Plaintiff Julian-Moye that the return or exchange was declined  
25 based upon the recommendation of TRE.

26           152. Stein Mart's sales associate presented Plaintiff Julian-Moye a printout  
27 stating the return or exchange was declined and providing contact information for TRE.

28

1 153. Plaintiff Julian-Moye was thereby prevented from completing the return or  
2 exchange.

3 **Plaintiff Alire**

4 154. Plaintiff Christine Alire is an individual residing in Sacramento, California.

5 155. On or about January 8, 2020, Plaintiff Alire attempted to return or exchange  
6 merchandise previously purchased from Athleta.

7 156. Athleta's sales associate entered Plaintiff Alire's transaction information  
8 into Athleta's computer system.

9 157. Athleta transmitted Plaintiff Alire's transaction information to TRE.

10 158. Athleta's sales associate did not notify Plaintiff Alire that her transaction  
11 information was being transmitted to TRE.

12 159. Plaintiff Alire did not know her transaction information was being  
13 transmitted to TRE.

14 160. Athleta's sales associate did not notify Plaintiff Alire that her transaction  
15 information transmitted to TRE was being used by TRE to generate a "risk score" for her  
16 from which TRE would then make a fraud determination and generate an approval or  
17 denial of the attempted return or exchange.

18 161. Plaintiff Alire did not know that her transaction information transmitted to  
19 TRE was being used by TRE to generate a "risk score" for her from which TRE would  
20 then make a fraud determination and generate an approval or denial of the attempted  
21 return or exchange.

22 162. After Athleta entered Plaintiff Alire's transaction information into its  
23 computer system, and transmitted that information to TRE, TRE communicated to  
24 Athleta's sales associate that the attempted return or exchange was to be declined.

25 163. After entering Plaintiff Alire's transaction information into Athleta's  
26 computer system and receiving the communication from TRE, Athleta's sales associate  
27 communicated to Plaintiff Alire that the return or exchange was declined based upon the  
28 recommendation of TRE.

1 164. Athleta's sales associate presented Plaintiff Alire a printout stating the return  
2 or exchange was declined and providing contact information for TRE.

3 165. Plaintiff Alire was thereby prevented from completing the return or  
4 exchange.

### 5 **Plaintiff Ho**

6 166. Plaintiff Jerry Ho is an individual residing in Alameda, California.

7 167. On or about May 28, 2020, Plaintiff Ho attempted to return or exchange  
8 merchandise previously purchased from Home Depot.

9 168. Home Depot's sales associate entered Plaintiff Ho's transaction information  
10 into Home Depot's computer system.

11 169. Home Depot transmitted Plaintiff Ho's transaction information to TRE.

12 170. Home Depot's sales associate did not notify Plaintiff Ho that his transaction  
13 information was being transmitted to TRE.

14 171. Plaintiff Ho did not know his transaction information was being transmitted  
15 to TRE.

16 172. Home Depot's sales associate did not notify Plaintiff Ho that his transaction  
17 information transmitted to TRE was being used by TRE to generate a "risk score" for him  
18 from which TRE would then make a fraud determination and generate an approval or  
19 denial of the attempted return or exchange.

20 173. Plaintiff Ho did not know that his transaction information transmitted to  
21 TRE was being used by TRE to generate a "risk score" for him from which TRE would  
22 then make a fraud determination and generate an approval or denial of the attempted  
23 return or exchange.

24 174. After Home Depot entered Plaintiff Ho's transaction information into its  
25 computer system, and transmitted that information to TRE, TRE communicated to Home  
26 Depot's sales associate that the attempted return or exchange was to be declined.

27 175. After entering Plaintiff Ho's transaction information into Home Depot's  
28 computer system and receiving the communication from TRE, Home Depot's sales

1 associate communicated to Plaintiff Ho that the return or exchange was declined based  
2 upon the recommendation of TRE.

3 176. Home Depot's sales associate presented Plaintiff Ho a printout stating the  
4 return or exchange was declined and providing contact information for TRE.

5 177. Plaintiff Ho was thereby prevented from completing the return or exchange.

### 6 **Plaintiff Lloyd**

7 178. Plaintiff Carol Lloyd is an individual residing in Sicklerville, New Jersey.

8 179. On or about May 9, 2019, Plaintiff Lloyd attempted to return or exchange  
9 merchandise previously purchased from TJ Maxx.

