

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

JAMES LUCAS SOUTHAM, individually)	
and as the representatives of a class of)	
similarly situated persons,)	
)	Case No.
Plaintiff,)	
)	Hon. Judge
v.)	
)	
RED WING SHOE COMPANY, INC.,)	
)	
Defendant.)	
)	

**DEFENDANT RED WING SHOE COMPANY'S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1441, et seq., Defendant Red Wing Shoe Company, Inc. (“Red Wing”), by and through its attorneys of record, hereby gives notice of removal of this action from the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida to the United States District Court for the Southern District of Florida. In support thereof, Red Wing states as follows:

I. THE ORIGINAL FEDERAL ACTION

1. On May 17, 2019, Plaintiff James Lucas Southam initiated this action in the United States District Court for the Southern District of Florida, Case No. 19-cv-61255 (the “Federal Action”). Plaintiff alleged a single violation of the Fair and Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. § 1681, et seq., stemming from a single receipt provided to Plaintiff on May 2, 2019. (See No. 19-cv-61255, Dkt. 1 ¶ 26.)

2. The Federal Action was assigned to Judge Rodney Smith on June 17, 2019. (See No. 19-cv-61255, Dkt. 9.)

3. On June 21, 2019, Red Wing filed an *Unopposed* Motion to Stay Proceedings

Pending the *Muransky v. Godiva* Appeal. (See No. 19-cv-61255, Dkt. 10.) Plaintiff *did not oppose* a stay of the Federal Action pending the resolution of the *Muransky* appeal in the Eleventh Circuit. (See *id.*)

4. On June 26, 2019, this Court granted Red Wing’s Motion, staying this case “pending final resolution of the *Muransky v. Godiva Chocolatier, Inc.* (No. 16-16486) appeal in the Eleventh Circuit.” (See No. 19-cv-61255, Dkt. 11.)

5. On October 4, 2019, the Eleventh Circuit vacated the *Muransky* decision and determined to rehear the *Godiva* matter *en banc*. The appeal thus remains pending.

6. The Federal Action remains pending.

II. THE STATE COURT ACTION

7. On October 28, 2019, Plaintiff initiated this civil action against Red Wing in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida (the “State Court Action”). A copy of the Complaint is attached hereto as **Exhibit 1**.

8. The State Court Action is identical to the Federal Action, alleging a single FACTA violation stemming from a single receipt provided to Plaintiff on May 2, 2019. See Ex. 1 ¶ 27.

9. The State Court Action appears to be an attempted end-around this Court’s June 21, 2019 Order staying this case pending the resolution of the *Muransky* appeal.

10. Because the Federal Action and the State Court Action are identical cases alleging identical violations of FACTA stemming from the same underlying transaction, this matter should be assigned to Judge Smith and likewise stayed pending *Muransky*. This will avoid Plaintiff’s attempt to circumvent this Court’s Order and avoid the appearance of judge shopping.

11. By removing this matter, Red Wing expressly does not concede or imply that there is subject matter jurisdiction in this case in light of the continuing uncertainty relating to whether

Plaintiff has Article III standing. This is, in fact, the very issue before the *en banc* panel of the Eleventh Circuit in the *Muransky* appeal—whether litigants asserting a technical violation of FACTA, absent any other injury, have Article III standing. *See Muransky*, No. 16-16486 (Order of Oct. 25, 2019, putting forth the standalone issue presented: “Does Dr. Muransky have Article III standing to bring this lawsuit.”). And this is exactly why the Federal Action is stayed.

12. Red Wing does not believe that Plaintiff has Article III standing. However, if Red Wing does not timely remove this case, it risks losing the opportunity to do so regardless of the *Muransky* decision, given that more than 30 days will elapse from service. *See* 28 U.S.C. § 1446(b).¹ The Eleventh Circuit will finally decide the standing issue in short order. Upon removal, Red Wing respectfully requests that this Court stay this matter pending *Muransky* such that the Parties and this Court can adequately determine whether Article III standing exists in this case.

13. It bears noting, however, that Plaintiff already put forth to this Court that he believes Article III standing exists, filing the Federal Action in federal court and contending in the Complaint that he suffered “multiple concrete harms.” (*See* No. 19-cv-61255, Dkt. 1 ¶ 3 n.1.)

III. REMOVAL PURSUANT TO 28 U.S.C. § 1331

14. Pursuant to 28 U.S.C. § 1446(a), copy of all process, pleadings, and orders that have been filed and served in the State Court Action are attached hereto as **Exhibits 1 and 2**.

15. The Summons and Complaint were served on Red Wing on December 16, 2019. (*See Exhibit 3*.) This Notice of Removal is therefore timely filed pursuant to 28 U.S.C. § 1446(b)(1).

¹ Though the *Muransky* Court initially found standing, that opinion has been withdrawn by virtue of the Eleventh Circuit granting the petition for hearing *en banc*. *See Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175, 1180 (11th Cir.), *reh’g en banc granted, opinion vacated*, 939 F.3d 1278 (11th Cir. 2019). Red Wing thus cannot rely on this decision for purposes of removal.

16. Pursuant to 28 U.S.C. § 1446(d), Red Wing will file a copy of this Notice of Removal with the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida. Red Wing will also serve Plaintiff with a copy of this Notice of Removal, a true and correct copy of which is attached hereto as **Exhibit 4**.

17. Pursuant to 28 U.S.C. § 89(c), venue for this case is proper in the Southern District of Florida.

18. Under 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

19. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 because it involves a federal question. *See* 28 U.S.C. § 1331 (providing that district courts shall have original jurisdiction over all civil actions arising under the “Constitution, laws, or treaties of the United States”).

20. Here, this Court has jurisdiction over the State Court Action because the only Count in the Complaint alleges a cause of action under the FACTA, a federal statute.

21. Pursuant to 28 U.S.C. § 1446(b)(2)(A), all Defendants consent to the removal of this civil action to this Court.

22. Pursuant to 28 U.S.C. § 1441 and 1446, removal of the State Court Action to this Court is appropriate.

WHEREFORE, Defendant Red Wing Shoe Company, Inc. hereby removes this civil action to this Court.

DATED: January 6, 2020

Respectfully submitted

/s/ Jordan S. Kosches

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CERTIFICATE OF SERVICE

I certify that a copy of the Notice of Removal, was served via electronic mail and U.S. First Class mail, postage prepaid, on January 6, 2020, upon all counsel of record at the following address:

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EXHIBIT 1

Filing # 97994376 E-Filed 10/28/2019 05:34:33 PM

IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

19-22284

JAMES LUCAS SOUTHAM, *individually, and on behalf of other similarly situated individuals,*

Plaintiff,

CLASS REPRESENTATION

v.

JURY TRIAL DEMANDED

RED WING SHOE COMPANY, INC.,
a Minnesota corporation,

Defendant.

CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (FACTA)

Plaintiff, James Lucas Southam ("Plaintiff"), on behalf of himself and others similarly situated individuals, sues Defendant, Red Wing Shoe Company, Inc. ("Defendant"), and alleges the following upon information and belief, and his own personal knowledge.

I. NATURE OF THE CASE

1. This action arises from Defendant's violation of the Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, ("FCRA"), which requires persons that accept debit cards or credit cards for the transaction of business to truncate certain card number information on printed receipts provided to consumers. Despite the clear language of the statute, Defendant knowingly or recklessly failed to comply with FCRA by printing ten (10) digits of its customers' credit card and/or debit card numbers on transaction receipts. As a result of Defendant's unlawful conduct, Plaintiff and the Class who conducted business with Defendant during the time frame relevant to this action have suffered a violation of their substantive rights under § 1681c(g), an invasion of their privacy, breach of their

confidence in the safe handling of their account information, exposure to an elevated risk of identity theft, and were unfairly burdened with the need to keep or destroy the receipt, to prevent further disclosure of their account information. Accordingly, Plaintiff and the Class are entitled to an award of statutory damages and other relief as further detailed herein.

