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12 Attorneys for Plaintiffs

14 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 15 COUNTY OF LOS ANGELES

17 MISTY D. JONES, an individual;
 ROBERT LIPTON, an individual; ELLIOT
 18 IVINS, an individual; REBECCA LIEN, an
 individual; and RENEE ALICE
 19 WATROBA, an individual, on behalf of
 themselves and all others similarly situated,

20 Plaintiffs,

21 v.

22 MASTERCARD INTERNATIONAL
 23 INCORPORATED, a corporation; and
 DOES 1 through 100,

24 Defendants.

No. ~~23STCV28742~~

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 COMPLAINT

2 Plaintiffs Misty D. Jones, Robert Lipton, Elliot Ivins, Rebecca Lien, and Renee Alice
3 Watroba, by and through their undersigned counsel, on their own behalf and on behalf of all other
4 persons similarly situated (residents of California only) (collectively, “Plaintiffs”), sue Mastercard
5 International Incorporated (“Mastercard”) and Does 1 through 100 (“Doe Defendants”)
6 (Mastercard and Doe Defendants are collectively referred to herein as the “Defendants”) and for
7 this Complaint, allege upon information and belief, and based on the investigation to date of their
8 counsel, as follows:

9 INTRODUCTION

10 1. This is a class action brought for the benefit and protection of Plaintiffs, and all other
11 similarly situated consumers who are residents of California and who have accessed and used
12 “mastercard.us” (the “Website”).

13 2. By way of this action, Plaintiffs, and all others similarly situated, seek statutory
14 damages available as a result of Defendants’ violation of California Civil Code section 1670.8, as
15 well as public injunctive relief to enjoin ongoing violations of said statutory provisions.

16 3. Because of the current power of the internet and social media platforms to publicize
17 a company’s offerings of goods or services—and the potential harm to corporate interests when
18 negative consumer statements “go viral”—Defendants have a significant incentive to minimize the
19 negative publicity they receive, including in the form of negative online reviews and comments.
20 Some companies have gone so far as to attempt to prohibit customers and potential customers from
21 making negative statements about the goods or services they offer, to the detriment of consumers,
22 potential consumers, and the public of the State of California. Fortunately, California Civil Code
23 section 1670.8 was enacted to protect the right of California consumers to voice their opinions,
24 observations, and experiences about the products and services delivered or offered to California
25 consumers, as well as the citizens of the State of California. The California Legislature reasonably
26 and correctly determined that such freedom is important to keep the public informed and keep large
27 corporations honest about the quality of the goods or services they offer to consumers.

28 4. Section 1670.8(a) provides as follows: “(1) A contract or proposed contract for

1 the sale or lease of consumer goods or services **may not include a provision waiving the**
2 **consumer’s right to make any statement** regarding the seller or lessor or its employees or agents,
3 or concerning the goods or services” and **“(2) It shall be unlawful to threaten or seek to enforce**
4 **a provision made unlawful under this section, or to otherwise penalize a consumer for making**
5 **any statement protected under this section.”** Section 1670.8’s protections are so important that
6 the statute expressly provides that **“any waiver of the provisions of this section is contrary to**
7 **public policy, and is void and unenforceable.”**

8 5. In order to use and benefit from the Website, Website visitors, or users, are informed
9 they must “accept and agree” to Defendants’ U.S. Terms of Use (“Terms”). In fact, Defendants
10 assert that simply by accessing and using the Website, users accept and agree to the Terms—
11 regardless of whether users are simply visiting the Website or are actual purchasers or registered
12 members of the Website. The Terms provide, “[b]y accessing and using the Mastercard Site, you
13 accept and agree to the following terms of use . . . without limitation or qualification. If you do not
14 agree with these Terms of Use, please do not use the Mastercard Site.”

15 6. While conducting substantial business with California consumers, the Terms
16 Defendants impose upon their customers and prospective customers clearly violate Section 1670.8.
17 Pursuant to the Terms that Defendants impose upon their customers for the privilege of accessing
18 the goods and/or services offered and promoted on the Website, Defendants require users to agree
19 they will not use Defendants’ Website to “portray Mastercard, or its products or services in a false,
20 misleading, derogatory, or otherwise offensive matter[sic]” The Terms further threaten visitors
21 or users of the Website that Mastercard retains the right and sole discretion to deny access to the
22 Website to anyone for violating any of these Terms.