10 180. TJ Maxx's sales associate entered Plaintiff Lloyd's transaction information  
11 into TJ Maxx's computer system.

12 181. TJ Maxx transmitted Plaintiff Lloyd's transaction information to TRE.

13 182. TJ Maxx's sales associate did not notify Plaintiff Lloyd that her transaction  
14 information was being transmitted to TRE.

15 183. Plaintiff Lloyd did not know her transaction information was being  
16 transmitted to TRE.

17 184. TJ Maxx's sales associate did not notify Plaintiff Lloyd that her transaction  
18 information transmitted to TRE was being used by TRE to generate a "risk score" for her  
19 from which TRE would then make a fraud determination and generate an approval or  
20 denial of the attempted return or exchange.

21 185. Plaintiff Lloyd did not know that her transaction information transmitted to  
22 TRE was being used by TRE to generate a "risk score" for her from which TRE would  
23 then make a fraud determination and generate an approval or denial of the attempted  
24 return or exchange.

25 186. After TJ Maxx entered Plaintiff Lloyd's transaction information into its  
26 computer system, and transmitted that information to TRE, TRE communicated to TJ  
27 Maxx's sales associate that the attempted return or exchange was flagged as potentially  
28



1 fraudulent and that future attempts by Plaintiff Lloyd to return or exchange merchandise  
2 without a receipt would be declined.

3 187. After entering Plaintiff Lloyd's transaction information into TJ Maxx's  
4 computer system and receiving the communication from TRE, TJ Maxx's sales associate  
5 communicated to Plaintiff Lloyd that the return or exchange was flagged as potentially  
6 fraudulent and that future attempts by Plaintiff Lloyd to return or exchange merchandise  
7 without a receipt would be declined based upon the recommendation of TRE.

8 188. TJ Maxx's sales associate presented Plaintiff Lloyd a printout stating the  
9 return or exchange was flagged as potentially fraudulent and that future attempts by  
10 Plaintiff Lloyd to return or exchange merchandise without a receipt would be declined  
11 and providing contact information for TRE.

12 189. Plaintiff Lloyd was thereby prevented from making future returns or  
13 exchanges without a receipt.

#### 14 CLASS ALLEGATIONS

15 190. Plaintiffs bring this class action lawsuit individually and on behalf of the  
16 proposed Class members under Rule 23 of the Federal Rules of Civil Procedure.

17 191. Plaintiffs seek certification of the following Classes:

18 National Class: **All persons in the United States who had their**  
19 **data transmitted by a Retail Defendant to The Retail**  
20 **Equation.**

21 and,

22 National Defamation Sub-Class: **All persons in the United**  
23 **States who had a return or exchange denied by a Retail**  
24 **Defendant based on communications from The Retail**  
25 **Equation.**

26 192. Specifically excluded from the Classes are Defendants and any entities in  
27 which Defendants have a controlling interest, Defendants' agents and employees, the  
28 judge to whom this action is assigned, members of the judge's staff, and the judge's  
immediate family.

1           193. **Numerosity:** Plaintiffs do not know the exact number of Class members,  
2 but believe the Classes comprise hundreds of thousands of consumers throughout the  
3 United States. As such, Class members are so numerous that joinder of all members is  
4 impracticable.

5           194. **Commonality:** Common questions of law and fact exist and predominate  
6 over any questions affecting only individual Class members. The common questions  
7 include:

- 8           a. Whether Defendants engaged in the conduct alleged herein;
- 9           b. Whether Retail Defendants' conduct constituted Deceptive Trade  
10 Practices (as defined below) actionable under the applicable consumer protection laws;
- 11           c. Whether TRE defamed Plaintiffs and Class members by advising  
12 Retail Defendants that attempted returns and exchanges were fraudulent, abusive, or an  
13 organized crime and should, therefore, be denied;
- 14           d. Whether Defendants' policies and procedures purposefully target  
15 consumers of specific socioeconomic backgrounds;
- 16           e. Whether Defendants' policies and procedures negligently affect  
17 consumers of specific socioeconomic backgrounds;
- 18           f. Whether Defendants violated the FCRA;
- 19           g. Whether Plaintiffs and Class members are entitled to recover actual  
20 damages and/or statutory damages; and
- 21           h. Whether Plaintiffs and Class members are entitled to equitable relief,  
22 including injunctive relief, restitution, disgorgement, and/or the establishment of a  
23 constructive trust.