II. JURISDICTION AND VENUE

2. This Court has original jurisdiction pursuant to Fla. Stat. § 26.012 because the amount for the proposed class action exceeds \$15,000.

3. This Court has personal jurisdiction over Defendant pursuant to Fla. Stat. §48.193(1)(a)(l) because Defendant conducts business in this State.

4. Venue is proper in Broward County, pursuant to Fla. Stat. §§ 47.011, 47.051 because Defendant's unlawful conduct occurred here, and Defendant conducts business in Broward County.

III. PARTIES

5. Plaintiff is a natural person who, at all times relevant to this action, was and is a citizen of the state of Florida.

6. Defendant is a Minnesota corporation whose principal address is 314 Main Street, Red Wing, MN 55066, and whose registered agent for service of process is CT Corporation System, Inc., 1010 Dale St. N., St. Paul, MN 55117.

7. Defendant is a well-known retailer of men's and women's footwear that owns and operates more than retail 100 stores located throughout the United States. There are more than twenty Red Wing Shoes® branded stores in Florida.

IV. FACTUAL ALLEGATIONS

A. Background of FACTA

8. Identity theft is a serious issue affecting both consumers and businesses. As of 2018, a Harris Poll revealed that nearly 60 million Americans have been affected by identity theft.¹ There were a record high 16.7 million victims of identity fraud in 2017 alone, and account takeovers (when a thief opens a credit card account or other financial account using a victim's name and other stolen information) tripled in 2017 from 2016, causing \$5.1 billion in losses.²

9. Congress enacted FACTA to prevent identity theft and related harm. *See* Pub. L. No. 108-159 (December 4, 2003) (“An Act . . . to prevent identity theft . . . and for other purposes.”)

10. Upon signing FACTA into law, President George W. Bush remarked that “[s]lips of paper that most people throw away should not hold the key to their savings and financial secrets.” 39 Weekly Comp. Pres. Doc. 1746, 1757 (Dec. 4, 2003). President Bush added that the government, through FACTA, was “act[ing] to protect individual privacy.” *Id.*

11. One such FACTA provision was specifically designed to thwart identity thieves' ability to gain sensitive information regarding a consumer's credit or bank account from a receipt provided to the consumer during a point of sale transaction, which, through any number of ways, could fall into the hands of someone other than the consumer.

12. Codified at 15 U.S.C. § 1681c(g), this provision states the following:

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.

¹ Source: <https://www.lifelock.com/learn-identity-theft-resources-how-common-is-identity-theft.html> (Last viewed: October 11, 2019).

² Source: <https://www.iii.org/fact-statistic/facts-statistics-identity-theft-and-cybercrime> (Last viewed: October 11, 2019).

15 U.S.C. § 1681c(g) (the “Receipt Provision”).

13. After enactment, FACTA provided three (3) years in which to comply with its requirements, mandating full compliance with its provisions no later than December 4, 2006.

14. The requirement was widely publicized among retailers and the FTC. For example, on March 6, 2003, in response to earlier state legislation enacting similar truncation requirements, then-CEO of Visa USA, Carl Pascarella, explained that, “Today, I am proud to announce an additional measure to combat identity theft and protect consumers. Our new receipt truncation policy will soon limit cardholder information on receipts to the last four digits of their accounts. The card’s expiration date will be eliminated from receipts altogether . . . The first phase of this new policy goes into effect July 1, 2003 for all new terminals.”³ Within 24 hours, MasterCard and American Express announced they were imposing similar requirements.

15. Card-issuing organizations proceeded to require compliance with FACTA by contract, in advance of FACTA’s mandatory compliance date. For example, the publication, “Rules for Visa Merchants,” which is distributed to and binding upon all merchants that accept Visa cards, expressly requires that “only the last four digits of an account number should be printed on the customer’s copy of the receipt” and “the expiration date should not appear at all.”⁴

16. Because a handful of large retailers did not comply with their contractual obligations to the card companies and the straightforward requirements of FACTA, Congress passed The Credit and Debit Card Receipt Clarification Act of 2007 to make temporary changes

³ *Visa USA Announces Account Truncation Initiative to Protect Consumers from ID Theft*, PR NEWSWIRE (Mar 06, 2003) <https://www.finextra.com/newsarticle/8206/visa-to-hide-card-numbers-in-bid-to-cut-identity-> (Last viewed: October 11, 2019).

⁴ *Rules for Visa Merchants*, VISA (Sept. 1, 2007), http://www.runtogold.com/images/rules_for_visa_merchants.pdf (Last viewed: October 11, 2019).

to the definition of willful noncompliance with respect to violations involving the printing of an expiration date on certain credit and debit card receipts before the date of the enactment of this Act.⁵ Importantly, the Clarification Act reaffirmed Congress's belief that "proper truncation" of the account number on the receipt (*i.e.* masking all but the last five digits) protects cardholders from identity theft or credit card fraud.

17. Accordingly, card processing companies continued to alert their merchant clients, including Defendant, of FACTA's requirements. According to a Visa Best Practice Alert in 2010:

Some countries already have laws mandating PAN truncation and the suppression of expiration dates on cardholder receipts. For example, the United States Fair and Accurate Credit Transactions Act (FACTA) of 2006 prohibits merchants from printing more than the last five digits of the PAN or the card expiration date on any cardholder receipt. (Please visit <http://www.ftc.gov/os/statutes/fcrajump.shtml> for more information on the FACTA.) To reinforce its commitment to protecting consumers, merchants, and the overall payment system, Visa is pursuing a global security objective that will enable merchants to eliminate the storage of full PAN and expiration date information from their payment systems when not needed for specific business reasons. To ensure consistency in PAN truncation methods, Visa has developed a list of best practices to be used until any new global rules go into effect.

See Exhibit A, Visa Best Practices Alert.

18. As noted above, the processing companies have required that credit card or debit card expiration dates not be shown since 2003 and still require it. For example, American Express requires:

Pursuant to Applicable Law, truncate the Card Number and do not print the Card's Expiration Date on the copies of Charge Records delivered to Card Members. Truncated Card Number digits must be masked with replacement characters such as "x," "*", or "#," and not blank spaces or numbers.

⁵ H.R. 4008 (110th): *Credit and Debit Card Receipt Clarification Act of 2007*, GOV TRACK, <https://www.govtrack.us/congress/bills/110/hr4008/tcxt> (Last viewed: October 11, 2019).

See Exhibit B, American Express Merchant Requirements.

19. Similarly, MasterCard required in a section titled Primary Account Number (PAN)

truncation and Expiration Date Omission:

A Transaction receipt generated by an electronic POI Terminal, whether attended or unattended, must not include the Card expiration date. In addition, a Transaction receipt generated for a Cardholder by an electronic POI Terminal, whether attended or unattended, must reflect only the last four digits of the primary account number (PAN). All preceding digits of the PAN must be replaced with fill characters, such as "X," "*", or "#," that are neither blank spaces nor numeric characters.

See Exhibit C, Mastercard Acceptance Procedures.