23 7. Defendants’ conduct is unlawful, including among other reasons, because it is aimed
24 to stifle California consumers’ right to free speech, and the right of the California public to hear
25 lawful discourse. Defendants’ strong-arm tactics to silence injured parties were and continue to be
26 intentionally exercised to protect Defendants’ self-promoting public image for commercial and
27 other benefits. Defendants’ unlawful business practices, purposefully designed to maintain and
28 increase their consumers and prop up their stock price, all while denying public, consumers, and

1 potential consumers accurate information so that they may make informed decisions as consumers.

2 8. By way of these provisions, Defendants seek to have users waive their right as
3 consumers to make negative statements regarding Defendants, or their product and service
4 offerings. These unlawful restrictions—imposed by Defendants against their own customers and
5 prospective customers—is an important component of Defendants’ business strategy, which relies
6 upon the popularity of their product offerings nationwide to generate significant revenues and
7 profits. But Defendants’ efforts to silence their customers and prospective customers is clearly
8 prohibited by California law, thereby subjecting Defendants to significant penalties, as described
9 herein.

10 **JURISDICTION AND VENUE**

11 9. This Court has jurisdiction over the claims and causes of action asserted herein
12 because such claims arise solely and specifically out of Defendants’ unlawful practices within the
13 State of California, and relate to at least one statute—California Civil Code section 1670.8—that
14 was designed to protect California’s citizens, the application of which is exclusively a matter for
15 the courts of this State.

16 10. Venue is proper in this Court because: Defendants transact business in California
17 and in the County of Los Angeles based on Plaintiffs’ use of the Website in this County; Defendants
18 have committed unlawful acts in the County by and through the Website and associated business
19 transactions within the County; and a substantial part of the events giving rise to the claims alleged
20 herein occurred in this County, where at least one of the Plaintiffs resides.

21 **THE PARTIES**

22 11. At all relevant times, Plaintiff Misty D. Jones was and has been a citizen of the State
23 of California and a resident of Los Angeles. Jones is an individual who accessed and used the
24 Website within the applicable limitations period in Los Angeles County in the State of California.

25 12. At all relevant times, Plaintiff Robert Lipton was and has been a citizen of the State
26 of California and a resident of Los Angeles. Lipton is an individual who accessed and used the
27 Website within the applicable limitations period in Los Angeles County in the State of California

28 13. At all relevant times, Plaintiff Elliot Ivins was and has been a citizen of the State of

1 California and a resident of Los Angeles. Ivins is an individual who accessed and used the Website
2 within the applicable limitations period in Los Angeles County in the State of California.

3 14. At all relevant times, Plaintiff Rebecca Lien was and has been a citizen of the State
4 of California and a resident of Los Angeles. Lien is an individual who accessed and used the
5 Website within the applicable limitations period in Los Angeles County in the State of California.

6 15. At all relevant times, Plaintiff Renee Alice Watroba was and has been a citizen of
7 the State of California. Watroba is an individual who accessed and used the Website within the
8 applicable limitations period in the State of California.

9 16. Defendant Mastercard is an entity that transacts business in the state of California
10 with California citizens. Mastercard develops, markets, and sells a variety of financial goods or
11 services. Defendant Mastercard operates in California and generates sales through the Website.
12 Upon information and belief, Mastercard is the second-largest payment processing corporation in
13 the world.

14 17. The true names and/or capacities, whether individual, corporate, partnership,
15 associate, governmental, or otherwise, of the Doe Defendants, inclusive, and each of them, are
16 unknown to Plaintiffs at this time, who therefore sues said Doe Defendants by such fictitious names.
17 Plaintiffs are informed and believe, and thereon allege, that each defendant designated herein as a
18 Doe Defendant caused injuries and damages proximately thereby to Plaintiffs as hereafter alleged,
19 and that each Doe Defendant is liable to Plaintiffs for the acts and omissions alleged herein below,
20 and the resulting injuries to Plaintiffs, and damages sustained by Plaintiffs. Plaintiffs will amend
21 this Complaint to allege the true names and capacities of said Doe Defendants when that same is
22 ascertained.

23 **FACTS COMMON TO ALL CLASS MEMBERS**

24 18. At all relevant times, Defendants were and currently are in the business of
25 advertising, promoting, marketing, and selling consumer financial products or services through the
26 Website, which Website is targeted to, and accessible by, the citizenry of California.

27 19. Defendants have sold and continue to sell services to millions of consumers through
28 their Website. Upon information and belief, there are more than 250 million Mastercard credit

1 cards in use in the United States.