24           195. **Typicality:** Plaintiffs' claims are typical of the claims of the Classes.  
25 Plaintiffs and Class members were injured through Defendants' uniform misconduct and  
26 their legal claims arise from the same core practices of Defendants.

27           196. **Adequacy:** Plaintiffs will fairly and adequately protect Class members'  
28 interests. Plaintiffs have no interests antagonistic to Class members' interests, and

1 Plaintiffs have retained counsel that has considerable experience and success in  
2 prosecuting complex class action and consumer-protection cases.

3       197. **Risks:** The proposed action meets the requirements of Fed. R. Civ. P.  
4 23(b)(1) because prosecution of separate actions by individual Class members would  
5 create a risk of inconsistent or varying adjudications that would establish incompatible  
6 standards for Defendants. Retail Defendants collect and share, and TRE maintains and  
7 uses Consumer Commercial Activity Data and Consumer ID Data of the Class members  
8 and other individuals, and varying adjudications could establish incompatible standards  
9 with respect to: whether Defendants' ongoing conduct violates Class members' rights as  
10 alleged herein; and whether the injuries suffered by Class members are legally  
11 cognizable, among others. Prosecution of separate actions by individual Class members  
12 would also create a risk of individual adjudications that would be dispositive of the  
13 interests of other Class members not parties to the individual adjudications, or  
14 substantially impair or impede the ability of Class members to protect their interests.

15       198. **Injunctive Relief:** The proposed action meets the requirements of Fed. R.  
16 Civ. P. 23(b)(2) because Defendants have acted or have refused to act on grounds  
17 generally applicable to the Classes, so that final injunctive relief or corresponding  
18 declaratory relief is appropriate as to the Classes as a whole.

19       199. **Predominance:** The proposed action meets the requirements of Fed. R. Civ.  
20 P. 23(b)(3) because questions of law and fact common to the Classes predominate over  
21 any questions that may affect only individual Class members in the proposed classes.

22       200. **Superiority:** The proposed action also meets the requirements of Fed. R.  
23 Civ. P. 23(b)(3) because a class action is superior to all other available methods of fairly  
24 and efficiently adjudicating this dispute. The injury sustained by each Class member,  
25 while meaningful on an individual basis, is not of such magnitude that it is economically  
26 feasible to prosecute individual actions against Defendants. Even if it were economically  
27 feasible, requiring hundreds of thousands of injured plaintiffs to file individual suits  
28 would impose a crushing burden on the court system and almost certainly lead to

1 inconsistent judgments. By contrast, class treatment will present far fewer management  
2 difficulties and provide the benefits of a single adjudication, economies of scale, and  
3 comprehensive supervision by a single court. Plaintiffs anticipate no unusual difficulties  
4 in managing this class action.

5       201. **Certification of Particular Issues:** In the alternative, the Classes may be  
6 maintained as class actions with respect to particular issues, in accordance with Fed. R.  
7 Civ. P. 23(c)(4).

8       202. Finally, all members of the purposed Classes are identifiable. Defendants  
9 have access to addresses and other contact information for members of the Classes, which  
10 can be used to identify Class members.

11   **COUNT I**

12   **Invasion of Privacy**

13   **(Against all Defendants on behalf of all Classes)**

14       203. Plaintiffs reallege and incorporate by reference every allegation set forth in  
15 the preceding paragraphs as though alleged in this Count.

16       204. Plaintiffs and Class members reasonably expected that their Consumer  
17 Commercial Activity Data and Consumer ID Data would be kept private and secure.

18       205. Plaintiffs and Class members reasonably expected that their Consumer  
19 Commercial Activity Data and Consumer ID Data would not be collected, used, sold,  
20 and/or disclosed by Defendants without appropriate notice and/or disclosures.

21       206. Defendants unlawfully invaded Plaintiffs’ and Class members’ privacy  
22 rights by:

- 23               a. collecting and/or using Plaintiffs’ and Class members’ Consumer  
24               Commercial Activity Data and Consumer ID Data without complying  
25               with the California Consumer Privacy Act of 2018 sections 1798.100(b)  
26               and 1798.110(c);