20. According to data from the Federal Trade Commission's 2018 Consumer Sentinel Network Data Book, Florida ranks No. 1 for the highest per capita rate of reported fraud and other types of complaints.⁶ For identity theft, Florida is ranked No. 4 in the country with a total of 37,797 complaints.⁷ Also, some of the top metro areas for identity theft are in Florida, according to the report. The fifth highest rate of identity theft in the United States takes place in the Miami-Fort Lauderdale-West Palm Beach metropolitan area with 280 reports per 100,000 people.⁸

21. So problematic is the crime of identity theft that the three main credit reporting agencies, Experian, Equifax, and Transunion, joined to set-up a free website (<http://www.annualcreditreport.com>) in order to comply with FACTA requirements and to provide the citizens of this country with a means of monitoring their credit reports for possible identity theft.

⁶ Source: https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf (Last viewed: July 12, 2019).

⁷ *Id.*

⁸ *Id.*

B. Defendant's Prior Knowledge of FACTA

22. FACTA prohibits the printing of more than the last five (5) digits of the card number to protect persons against the heightened risk of identity theft caused by memorializing additional segments of the card number on the receipt.

23. Defendant is well aware of its FACTA obligations. In 2012, Defendant was sued for violating FACTA in the *very same way* as described herein: for printing the first six (6) and the last four (4) digits of the plaintiff's credit card number. *See Fouks v. Red Wing Shoe Company, Inc.*, No. 0:12-cv-02160-JNE-FLN (D. Minn. Filed Aug. 31, 2012).

24. Most of Defendant's business peers and competitors currently and diligently ensure their credit card and debit card receipt printing process remains in compliance with FACTA by consistently verifying their card machines and devices comply with the truncation requirement. Defendant could have readily done the same.

25. In addition to being informed not to print more than the last five (5) digits of credit or debit cards, Defendant was contractually prohibited from doing so. Defendant accepts credit cards and debit cards from all major issuers. As discussed, *supra*, these companies set forth requirements that merchants, including Defendant, must follow, including FACTA's redaction and truncation requirements.

26. Despite its awareness of its FACTA obligations, Defendant allowed Red Wing Shoes® branded stores to routinely print more than the last 5 digits of debit and credit card numbers on receipts provided to cardholders at the point of sale.

C. Plaintiff's Factual Allegations

27. On May 2, 2019, Plaintiff made a purchase using his personal credit card at the Red Wing Shoes® branded store located at 2766 N University Dr., Sunrise, FL 33322.

28. At that time, Plaintiff was provided an electronically printed receipt bearing the first six (6) and last four (4) digits of his credit card number.

29. In addition to bearing ten (10) digits of his credit card number, the receipt also, identifies what Plaintiff bought, the transaction date, time, and location, and Plaintiff's full name and telephone number.

30. As a direct result of the memorialization of the first six (6) and last four (4) digits of his credit card number on the receipt, Plaintiff took action to safeguard the receipt.

31. The disclosure of the first six (6) and last four (4) digits of Plaintiff's credit card number invaded his privacy by disclosing his private financial information to the store employee who provided the receipt.

32. The disclosure of the first six (6) and last four (4) digits of Plaintiff's his credit card account number breached Plaintiff's confidence in the proper handling of his account information, and exposed him to a heightened risk of identity theft.

D. Defendant's Misdeeds

33. Defendant controls the point-of-sale payment process of Red Wing Shoes® branded stores in the United States, including but not limited to the "Red Wing proprietary POS software" it requires the stores to use. *See Exhibit D, New Dealer Benefits.*

34. At all times relevant herein, Defendant was acting by and through its subsidiaries, employees, and/or agents, each of whom were acting within the course and scope of their agency or employment, and under the control of Defendant.

35. Defendant's proprietary POS software is programmed to electronically generate a receipt for customers at the point-of-sale.

36. Plaintiff is informed and believes Defendant and/or its proprietary POS system maintains a record of all payment transactions and associated customer information for the past three years, including duplicates of all payment receipts provided to customers.

37. Notwithstanding its knowledge of FACTA's requirements and the dangers its noncompliance imposes on consumers, Defendant allowed its proprietary POS system to issue, during the time frame relevant to this action, thousands of point-of-sale receipts containing the first six (6) and last four (4) digits of credit and debit card numbers.

38. By shirking its FACTA obligations on such a large scale, Defendant systematically violated Plaintiff's and the other putative Class members' privacy, breached their confidence, mishandled their personal account information, and exposed them to a heightened risk of identity theft. Defendant's conduct alleged herein resulted in the disclosure of Plaintiff's and the Class members' private financial information to persons who might find the receipts in the trash or elsewhere, as well as retail staff persons who handled the receipts.

39. Simply put, by allowing its proprietary POS software to print transaction receipts in violation of this long-standing, well-known federal statute, Defendant caused "an unjustifiably high risk of harm that [wa]s either known or so obvious that it should [have been] known" to Defendant. *Redman v. RadioShack Corp.*, 768 F.3d 622, 627 (7th Cir. 2014) (quoting *Farmer v. Brennan*, 511 U.S. 825, 836, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)).

V. CLASS REPRESENTATION ALLEGATIONS UNDER RULE 1.22(b)(3)

40. This action is brought as a Class Action under Florida Rule of Civil Procedure 1.220. Plaintiff proposes the following class, defined as follows, subject to modification by the Court as required:

All persons in the United States who, from May 19, 2017 through the date of the Court's order granting class certification, (i) engaged in one or

more transactions using a debit card or credit card at one or more Red Wing Shoes® branded stores in the United States, and (ii) at which time Defendant's point-of-sale system was programmed to generate a printed customer receipt displaying more than the last 5 digits of the credit or debit card number used in connection with such transaction(s).

41. Plaintiff falls within the class definition and is a member of the class. Excluded from the class is Defendant and any entities in which Defendant has a controlling interest, Defendant's agents and employees, Plaintiff's attorneys and their employees, the Judge to whom this action is assigned and any member of the Judge's staff and immediate family, and claims for personal injury, wrongful death, and/or emotional distress.

42. The class is ascertainable. It is defined based on objective criteria. Also, its members generally can be identified based in whole or in part on information within Defendant's possession, custody, or control, as well as from records of the entities that processed the card transactions at issue, and records of the banks that issued the credit/debit cards.

43. Defendant's proprietary POS software prints numerous credit and debit card receipts each day. The class period is more than two years. Thus, Defendant issued thousands of point-of-sale receipts containing the first six (6) and last four (4) digits of credit and debit card numbers. Accordingly, the class is sufficiently numerous such that individual joinder of all members is impractical. The disposition of the claims in a class action will provide substantial benefit to the parties and the Court by avoiding multiple identical suits.

44. While all Class Members have experienced actual harm as previously explained herein, this suit seeks only statutory damages on behalf of the class and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

45. This case presents questions of law and fact that are common among Plaintiff and the class, and predominate over any questions affecting only the individual members, including:

- a. Whether within the applicable statute of limitations, Defendant's proprietary POS software processed transactions involving a debit or credit card at a time when the software was programmed to print more than the last five digits of debit and credit card numbers on store customer transaction receipts;
- b. Whether Defendant violated FACTA;
- c. Whether Defendant's FACTA violation was with knowledge of the law or in reckless disregard of it; and
- d. Whether Defendant is liable for damages, and the extent of statutory damages for each such violation.

46. As a person who made a credit card purchase at a Red Wing Shoes® branded store during the relevant period, and was provided a printed receipt containing more than the last five (5) digits of his credit card number, Plaintiff's claim is typical of the class members' claims.