2 20. Defendants are well-aware that their public image is vital to maintaining and gaining
3 customers. If the public sees content posted by users that may be insulting to Defendants, and/or
4 any of their products and services, then their current customers and/or prospective customers may
5 shift to a competitor, ultimately resulting in loss of business and loss of revenue.

6 21. Thus, in order to maintain a positive public image, Defendants have engaged in an
7 intentional business strategy to silence each and every customer or potential customer who visits
8 their Website by purporting to bind users to their Terms—immediately upon accessing the Website.

9 22. Specifically, Defendants’ Terms provide that by accessing and using the Website,
10 users accept and agree to the Terms—regardless of whether users are simply visiting the Website
11 or are actual purchasers or registered members of the Website.

12 23. The Terms require users to agree they will not use Defendants’ Website to “portray
13 Mastercard, or its products or services in a false, misleading, derogatory, or otherwise offensive
14 matter[sic]” The Terms further threaten visitors or users of the Website that Mastercard retains
15 the right and sole discretion to deny access to the Website to anyone for violating any of these
16 Terms.

17 24. In doing so, Defendants have and continue to engage in conduct, that violates
18 California Civil Code section 1670.8.

19 25. Each of the Plaintiffs specifically identified herein, and millions more similarly
20 situated persons in the State of California, have visited the Website—either as consumers or
21 potential consumers—and thus have ostensibly been subjected to the unlawful Terms.

22 **CLASS ACTION ALLEGATIONS**

23 26. Pursuant to California Code of Civil Procedure section 382, Plaintiffs bring this
24 class action on their own behalf and on behalf of all other similarly situated consumers in California.
25 The proposed class is defined as follows:

26 a. During the fullest period allowed by law, all persons residing in California who accessed
27 or used the Website (the “Class”).

28 27. Like Plaintiffs, all Class members are California residents who accessed or used the

1 Website and who were subject to the Terms that limit their right as consumers to make statements
2 regarding Defendants, their employees, or agents, and/or concerning the goods and/or services.

3 28. Excluded from the Class are assigned judges and members of their families within
4 the first degree of consanguinity; Defendants; and Defendants' subsidiaries, affiliates, officers, and
5 directors.

6 29. The requirements of Code of Civil Procedure section 382 are satisfied for the
7 proposed Class.

8 30. The proposed Class is so numerous that individual joinder of all the members is
9 impracticable because members of the Class number in the tens or hundreds of thousands. The
10 precise number of Class members and their identities are unknown to Plaintiffs at this time but are
11 objectively ascertainable and will be determined through appropriate discovery and other readily
12 available means.

13 31. Defendants possess objective evidence as to the identity of each Class member and,
14 to a reasonable degree of certainty, the harm suffered by each Class member, including without
15 limitation web traffic data evidencing visits to the Website sales receipts, phone numbers, names,
16 rewards accounts data, credit card data, customer service complaint forms/emails/date, and other
17 evidence which objectively identifies Class members.

18 32. Class members may be notified of the pendency of this action by mail, publication
19 and/or through the records of Defendants.

20 33. There are common questions of law and fact affecting Plaintiffs and Class members.
21 Common legal and factual questions include, but are not limited to:

22 a. Whether each imposition of Defendants' Terms upon members of the Class constitutes a
23 violation of the provisions of California Civil Code section 1670.8 and, if so, whether each such
24 violation is a "willful, intentional, or reckless" violation;

25 b. Whether Defendants' Terms are unlawful, contrary to public policy, void and/or
26 unenforceable;

27 c. Whether Class members are entitled to civil penalties; and

28 d. Whether, as a result of Defendants' misconduct alleged herein, Plaintiffs and Class

1 members are entitled to injunctive and/or public injunctive relief and, if so, the nature of such relief.

2 34. Plaintiffs' claims are typical of the claims of the proposed Class because the rights
3 of Plaintiffs and Class members were violated in the same manner by the same conduct.

4 35. Plaintiffs and Class members are all entitled to recover statutory penalties and other
5 relief arising out of Defendants' violations of statutory law alleged herein.

6 36. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

7 37. Plaintiffs' interests do not conflict with the interests of the Class they seek to
8 represent. Plaintiffs have retained counsel competent and experienced in prosecuting class actions,
9 and Plaintiffs intend to vigorously prosecute this action.