- 1 b. selling and/or disclosing Plaintiffs' and Class members' Consumer  
2 Commercial Activity Data and Consumer ID Data without complying  
3 with the California Consumer Privacy Act of 2018 section 1798.115(c);  
4 c. selling Plaintiffs' and Class members' Consumer Commercial Activity  
5 Data and Consumer ID Data without complying with the California  
6 Consumer Privacy Act of 2018 section 1798.115(d);  
7 d. collecting, selling, using and/or disclosing Plaintiffs' and Class  
8 members' Consumer Commercial Activity Data and Consumer ID Data  
9 in a manner highly offensive to a reasonable person;  
10 e. collecting, selling, using and/or disclosing Plaintiffs' and Class  
11 members' Consumer Commercial Activity Data and Consumer ID Data  
12 without appropriate notice and/or disclosures; and  
13 f. collecting, selling, using and/or disclosing Plaintiffs' and Class  
14 members' Consumer Commercial Activity Data and Consumer ID Data  
15 without their informed, voluntary, affirmative, and clear consent.

16 207. In collecting, selling, using and/or disclosing Plaintiffs' and Class members'  
17 Consumer Commercial Activity Data and Consumer ID Data, Defendants acted in  
18 reckless disregard of Plaintiffs' and Class members' privacy rights. Defendants knew or  
19 should have known that collecting, selling, using and/or disclosing Consumer  
20 Commercial Activity Data and Consumer ID Data, is highly offensive to a reasonable  
21 person in Plaintiffs' and Class members' position.

22 208. Defendants violated Plaintiffs' and Class members' right to privacy under  
23 the common law.

24 209. Defendants violated Plaintiffs' and Class members' right to privacy under  
25 the California Constitution, Article I, Section 1.

26 210. Defendants violated Plaintiffs' and Class members' right to privacy under  
27 the California Consumer Privacy Act of 2018 sections 1798.100(b), 1798.110(c), and  
28 1798.115(c) and (d).

1 211. As a direct and proximate result of Defendants’ unlawful invasions of  
2 privacy, Plaintiffs’ and Class members’ reasonable expectations of privacy were  
3 frustrated and defeated. Defendants’ unlawful invasions of privacy damaged Plaintiffs  
4 and Class members as set forth above, and they are entitled to appropriate relief.

5 **COUNT II**

6 **Violations of California’s Unfair Competition Law**

7 **California Business & Professions Code § 17200 et seq.**

8 **(Against all Defendants on behalf of all Classes)**

9 212. Plaintiffs reallege and incorporate by reference every allegation set forth in  
10 the preceding paragraphs as though alleged in this Count.

11 213. Section 17200 of the California Business & Professions Code (“UCL”)  
12 prohibits any “unlawful,” “unfair,” or “fraudulent” business practices.

13 214. Retail Defendants violated, and continue to violate, the “unlawful” and  
14 “unfair” prongs of the UCL by transmitting to and sharing with TRE the Consumer  
15 Commercial Activity Data and Consumer ID Data they collected from Plaintiffs and  
16 Class members without the consent or knowledge of Plaintiffs and Class members in  
17 violation of Plaintiffs’ and Class members’ right to privacy under the common law,  
18 California Constitution, Article I, Section 1, and the California Consumer Privacy Act of  
19 2018 sections 1798.100(b), 1798.110(c), and 1798.115(c) and (d).

20 215. Retail Defendants’ practice of transmitting to and sharing with TRE the  
21 Consumer Commercial Activity Data and Consumer ID Data they collected from  
22 Plaintiffs and Class members is and was immoral, unethical, oppressive, unscrupulous,  
23 unconscionable, and/or substantially injurious to Plaintiffs and Class members. Retail  
24 Defendants’ practice is and was also contrary to legislatively declared and public policy  
25 and the harm it caused to consumers outweighed its utility, if any.

26 216. TRE violated, and continues to violate, the “unlawful” and “unfair” prongs  
27 of the UCL by receiving from Retail Defendants the Consumer Commercial Activity Data  
28 and Consumer ID Data Retail Defendants collected from Plaintiffs and Class members

1 without the consent or knowledge of Plaintiffs and Class members in violation of  
2 Plaintiffs' and Class members' right to privacy under the common law, California  
3 Constitution, Article I, Section 1, and the California Consumer Privacy Act of 2018  
4 sections 1798.100(b), 1798.110(c), and 1798.115(c) and (d).

5 217. TRE's practice of receiving from Retail Defendants the Consumer  
6 Commercial Activity Data and Consumer ID Data Retail Defendants collected from  
7 Plaintiffs and Class members is and was immoral, unethical, oppressive, unscrupulous,  
8 unconscionable, and/or substantially injurious to Plaintiffs and Class members. TRE's  
9 practice is and was also contrary to legislatively declared and public policy and the harm  
10 it caused to consumers outweighed its utility, if any.