47. Plaintiff will fairly and adequately represent and protect the interests of the class in that Plaintiff has no interests antagonistic to any member of the class, and has engaged competent class counsel.

48. Defendant's defenses are and will be typical of and the same or identical for each of the members of the class and will be based on the same legal and factual theories.

49. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal law. The interest of Class Members in individually controlling the prosecution of separate claims against Defendant is minimal. The maximum statutory damages in an individual action for a

violation of this statute are relatively small, and the cost and effort needed to prosecute a claim to recover those damages is substantial.

COUNT I – VIOLATION OF 15 U.S.C. § 1681(c)(g)

50. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

51. 15 U.S.C. §1681c(g) states as follows:

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.

52. This section applies to any “device that electronically prints receipts” (“Devices”) at point of sale or transaction. 15 U.S.C. §1681c(g)(3).

53. Defendant requires the use of said Devices for point of sale transactions at each Red Wing Shoes® branded store, including the University Drive Red Wing Store.

54. On or before the date on which this complaint was filed, Plaintiff and members of the class were provided receipts at Red Wing Shoes® branded stores that violated the Receipt Provision.

55. At all times relevant to this action, Defendant was aware, or should have been aware, of the Receipt Provision.

56. Notwithstanding the three-year period to comply with FACTA and its accompanying provisions, nor the subsequent years since FACTA became effective, and despite having knowledge of the Receipt Provision and FACTA, Defendant violated the Receipt Provision with knowledge of the law or in reckless disregard of it.

57. By causing the printing more than the last five (5) digits of Plaintiff's credit card number on Plaintiff's and other customers' transaction receipts, Defendant caused Plaintiff and its other customers numerous injuries as described above.

58. As a result of Defendant's willful violations of the FCRA, Defendant is liable to Plaintiff and members of the class pursuant to 15 U.S.C. § 1681n for statutory damages, punitive damages, attorney's fees and costs.

* * *

WHEREFORE, Plaintiff James Lucas Southam respectfully requests that this Court enter judgment in his favor and the class, and against Defendant, as follows:

- a. Granting certification of the Class;
- b. Awarding statutory damages;
- c. Awarding punitive damages;
- d. Awarding attorneys' fees, litigation expenses and costs of suit, and;
- e. Awarding such other and further relief as the Court deems proper under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: October 28, 2019

JAMES LUCAS SOUTHAM, *individually, and on behalf of other similarly situated individuals*

s/Scott D. Owens
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“EXHIBIT A”



VISA BEST PRACTICES

14 July 2010

Visa Best Practices for Primary Account Number Storage and Truncation

Introduction

Due to misinterpretation of Visa dispute processing rules, some acquirers require their merchants to unnecessarily store full Primary Account Numbers (PANs)¹ for exception processing to resolve disputes. The unnecessary storage of full card PAN information by merchants has led to incidents of data compromise, theft or unintended disclosure during disposal. Additional confusion exists due to inconsistent dispute resolution practices by issuers and acquirers in use across different geographies, leading some merchants to conclude that PAN data must be retained for all transactions.

To clarify, Visa does not require merchants to store PANs, but does recommend that merchants rely on their acquirer / processor to manage this information on the merchants' behalf. Visa also recommends that acquirers / processors evolve their systems to provide merchants with a substitute transaction identifier to reference transaction details (in lieu of using PANs).

Some countries already have laws mandating PAN truncation and the suppression of expiration dates on cardholder receipts. For example, the United States Fair and Accurate Credit Transactions Act (FACTA) of 2006 prohibits merchants from printing more than the last five digits of the PAN or the card expiration date on any cardholder receipt. (Please visit <http://www.ftc.gov/os/statutes/fcrajump.shtml> for more information on the FACTA.)

To reinforce its commitment to protecting consumers, merchants, and the overall payment system, Visa is pursuing a global security objective that will enable merchants to eliminate the storage of full PAN and expiration date information from their payment systems when not needed for specific business reasons. To ensure consistency in PAN truncation methods, Visa has developed a list of best practices to be used until any new global rules go into effect.

¹ A PAN is the 16-digit number embossed, engraved, or imprinted on a payment card.

PAN Truncation Best Practice

In addition to required compliance with applicable card data security standards, including the Payment Card Industry Data Security Standard (PCI DSS), and Visa Best Practices for Tokenization of Cardholder Information, Visa strongly recommends that acquirers and merchants follow these best practices:

Domain	Best Practice
Cardholder Receipts	<p>1. Disguise or suppress all but the last four digits of the PAN, and suppress the full expiration date, on the cardholder's copy of a transaction receipt created at a point of sale (POS) terminal or an ATM (already required for merchants in the U.S., Europe, and CEMEA; Visa will apply this rule across all regions in the near future to provide global consistency).</p> <ul style="list-style-type: none"> • Example: XXXXXXXXXXXX1234 for the PAN and XXXX for the expiration date.
Merchant Receipts	<p>2. Disguise or suppress the PAN to display a maximum of the first six and last four digits, and suppress the full expiration date, on the merchant's copy of a transaction receipt created at a POS terminal. Note: Many merchants already follow this best practice by truncating the PAN to the last four digits on both the cardholder's and merchant's receipts.</p> <ul style="list-style-type: none"> • Example: 412345XXXXXX6789 or XXXXXXXXXXXX1234 for the PAN and XXXX for the expiration date.
Merchant Transaction Data Storage by Acquirers	<p>3. Acquirers should support their merchants by providing transaction data storage, thereby allowing merchants to retain only disguised or suppressed PANs on the merchant's copy of an electronically generated receipt and in their transaction records (unless the merchant has a business need to retain the full card PAN).</p>
Enhanced Acquirer Systems	<p>4. Acquirers should enhance their systems to provide merchants with substitute transaction identifiers (such as the Visa Transaction Identifier) or software tokens to facilitate retrieval of transaction data stored by the acquirer, in lieu of using the PAN as a reference for individual transactions.</p>
Merchant Communications from Acquirers	<p>5. Acquirers should disguise or suppress all PANs sent to merchants in any communications (e-mail, reports, etc.).</p> <p>Reminder: PCI DSS already requires a PAN transmitted over a public network to be rendered unreadable by encryption, truncation, or hashing.</p>

Conclusion

Due to legacy practices and a misinterpretation by issuers and acquirers of Visa dispute resolution processing rules, many merchants unnecessarily store and/or print full card PANs on cardholder and merchant receipts. Visa rules do not require merchants to store full card PANs after settlement, and do allow merchant receipts with truncated PAN information to be retained for copy retrieval and dispute fulfillment.

Visa encourages 1) merchants to only print truncated PANs on cardholder and merchant receipts; and 2) acquirers to not require merchants to store PANs, and to provide alternate means for merchants to reference individual transactions. Visa has developed best practices to increase data security without affecting merchants' ability to meet dispute resolution requirements. Acquirers and processors are strongly encouraged to support their merchants in following these best practices.

Respond With Comments by August 31, 2010

Visa would appreciate stakeholder feedback on these best practices by August 31, 2010. Please submit any comments via e-mail to inforisk@visa.com with "PAN Truncation Best Practices" in the subject line.