10 38. The class mechanism is superior to other available means for the fair and efficient
11 adjudication of the claims of Plaintiffs and Class members.

12 39. Given the relative value of statutory penalties available to any of the individual Class
13 members, individual litigation is not practicable.

14 40. Individual Class members will not wish to undertake the burden and expense of
15 individual cases.

16 41. In addition, individualized litigation increases the delay and expense to all parties
17 and multiplied the burden on the judicial system. Individualized litigation also presents the potential
18 for inconsistent or contradictory judgments.

19 42. In contrast, the class action device presents far fewer management difficulties and
20 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by
21 a single court.

22 43. Questions of law and fact common to all Class members predominate over any
23 questions affecting only individual Class members. Injuries sustained by Plaintiffs and Class
24 members flow, in each instance, from a common nucleus of operative facts as set forth above.

25 44. In each case, Defendants' actions caused harm to all Class members as a result of
26 such conduct. The resolution of these central issues will be the focus of the litigation and
27 predominate over any individual issues.

28 45. Proposed Class counsel possesses the knowledge, experience, reputation, ability,

1 skill, and resources to represent the Class and should be appointed lead counsel for the Class.

2 **COUNT I— VIOLATION OF CIVIL CODE SECTION 1670.8**

3 46. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 45 of their
4 Complaint. Plaintiffs assert this cause of action on behalf of themselves and all other similarly
5 situated persons residing in California who used or accessed the Website.

6 47. Defendants are in the business of marketing and selling financial products and
7 services to consumers.

8 48. Plaintiffs and Class members accessed or used the Website.

9 49. Pursuant to the Terms on the Website, Defendants told Plaintiffs and the Class
10 members that they cannot use the Website to “portray Mastercard, or its products or services in a
11 false, misleading, derogatory, or otherwise offensive matter[sic]” The Terms further threaten
12 visitors or users of the Website that Mastercard retains the right and sole discretion to deny access
13 to the Website to anyone for violating any of these Terms.

14 50. By simply accessing or using the Website, Defendants purport to have charged
15 Plaintiffs and Class members with having agreed to the Terms.

16 51. By way of this restriction, Defendants intentionally, willfully, or recklessly seek to
17 have Plaintiffs and the Class members waive their right as consumers to make statements regarding
18 Defendants, their employees, agents, and goods and/or services, which restriction is prohibited
19 under California Civil Code section 1670.8 and is contrary to public policy.

20 52. Defendants have repeatedly violated California Civil Code section 1670.8 in relation
21 to each of the Plaintiffs and Class members and their respective interactions with the Website.

22 53. Plaintiffs and Class members are also entitled to civil penalties for Defendants’
23 violations of Civil Code section 1670.8, as well as injunctive and/or public injunctive relief.

24 **PRAYERS FOR RELIEF**

25 **WHEREFORE**, Plaintiffs, on behalf of themselves and the putative Class members, pray
26 for judgment as follows:

27 a. Determining that this action is a proper class action and certifying the Class, as defined
28 herein;

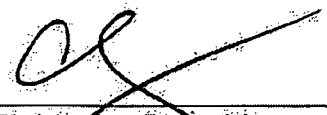
- 1 b. Appointing Plaintiffs as Class representatives;
- 2 c. Appointing the undersigned as Class counsel;
- 3 d. Finding Defendants liable to Plaintiffs and Class members for damages in such amount(s)
- 4 as the Court or Jury may determine;
- 5 e. Awarding statutorily provided damages to Plaintiffs and Class members as appropriate;
- 6 f. Awarding pre- and post-judgment interest;
- 7 g. Awarding injunctive relief, including public injunctive relief, as claimed herein or as the
- 8 Court may deem proper;
- 9 h. Awarding Plaintiffs and Class members attorney fees and all litigation costs, as allowed
- 10 by law; and
- 11 i. Awarding such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

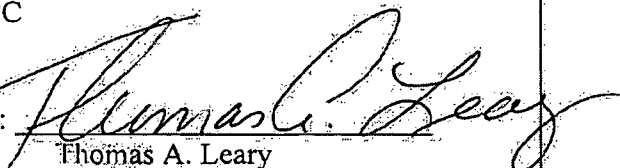
Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: November 21, 2023

SINGLETON SCHREIBER, LLP

By: 
 Christopher R. Rodriguez
 Attorneys for Plaintiffs

LAW OFFICES OF THOMAS LEARY,
APC

By: 
 Thomas A. Leary
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