11 218. Retail Defendants and TRE violated, and continue to violate, the "unlawful"  
12 and "unfair" prongs of the UCL by using the Consumer Commercial Activity Data and  
13 Consumer ID Data Retail Defendants collected from Plaintiffs and Class members  
14 without the consent or knowledge of Plaintiffs and Class members in violation of  
15 Plaintiffs' and Class members' right to privacy under the common law, California  
16 Constitution, Article I, Section 1, and the California Consumer Privacy Act of 2018  
17 sections 1798.100(b), 1798.110(c), and 1798.115(c) and (d).

18 219. Retail Defendants' and TRE's practice of using the Consumer Commercial  
19 Activity Data and Consumer ID Data Retail Defendants collected from Plaintiffs and  
20 Class members is and was immoral, unethical, oppressive, unscrupulous, unconscionable,  
21 and/or substantially injurious to Plaintiffs and Class members. Retail Defendants' and  
22 TRE's practice is and was also contrary to legislatively declared and public policy and  
23 the harm it caused to consumers outweighed its utility, if any.

24 220. As a direct and proximate result of Retail Defendants' and TRE's unlawful  
25 and unfair conduct, Plaintiffs and Class members have had their privacy rights violated  
26 and lost money and property.

27 221. Retail Defendants' and TRE's conduct caused substantial injury to Plaintiffs  
28 and Class members. Accordingly, Plaintiffs seek an order enjoining Retail Defendants

1 and TRE from committing such unlawful and unfair business practices, and seek the full  
2 amount of money Plaintiffs and Class members paid for the purchased goods and/or  
3 restitutionary disgorgement of profits. Plaintiffs also seek attorneys' fees and costs under  
4 Cal. Code Civ. Proc. § 1021.5.

5 **COUNT III**

6 **Defamation per se – Private Figure & Matter of Private Concern**  
7 **(Against TRE on behalf of the National Defamation Sub-Class)**

8 222. Plaintiffs reallege and incorporate by reference every allegation set forth in  
9 the preceding paragraphs as though alleged in this Count.

10 223. This claim is brought on behalf of the Defamation Sub-Class only.

11 224. Defamation in the Age of Big-Data Analytics requires fresh analysis.  
12 Improperly, negligently, or maliciously analyzing data can harm vast numbers of people  
13 in today's commercial environment.

14 225. At all times relevant herein, TRE's purported business model has been to  
15 detect and identify consumers committing fraud or engaging in organized crime on behalf  
16 of its retail clients, including Retail Defendants, and to thwart the fraud or organized  
17 crime by preventing those consumers from making returns and exchanges.

18 226. At all times relevant herein, Retail Defendants knew and understood that  
19 TRE's purported business model has been to detect and identify consumers committing  
20 fraud or engaging in organized crime on behalf of its retail clients, including Retail  
21 Defendants, and to thwart the fraud or organized crime by preventing those consumers  
22 from making returns and exchanges.

23 227. At all times relevant herein, Retail Defendants understood and believed that  
24 consumers detected and identified by TRE, and prevented from making returns and  
25 exchanges by TRE, were committing fraud or engaging in organized crime.

26 228. TRE harmed Plaintiffs and Defamation Sub-Class members by  
27 communicating to Retail Defendants that Plaintiffs' and Defamation Sub-Class members'



1 attempted returns and exchanges were fraudulent and/or affiliated with organized crime  
2 and should therefore be denied.

3 229. Fraud is a crime in every State in the United States.

4 230. Organized crime is a federal crime punishable by the Racketeer Influenced  
5 and Corrupt Organizations Statute (18 U.S.C. §§ 1961-1968).

6 231. Retail Defendants reasonably understood the statements made to them by  
7 TRE about Plaintiffs and Defamation Sub-Class members to mean that Plaintiffs' and  
8 Defamation Sub-Class members' attempted returns and exchanges were fraudulent  
9 and/or an organized crime and that Plaintiffs and Defamation Sub-Class members were  
10 committing a crime.

11 232. Retail Defendants denied Plaintiffs' and Defamation Sub-Class members'  
12 attempted returns and exchanges because of the statements made by TRE.

13 233. TRE failed to use reasonable care to determine the truth or falsity of the  
14 statements it made to Retail Defendants about Plaintiffs and Defamation Sub-Class  
15 members.