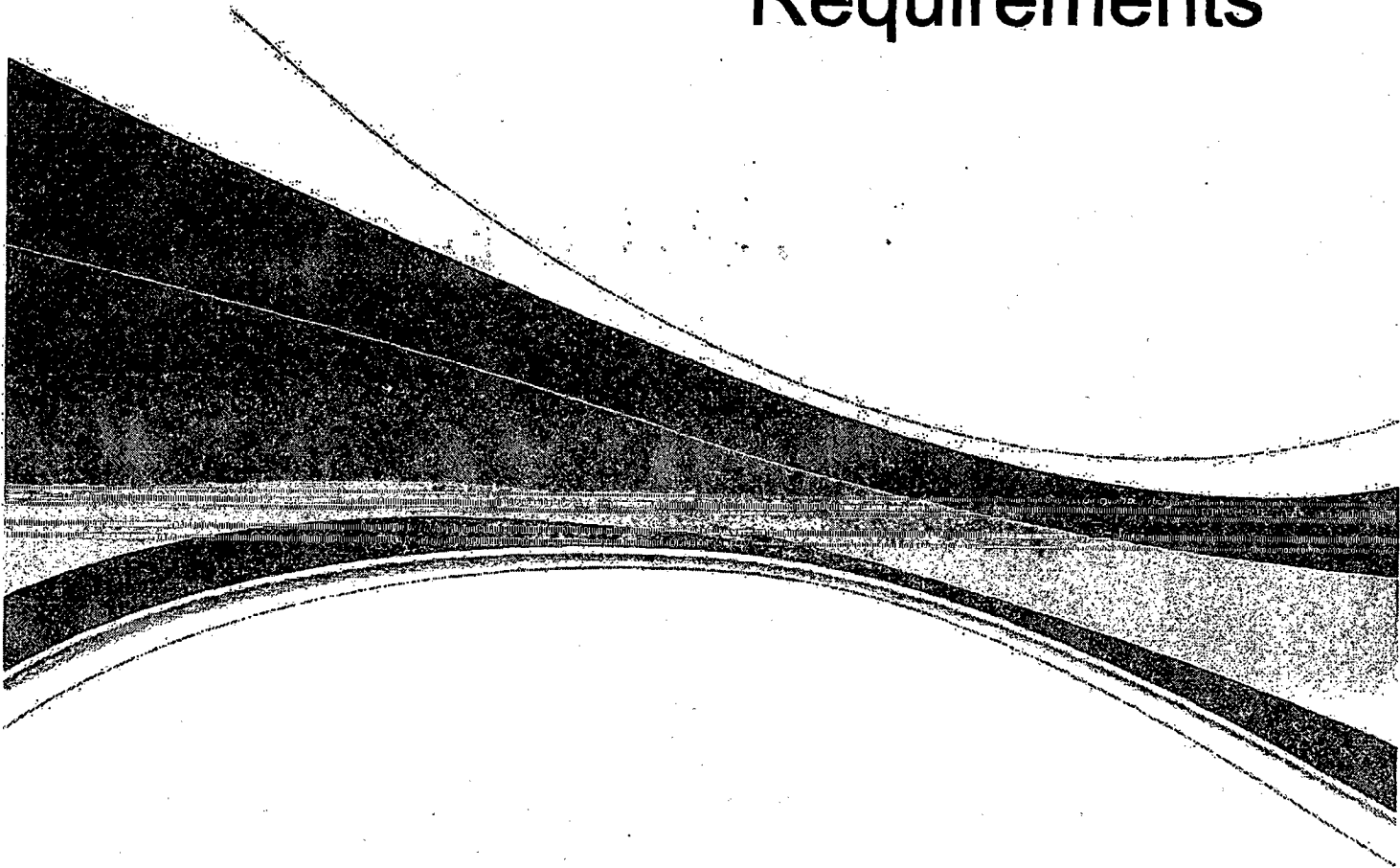
Related Documents

"Visa Best Practices for Data Field Encryption" – October 2009

"Visa Best Practices for Tokenization of Cardholder Information" – July 2010

“EXHIBIT B”

American Express
Merchant
Requirements



April 2014

American Express Merchant Requirements

For Internet Orders, Merchant must:

- o use any separate Merchant Numbers (Seller ID) established for Merchant for internet Orders in all Merchant's requests for Authorization and Submission of Charges,
- o provide American Express with at least one (1) month's prior written notice of any change in Merchant's internet address, and
- o comply with any additional requirements that American Express provides from time to time.

Additionally, if a Disputed Charge arises involving a Card Not Present Charge that is an Internet Electronic Delivery Charge, American Express may exercise Chargeback for the full amount of the Charge and place Merchant in any of its Chargeback programs. When providing Proof of Delivery, a signature from the Card Member or an authorized signer of the Card is not required.

4.5 Charge Records

Merchant must create a Charge Record for every Charge. For each Charge submitted electronically, Merchant must create an electronically reproducible Charge Record, and the Charge must comply with the Technical Specifications.

The Charge Record (and a copy of the customer's receipt) must disclose Merchant's return and/or cancellation policies. See Section 4.8, "Return and Cancellation Policies" for additional information.

If the Card Member wants to use different Cards for payment of a purchase, Merchant may create a separate Charge Record for each Card used. However, if the Card Member is using a single Card for payment of a purchase, Merchant shall not divide the purchase into more than one Charge, nor shall Merchant create more than one Charge Record.

For all Charge Records, Merchant must:

1. submit the Charge to American Express directly, or through Merchant's Processor, for payment.
2. retain the original Charge Record (as applicable) and all documents evidencing the Charge, or reproducible records thereof, for the timeframe listed in American Express' country-specific policies. See chapter 8, "Protecting Card Member Information" for additional information.
3. provide a copy of the Charge Record to the Card Member.

Merchant may be able to create more than one Charge Record if the purchase qualifies for a Delayed Delivery Charge. See Section 4.13, "Delayed Delivery Charges".

The retention time frame for Charge Records is twenty-four (24) months from the date Merchant submitted the corresponding Charge to American Express.

Pursuant to Applicable Law, truncate the Card Number and do not print the Card's Expiration Date on the copies of Charge Records delivered to Card Members. Truncated Card Number digits must be masked with replacement characters such as "x," "*", or "#," and not blank spaces or numbers.

“EXHIBIT C”

Primary Account Number (PAN) Truncation and Expiration Date Omission

A Transaction receipt generated by an electronic POI Terminal, whether attended or unattended, must not include the Card expiration date. In addition, a Transaction receipt generated for a Cardholder by an electronic POI Terminal, whether attended or unattended, must reflect only the last four digits of the primary account number (PAN). All preceding digits of the PAN must be replaced with fill characters, such as "X," "*", or "#," that are neither blank spaces nor numeric characters.

The Corporation strongly recommends that if an electronic POS Terminal generates Merchant copies of Transaction receipts, the Merchant copies should also reflect only the last four digits of the PAN, replacing all preceding digits with fill characters, such as "X," "*", or "#," that are neither blank spaces nor numeric characters.

NOTE

Additions and/or variations to this Rule appear in the "Canada Region" and "Europe Region" sections at the end of this chapter.

Returned Products and Canceled Services

A Merchant is required to accept the return of products or the cancellation of services unless specific disclosure was provided at the time of the Transaction.

Upon the return in full or in part of products or the cancellation of a service purchased with a Card, or if the Merchant agrees to a price adjustment on a purchase made with a Card, the following applies:

- If a MasterCard Card was used, the Merchant may not provide a price adjustment by cash, check, or any means other than a credit to the same Card Account used to make the purchase (or a Card reissued by the same Issuer to the same Cardholder). A cash or check refund is permitted for involuntary refunds by airlines or other Merchants only when required by law.
- If a Maestro Card was used, a Merchant may offer a price adjustment by means of a credit, provided the credit is posted to the same Card Account used to make the purchase (or a Card reissued by the same Issuer to the same Cardholder).