16 234. TRE failed to determine or even inquire about the reason for every single  
17 return and exchange.

18 235. TRE's failure to determine, or even inquire, about the reasons for returns  
19 and exchanges is a failure to use reasonable care to determine the truth or falsity of the  
20 statements it made to Retail Defendants about Plaintiffs and Defamation Sub-Class  
21 members.

22 236. TRE's defamatory statements to Retail Defendants harmed Plaintiffs and  
23 Defamation Sub-Class members because Retail Defendants denied returns and exchanges  
24 to Plaintiffs and Defamation Sub-Class members based wholly upon TRE's defamatory  
25 statements.

1 **COUNT IV**

2 **Violation of Fair Credit Reporting Act**

3 **(Against TRE on behalf of all Classes)**

4 237. Plaintiffs reallege and incorporate by reference every allegation set forth in  
5 the preceding paragraphs as though alleged in this Count.

6 238. As individuals, Plaintiffs and Class members are consumers entitled to the  
7 protections of the FCRA. 15 U.S.C. § 1681a(c).

8 239. Under the FCRA, a “consumer reporting agency” is defined as “any person  
9 which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in  
10 whole or in part in the practice of assembling or evaluating consumer credit information  
11 or other information on consumers for the purpose of furnishing consumer reports to third  
12 parties . . . .” 15 U.S.C. § 1681a(f).

13 240. TRE is a consumer reporting agency under the FCRA because, for monetary  
14 fees, it regularly engages in the practice of assembling or evaluating information on  
15 consumers for the purpose of furnishing consumer reports to third parties.

16 241. Under the FCRA, a “consumer report” is defined as “any written, oral, or  
17 other communication of any information by a consumer reporting agency bearing on a  
18 consumer’s credit worthiness, credit standing, credit capacity, character, general  
19 reputation, personal characteristics, or mode of living which is used or expected to be  
20 used or collected in whole or in part for the purpose of serving as a factor in establishing  
21 the consumer’s eligibility for -- (A) credit or insurance to be used primarily for personal,  
22 family, or household purposes; (B) employment purposes; or (C) any other purpose  
23 authorized under section 1681b of this title.” 15 U.S.C. § 1681a(d)(1).

24 242. The communications by TRE to Retail Defendants were consumer reports  
25 under the FCRA because they were communications of information bearing on Plaintiffs’  
26 and Class members’ credit worthiness, credit standing, credit capacity, character, general  
27 reputation, personal characteristics, or mode of living used, or expected to be used or  
28

1 collected in whole or in part, for the purpose of serving as a factor in determining whether  
2 or not to permit returns and/or exchanges from consumers.

3 243. As a consumer reporting agency, TRE may only furnish consumer reports  
4 under the limited circumstances set forth in 15 U.S.C. § 1681b, “and no other.” 15 U.S.C.  
5 § 1681b(a). None of the purposes listed under 15 U.S.C. § 1681b permit consumer  
6 reporting agencies to furnish consumer reports for the purpose of instructing retail  
7 businesses to deny returns and/or exchanges. TRE violated § 1681b by furnishing  
8 consumer reports to Retail Defendants, as detailed above.

9 244. As a consumer reporting agency, the FCRA requires TRE to “maintain  
10 reasonable procedures designed to . . . limit the furnishing of consumer reports to the  
11 purposes listed under section 1681b of this title.” 15 U.S.C. § 1681e(a). None of the  
12 purposes listed under 15 U.S.C. § 1681b permit consumer reporting agencies to furnish  
13 consumer reports for the purpose of instructing retail businesses to deny returns and/or  
14 exchanges. TRE, therefore, violated § 1681e(a) by furnishing consumer reports to Retail  
15 Defendants, as detailed above.

16 245. “No consumer reporting agency may furnish a consumer report to any  
17 person if it has reasonable grounds for believing that the consumer report will not be used  
18 for a purpose listed in section 1681b of this title.” 15 U.S.C. § 1681e(a). None of the  
19 purposes listed under 15 U.S.C. § 1681b permit consumer reports to be used for the  
20 purpose of permitting retail businesses to deny returns and/or exchanges. TRE knew the  
21 purpose for which Retail Defendants were using the consumer reports and knew Retail  
22 Defendants’ purpose was not a purpose listed in section 1681b. TRE, therefore, further  
23 violated § 1681e(a) by furnishing consumer reports to Retail Defendants, as detailed  
24 above.

25 246. TRE acted willfully because it knew or should have known about its legal  
26 obligations under the FCRA. These obligations are well established in the plain language  
27 of the FCRA and in the promulgations of the Federal Trade Commission. TRE obtained,  
28 or had available, these and other substantial written materials that apprised it of its duties

1 under the FCRA. Any reasonable consumer reporting agency knows or should know  
2 about these requirements. Despite knowing of these legal obligations, TRE acted  
3 consciously in breaching known duties and depriving Plaintiffs and Class members of  
4 their rights under the FCRA.

5 247. Plaintiffs and Class members have been damaged by TRE’s willful failure  
6 to comply with the FCRA. Therefore, Plaintiffs and Class members are entitled to recover  
7 “any actual damages sustained by the consumer . . . or damages of not less than \$100 and  
8 not more than \$1,000.” 15 U.S.C. § 1681n(a)(1)(A).

9 248. Plaintiffs and Class members are also entitled to punitive damages, costs of  
10 the action, and reasonable attorneys’ fees. 15 U.S.C. § 1681n(a)(2),(3).

## 11 **COUNT V**

### 12 **Unjust Enrichment**

#### 13 **(Against all Defendants on behalf of all Classes)**

14 249. Plaintiffs reallege and incorporate by reference every allegation set forth in  
15 the preceding paragraphs as though alleged in this Count.

16 250. Defendants have been unjustly enriched by unlawfully sharing, receiving  
17 and using Consumer Commercial Activity Data and Consumer ID Data Retail Defendants  
18 collected from Plaintiffs and Class members without the consent or knowledge of  
19 Plaintiffs and Class members.

20 251. Plaintiffs and Class members would not have purchased merchandise from  
21 Retail Defendants had they known their Consumer Commercial Activity Data and  
22 Consumer ID Data was being shared, received and used by Defendants in the manner  
23 described herein.

24 252. Plaintiffs and Class members would not have paid as much for merchandise  
25 from Retail Defendants had they known their Consumer Commercial Activity Data and  
26 Consumer ID Data was being shared, received and used by Defendants in the manner  
27 described herein.

28



1 for example, Defendant Retailers sharing the personal information outlined above in an  
2 unsecured, unrestricted manner with TRE to create consumer reports and generate a  
3 “risk score” that TRE then shared with other Defendant Retailers alongside other  
4 personal information. This widespread, unauthorized dissemination of Plaintiffs’ and  
5 Class members’ personal information is exactly what the CCPA is intended to make  
6 actionable.

7 260. In accordance with Civil Code section 1798.150(b), prior to the filing of  
8 this amended complaint, Plaintiffs’ counsel served Defendants with notice of these  
9 CCPA violations by certified mail, return receipt requested.

10 261. On behalf of Class members, Plaintiffs seek injunctive relief in the form of  
11 an order enjoining Defendants from continuing to violate the CCPA. If Defendants fail  
12 to respond to Plaintiffs’ notice letter or agree to rectify the violations detailed above  
13 within 30 days of the date of written notice, Plaintiffs also will seek leave to amend this  
14 complaint to assert claims for actual, punitive, and statutory damages, restitution,  
15 attorneys’ fees and costs, and any other relief the Court deems proper as a result of  
16 Defendants’ CCPA violations.

### 17 **PRAYER FOR RELIEF**

18 Plaintiffs, individually and on behalf of the Classes, respectfully request that the  
19 Court order relief enter judgment in their favor and against Defendants as follows:

- 20 A. An order certifying Plaintiffs’ proposed Classes and appointing Plaintiffs  
21 and Plaintiffs’ counsel to represent the Classes;
- 22 B. An order that Defendants are permanently enjoined from their improper  
23 conduct and practices as alleged;
- 24 C. A judgment awarding Plaintiffs and Class members appropriate monetary  
25 relief, including actual and statutory damages, restitution, and disgorgement;
- 26 D. An order that Defendants pay the costs involved in notifying the Class  
27 members about the judgment and administering the claims process;
- 28 E. Pre-judgment and post-judgment interest;

1 F. Attorneys' fees, expenses, and the costs of this action; and

2 G. All other and further relief as this Court deems necessary, just, and proper.

3 **JURY DEMAND**

4 Plaintiffs demand a trial by jury on all issues so triable.

5  
6 DATED: August 3, 2020

Respectfully submitted,

7  
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