In a Card-present environment, the Merchant should ask the Cardholder for a Transaction receipt identifying (by means of a truncated PAN) the payment card used for the original purchase Transaction (but be aware that if a Contactless Payment Device was used, the PAN on a Card linked to the same Account may not match the PAN on the receipt). If the Card used to make the purchase is no longer available, the Merchant must act in accordance with its policy for adjustments, refunds, returns or the like.

“EXHIBIT D”



OWN A SHOE STORE: FREQUENTLY ASKED QUESTIONS

Overview (<http://www.redwingshoes.com/shoe-store-dealership-opportunity>)

What Can I Earn? (<http://www.redwingshoes.com/shoe-store-average-return>)

What is the Investment? (<http://www.redwingshoes.com/shoe-store-investment>)

Why Red Wing? (<http://www.redwingshoes.com/shoe-store-why-red-wing>)

How Can I Grow? (<http://www.redwingshoes.com/shoe-store-growth-opportunity>)

Training & Support (<http://www.redwingshoes.com/shoe-store-training>)

Get Started (<http://www.redwingshoes.com/shoe-store-get-started>)

Q. Why a Red Wing Shoe Store?

A. Red Wing Shoes is the number one purpose-built work footwear brand and is growing. It is considered the premium brand for the Modern Craftsman. The company is a well-established, 110 year old, third generation, privately held company headquartered in Red Wing, MN. Red Wing footwear is sold worldwide in over 100 countries. Red Wing Shoes owns and operates two manufacturing plants in the United States and employs over 1,800 employees. Red Wing Shoes retail stores were first established in the 1950s and have a proven system of success. No other business opportunity offers investors the multitude of benefits, support, and the unique investment features described here. Request a dealer kit today.

(<http://www.rwssdealership.com/DlrRecruitFormA>)

Q. Why now?

A. Red Wing Shoes has recently announced the first store expansion program offered in over 30 years. The benefits available and long term growth opportunities are unique in the industry, making owning a Red Wing Shoe Store a superior investment by any measure.

Q. What are the key advantages to owning a Red Wing Shoe Store?

A. You will be associated with a world renowned brand, a respected company with a unique investment opportunity, pay no fees, provided complete field and corporate support, and offered growth opportunities in key markets. Red Wing Shoes is dedicated to your success.

INVESTMENT OPPORTUNITY

Q. How much money can I make with a Red Wing Shoe Store Dealership?

A. We surveyed 109 stores that used our proprietary software program in 2014. The average sales per store were \$851,076, the average cash flow for the owner/operator was \$127,363 and the average return on

investment was 46.1%. This is not a guarantee of future performance. Results vary based on management style. Dealer Store Financials Information. (</assets/content/redwingshoes/menu/RWSS Dealer Store Financials.pdf>)

Q. Does Red Wing offer a new Dealer any financing?

A. Yes, Red Wing will make a substantial investment in your new Red Wing Shoe Store by providing:

- Extended dating on the initial inventory for up to 15 months, interest and fee free. This saves you about \$10,000 in borrowing costs.
- Reimbursement up to \$25,000 towards your initial store build-out. This is not a loan and is not repaid.
- Use of Red Wing's proprietary store POS program, free for 1 year. This saves you about \$6,000.

Q. Is there any additional financing available?

A. Yes, Red Wing will assist qualified buyers with SBA financing through Wells Fargo Bank (</assets/content/redwingshoes/menu/Wells Fargo Lending.pdf>), Sterns Bank, or 401k financing through Benetrends (<http://www.benetrends.com>).

Q. What is the Franchise Registry?

The U.S. Small Business Administration (SBA) has reviewed and approved Red Wing Shoes as a company whose Dealership system contains no unacceptable control provisions over its dealers. This provides our potential dealers the benefits of a streamlined review process for SBA financings. Loan applications for Dealerships on the Franchise Registry can be reviewed and processed more efficiently and quickly by SBA and its lenders because the respective Dealer Agreements do not need to be reviewed in each individual dealership situation. View the Franchise Registry and search their database for Red Wing Shoes. (<http://franchiseregistry.com/>)

Q. What is the total investment?

A. The total investment averages \$275,000. However, payments on the largest component (cost of inventory) are deferred for up to 15 months, improving initial cash flow.

Q. What are the franchise fees, royalties and advertising fund costs?

A. There are no franchise fees, no royalties and no marketing fund fees. Red Wing Shoe Stores are not franchises, they are privately-owned dealerships.

Q. What are the financial qualifications you require?

A. Owning a Red Wing Shoe Store requires a minimum liquidity of \$50,000-\$75,000, and a minimum net worth of \$300,000.

TRAINING/LEARNING DEVELOPMENT

Q. Will I be able to meet Red Wing Shoe Store owners to discuss their experience with Red Wing Shoes before making a final decision?

A. Yes, Red Wing Shoes will assist you in learning as much as possible about owning a Red Wing Shoe Store.

You will meet with members of our Regional Team to discuss your interest as well as tour local stores to meet the owners.

Q. Will Red Wing Shoes assist me with selecting a retail site?

A. Yes. Red Wing Shoes utilizes the market analysis services of a premier site selection firm, combined with the market knowledge of local Red Wing Shoes personnel, to help select sites that best meet the criteria for a successful store. These services will be provided to you at no cost.

Q. I have no retail experience, how does the training work?

A. Yes. Red Wing Shoes utilizes the market analysis services of a premier site selection firm, combined with the market knowledge of local Red Wing Shoes personnel, to help select sites that best meet the criteria for a successful store. These services will be provided to you at no cost. Red Wing Shoe University information.

(/assets/content/redwingshoes/menu/RWSS Training for Store Owners.pdf)

Q. What assistance does Red Wing Shoes offer to help me market my store and acquired new customers?

A. Red Wing Shoes provides extensive national advertising, local micro websites, and complete store marketing and POS materials for dealer use. The system for successful building of an ongoing base of B2B accounts is also provided along with a list of Red Wing Shoes' national accounts.

Q. How long does it take to open a store?

A. There is a seven step process that each new dealer will be guided through. After a dealer is approved and a location is secured, it takes about 120 additional days to open a Red Wing Shoe Store. Request a dealer kit today. (<http://www.rwssdealership.com/DlrRecruitFormA>)

GROWTH OPPORTUNITY

Q. Can I own/operate more than one store?

A. Red Wing Shoes likes to start most new dealers with a single store and expand, where market opportunities are available, later into additional stores. An additional opportunity can be adding a Mobile Shoe Truck in markets where the demand for on-site B2B service is strong. Individual opportunities may vary. Request a dealer kit today. (<http://www.rwssdealership.com/DlrRecruitFormA>)

Q. Can I have a presence on the internet? What does that cost?

A. As a Red Wing Shoe Store owner, you will receive your own Red Wing Shoe Store micro site linked directly from Red Wing Shoes' corporate home page, at no cost to you. Your site will include all your store information, services, products available, and is an excellent marketing and promotional tool.

Q. How many Red Wing Shoe Stores are there in the United States?

A. There are 500+ Red Wing Shoe Stores operating today in the United States. Expansion plans include adding another 250+ stores in many new and underdeveloped markets throughout the country.

Q. I've see Red Wing Mobile Shoe Trucks. Can I have one?

A. Mobile Shoe Trucks are part of the market growth plan for many, but not every, Red Wing Shoe Store. The first step is to open a single Red Wing Shoe Store. Subsequent growth plans are offered for availability where strong industrial growth potential exists based on an overall market distribution strategy. Request a dealer kit today. (<http://www.rwssdealership.com/DlrRecruitFormA>)

Q. Is there a business to business opportunity with a Red Wing Shoe Store?

A. Yes. This can be a huge segment of your store's overall revenue stream and requires B2B selling and account relationship building to establish and develop this component of your total retail revenue base. Once established, this segment of your business can produce substantial annual revenues year after year.

Q. What brands can I carry in my store?

A. Red Wing Shoe Company's brands of footwear, clothing, and accessories are the only products that can be carried and are needed in a Red Wing Shoe Store. Those brands include: Red Wing, Irish Setter Work, WORX, Irish Setter Hunt, Vasque, and select styles from the Red Wing Heritage collection.

Request a Red Wing Shoe Store dealer kit today. (<http://www.rwssdealership.com/DlrRecruitFormA>)



See videos about the people and processes that make Red Wing Shoes the industry leader. (<http://www.redwingshoes.com/red-wing-video-series>)

Join our mailing list for news and exclusive offers:

SUBSCRIBE

EXHIBIT 2

12-16-19
2:28
NH

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY FLORIDA

JAMES LUCAS SOUTHAM, *individually, and on behalf of a class of similarly situated individuals,*

Plaintiff,

CASE NO: CACE-19-022281

CLASS ACTION

v.

JURY TRIAL DEMANDED

RED WING SHOE COMPANY, INC.,
a Minnesota corporation,

Defendant.

DATE _____ TIME _____

SUMMONS INITIAL _____ BADGE# _____

THE STATE OF FLORIDA

To All and Singular the Sheriffs of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant,

RED WING SHOE COMPANY, INC.
c/o CT Corporation System, Inc. (Registered Agent)
1010 Dale Street North
St. Paul, MN 55117

Each defendant is required to serve written defense to the complaint or petition on plaintiff's attorney, to wit: SCOTT D. OWENS, ESQ., whose address is SCOTT D. OWENS, P.A., 3800 S. Ocean Dr., Ste. 235, Hollywood, FL 33019, WITHIN 20 DAYS AFTER SERVICE OF THIS SUMMONS ON THAT DEFENDANT, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. IF A DEFENDANT FAILS TO DO SO, A DEFAULT WILL BE ENTERED AGAINST THAT DEFENDANT FOR THE RELIEF DEMANDED IN THE COMPLAINT OR PETITION.

WITNESS my hand and seal of this Court on this NOV 08 2019

Brenda D. Forman
Clerk of the Circuit Court

By: _____
As Deputy Clerk



Court Seal

In accordance with the Americans with Disabilities Act of 1990, disabled persons who, because of their disabilities need special accommodation to participate in these proceedings should contact the ADA Coordinator at 201 S.E. 6th Street, Room 136, **BRENDA D. FORMAN** or telephone voice/TDD (954)831-7721 not later than five business days prior to such proceedings.

Filing # 97994376 E-Filed 10/28/2019 05:34:33 PM

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

Case No.: 19-22284
Judge: _____

James Lucas Southam
Plaintiff

vs.

Red Wing Shoe Company, Inc.
Defendant

II. TYPE OF CASE

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability – commercial
 - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure \$0 - \$50,000
 - Commercial foreclosure \$50,001 - \$249,999
 - Commercial foreclosure \$250,000 or more
 - Homestead residential foreclosure \$0 – 50,000
 - Homestead residential foreclosure \$50,001 - \$249,999
 - Homestead residential foreclosure \$250,000 or more
 - Non-homestead residential foreclosure \$0 - \$50,000
 - Non-homestead residential foreclosure \$50,001 - \$249,999

- Non-homestead residential foreclosure \$250,00 or more
- Other real property actions \$0 - \$50,000
- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
 - Malpractice – business
 - Malpractice – medical
 - Malpractice – other professional
- Other
 - Antitrust/Trade Regulation
 - Business Transaction
 - Circuit Civil - Not Applicable
 - Constitutional challenge-statute or ordinance
 - Constitutional challenge-proposed amendment
 - Corporate Trusts
 - Discrimination-employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

III. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Non-monetary declaratory or injunctive relief;
- Punitive

IV. NUMBER OF CAUSES OF ACTION: ()
(Specify)

1

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- Yes
- No

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- No
- Yes – If “yes” list all related cases by name, case number and court:

Southam v. Red Wing Brands of America, Inc., Case No. 19-cv-61255-RS

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- Yes
- No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Scott D Owens FL Bar No.: 597651
Attorney or party

(Bar number, if attorney)

Scott D Owens 10/28/2019
(Type or print name)

Date

EXHIBIT 3



**Service of Process
Transmittal**

12/16/2019

CT Log Number 536821568

TO: Sarah Erickson, General Counsel
Red Wing Shoe Company, Inc.
314 Main St
Red Wing, MN 55066-2337

RE: Process Served in Minnesota

FOR: Red Wing Shoe Company, Inc. (Domestic State: MN)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: JAMES LUCAS SOUTHAM, INDIVIDUALLY, AND ON BEHALF OF OTHER SIMILARLY SITUATED INDIVIDUALS, PLTF. vs. RED WING SHOE COMPANY, INC., DFT.

DOCUMENT(S) SERVED: Summons, Complaint, Exhibit(s), Attachment(s)

COURT/AGENCY: BROWARD COUNTY - CIRCUIT COURT, FL
Case # CACE19022281

NATURE OF ACTION: Complaint for violations of the fair and accurate credit transactions

ON WHOM PROCESS WAS SERVED: CT Corporation System, Inc, Saint Paul, MN

DATE AND HOUR OF SERVICE: By Process Server on 12/16/2019 at 15:18

JURISDICTION SERVED : Minnesota

APPEARANCE OR ANSWER DUE: Within 20 days after service of this summons on that defendant, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Scott D. Owens
Scott D. Owens, P.A.
3800 S. Ocean Dr.
Ste. 235
Hollywood, FL 33019
954-589-0588

REMARKS: Please note the process server underlined, circled, initialed and/or highlighted the entity name being served prior to receipt.

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780127525485
Image SOP
Email Notification, Kellie Steiner kellie.steiner@redwingshoes.com
Email Notification, Sarah Erickson sarah.erickson@redwingshoes.com

SIGNED: CT Corporation System, Inc
ADDRESS: 208 S La Salle St Ste 814
Chicago, IL 60604-1101

For Questions: 866-331-2303
CentralTeam1@wolterskluwer.com

EXHIBIT 4

**IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

JAMES LUCAS SOUTHAM, individually)	
and as the representatives of a class of)	
similarly situated persons,)	
)	Case No. CACE-19-022281-03
Plaintiff,)	
)	Hon. Judge Nicholas Lopane
v.)	
)	
RED WING SHOE COMPANY, INC.,)	
)	
Defendant.)	
)	

NOTICE OF FILING NOTICE OF REMOVAL

TO: Attached service list.

PLEASE TAKE NOTICE THAT on January 6, 2020, Defendant Red Wing Shoe Company, Inc. filed its Notice of Removal in the United States District Court for the Southern District of Florida, a copy of which is attached and served upon you pursuant to 28 U.S.C. § 1446(d).

DATED: January 6, 2020

/s/ Jordan S. Kosches

David S. Almeida, Esq. (*pro hac vice to be filed*)
dalmeida@beneschlaw.com
**BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP**
333 West Wacker Drive, Suite 1900
Chicago, Illinois 60606
Telephone: (312) 212-4949
Facsimile: (312) 767-9192

Jordan S. Kosches, Esq.
jordan.kosches@gray-robinson.com
GRAYROBINSON, P.A.
333 SE 2nd Avenue, Suite 3200
Miami, Florida 33131
Telephone: (305) 416-6880
Facsimile: (305) 416-6997
Florida Bar No.: 49881

Counsel for Red Wing Shoe Company, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the Notice of Removal, was served via electronic mail and U.S. First Class mail, postage prepaid, on January 6, 2020, upon all counsel of record at the following address:

Scott D. Owens, Esq.
Scott D. Owens, P.A.
3800 S. Ocean Dr., Suite 235
Hollywood, Florida 33019
scott@scottdowens.com

Bret L. Lusskin, Esq.
Bret Lusskin, P.A.
20803 Biscayne Blvd., Suite 302
Aventura, Florida 33180
blusskin@lusskinlaw.com

Keith J. Keogh, Esq.
Keogh Law, Ltd.
55 W. Monroe St., Suite 3390
Chicago, Illinois 60603
keith@keoghlaw.com

/s/ *Jordan S. Kosches*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

JAMES LUCAS SOUTHAM, individually)	
and as the representatives of a class of)	
similarly situated persons,)	
)	Case No.
Plaintiff,)	
)	Hon. Judge
v.)	
)	
RED WING SHOE COMPANY, INC.,)	
)	
Defendant.)	
)	

**DEFENDANT RED WING SHOE COMPANY’S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1441, et seq., Defendant Red Wing Shoe Company, Inc. (“Red Wing”), by and through its attorneys of record, hereby gives notice of removal of this action from the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida to the United States District Court for the Southern District of Florida. In support thereof, Red Wing states as follows:

I. THE ORIGINAL FEDERAL ACTION

1. On May 17, 2019, Plaintiff James Lucas Southam initiated this action in the United States District Court for the Southern District of Florida, Case No. 19-cv-61255 (the “Federal Action”). Plaintiff alleged a single violation of the Fair and Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. § 1681, et seq., stemming from a single receipt provided to Plaintiff on May 2, 2019. (See No. 19-cv-61255, Dkt. 1 ¶ 26.)

2. The Federal Action was assigned to Judge Rodney Smith on June 17, 2019. (See No. 19-cv-61255, Dkt. 9.)

3. On June 21, 2019, Red Wing filed an *Unopposed* Motion to Stay Proceedings

Pending the *Muransky v. Godiva* Appeal. (See No. 19-cv-61255, Dkt. 10.) Plaintiff *did not oppose* a stay of the Federal Action pending the resolution of the *Muransky* appeal in the Eleventh Circuit. (See *id.*)

4. On June 26, 2019, this Court granted Red Wing’s Motion, staying this case “pending final resolution of the *Muransky v. Godiva Chocolatier, Inc.* (No. 16-16486) appeal in the Eleventh Circuit.” (See No. 19-cv-61255, Dkt. 11.)

5. On October 4, 2019, the Eleventh Circuit vacated the *Muransky* decision and determined to rehear the *Godiva* matter *en banc*. The appeal thus remains pending.

6. The Federal Action remains pending.

II. THE STATE COURT ACTION

7. On October 28, 2019, Plaintiff initiated this civil action against Red Wing in the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida (the “State Court Action”). A copy of the Complaint is attached hereto as **Exhibit 1**.

8. The State Court Action is identical to the Federal Action, alleging a single FACTA violation stemming from a single receipt provided to Plaintiff on May 2, 2019. See Ex. 1 ¶ 27.

9. The State Court Action appears to be an attempted end-around this Court’s June 21, 2019 Order staying this case pending the resolution of the *Muransky* appeal.

10. Because the Federal Action and the State Court Action are identical cases alleging identical violations of FACTA stemming from the same underlying transaction, this matter should be assigned to Judge Smith and likewise stayed pending *Muransky*. This will avoid Plaintiff’s attempt to circumvent this Court’s Order and avoid the appearance of judge shopping.

11. By removing this matter, Red Wing expressly does not concede or imply that there is subject matter jurisdiction in this case in light of the continuing uncertainty relating to whether

Plaintiff has Article III standing. This is, in fact, the very issue before the *en banc* panel of the Eleventh Circuit in the *Muransky* appeal—whether litigants asserting a technical violation of FACTA, absent any other injury, have Article III standing. *See Muransky*, No. 16-16486 (Order of Oct. 25, 2019, putting forth the standalone issue presented: “Does Dr. Muransky have Article III standing to bring this lawsuit.”). And this is exactly why the Federal Action is stayed.

12. Red Wing does not believe that Plaintiff has Article III standing. However, if Red Wing does not timely remove this case, it risks losing the opportunity to do so regardless of the *Muransky* decision, given that more than 30 days will elapse from service. *See* 28 U.S.C. § 1446(b).¹ The Eleventh Circuit will finally decide the standing issue in short order. Upon removal, Red Wing respectfully requests that this Court stay this matter pending *Muransky* such that the Parties and this Court can adequately determine whether Article III standing exists in this case.

13. It bears noting, however, that Plaintiff already put forth to this Court that he believes Article III standing exists, filing the Federal Action in federal court and contending in the Complaint that he suffered “multiple concrete harms.” (*See* No. 19-cv-61255, Dkt. 1 ¶ 3 n.1.)

III. REMOVAL PURSUANT TO 28 U.S.C. § 1331

14. Pursuant to 28 U.S.C. § 1446(a), copy of all process, pleadings, and orders that have been filed and served in the State Court Action are attached hereto as **Exhibits 1 and 2**.

15. The Summons and Complaint were served on Red Wing on December 16, 2019. (*See Exhibit 3*.) This Notice of Removal is therefore timely filed pursuant to 28 U.S.C. § 1446(b)(1).

¹ Though the *Muransky* Court initially found standing, that opinion has been withdrawn by virtue of the Eleventh Circuit granting the petition for hearing *en banc*. *See Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175, 1180 (11th Cir.), *reh’g en banc granted, opinion vacated*, 939 F.3d 1278 (11th Cir. 2019). Red Wing thus cannot rely on this decision for purposes of removal.

16. Pursuant to 28 U.S.C. § 1446(d), Red Wing will file a copy of this Notice of Removal with the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida. Red Wing will also serve Plaintiff with a copy of this Notice of Removal, a true and correct copy of which is attached hereto as **Exhibit 4**.

17. Pursuant to 28 U.S.C. § 89(c), venue for this case is proper in the Southern District of Florida.

18. Under 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

19. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 because it involves a federal question. *See* 28 U.S.C. § 1331 (providing that district courts shall have original jurisdiction over all civil actions arising under the “Constitution, laws, or treaties of the United States”).

20. Here, this Court has jurisdiction over the State Court Action because the only Count in the Complaint alleges a cause of action under the FACTA, a federal statute.

21. Pursuant to 28 U.S.C. § 1446(b)(2)(A), all Defendants consent to the removal of this civil action to this Court.

22. Pursuant to 28 U.S.C. § 1441 and 1446, removal of the State Court Action to this Court is appropriate.

WHEREFORE, Defendant Red Wing Shoe Company, Inc. hereby removes this civil action to this Court.

DATED: January 6, 2020

Respectfully submitted

/s/ Jordan S. Kosches

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Counsel for Red Wing Shoe Company, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the Notice of Removal, was served via electronic mail and U.S. First Class mail, postage prepaid, on January 6, 2020, upon all counsel of record at the following address:

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Red Wing Shoes Illegally Printed 10 Digits of Credit, Debit Card Numbers on Sales Receipts](#)
