

Case No. 15-55174

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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RITA MEDELLIN, On Behalf of Herself and All Others Similarly Situated,

*Plaintiff-Appellant,*

v.

IKEA U.S. WEST, INC.,

*Defendant-Appellee.*

---

Appeal from the United States District Court  
for the Southern District of California, San Diego  
No. 3:11-cv-00701-BAS-BGS  
The Honorable Cynthia A. Bashant

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**PLAINTIFF/APPELLANT'S MOTION TO DISMISS APPEAL  
FOR LACK OF SUBJECT MATTER JURISDICTION  
WITH DIRECTIONS TO DISTRICT COURT TO REMAND**

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Plaintiff/Appellant, Rita Medellin, moves this Court pursuant to Fed. Rule App. Proc. 27 to dismiss her appeal and vacate the district court's decertification order and judgment for lack of subject matter jurisdiction, and instruct the district court to remand the action back to the Superior Court of the County of San Diego where the action was originally filed.

## **I. INTRODUCTION**

On May 16, 2016, the United States Supreme Court issued its opinion in *Spokeo, Inc. v. Robins*, No. 13-1339, 2016 U.S. LEXIS 3046, \*16 (May 16, 2016) and held that a plaintiff cannot satisfy the injury-in-fact requirement of Article III simply by alleging a bare statutory violation. Rather, to satisfy the injury in fact requirement of Article III, a plaintiff must allege an injury that although may be intangible, nevertheless "actually exist[s]." *Id.* at \*14-15.

At issue in this case is a single claim for violation of a California state civil penalty statute, California Civil Code §1747.08(a)(2) (the "Credit Card Act"). The Credit Card Act allows only for imposition of civil penalties, and not damages or restitution, regardless of any harm caused to plaintiff. Cal. Civ. Code §1747.08(e). The parties in this case have always agreed, Plaintiff has never allege otherwise, and the district court expressly found, that Medellin does not allege any harm caused by Defendant/Appellee IKEA U.S. West, Inc.'s ("IKEA") violation of the Credit Card Act. *See* ER0950-951.

In light of the Court's recent decision in *Spokeo*, federal subject matter jurisdiction does not exist in this case because Article III is not satisfied. The appeal must be dismissed, the district court's decertification order and judgment vacated, and the case remanded back to state court where it was originally filed. *See* 28 U.S.C. §1447(c).

## II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This class action was originally filed by plaintiff Rita Medellin in the Superior Court for the County of San Diego. Ex. A (Original Complaint).<sup>1</sup> IKEA removed the case to federal court pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. §1442. Ex. B (Notice of Removal at 4-5). Once removed, Medellin's case was consolidated with plaintiff Reid Yeoman's case and an amended complaint was filed in the Southern District of California. ER1011. Yeoman's claim was dismissed and is not part of this appeal. ER1058 (Dkt. 273).

Medellin alleged a single claim for violation of the Credit Card Act. ER1016-1017. The Credit Card Act prohibits a retailer from requesting and recording personal identification information ("PII") during a credit card transaction. Cal. Civ. Code §1747.08(a)(2). Medellin alleged IKEA requested and recorded ZIP codes at the point of sale during credit card transactions at its

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<sup>1</sup> "Ex." Refers to the Exhibits attached to the Declaration of Timothy G. Blood in Support of Plaintiff/Appellant's Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction with Directions to District Court to Remand Action.

California retail stores. ER1017 (¶27). Medellin sought civil penalties permitted under the statute up to \$1,000 per violation. *Id.* (¶28).

The case proceeded to trial on the Credit Card Act violation. After a trial on liability, the district court found Medellin proved liability for IKEA's practice and procedure for collecting personal information in violation of the Credit Card Act on her individual claim but decertified the Class. ER0008 (¶22); ER00013. The parties stipulated to judgment and an individual civil penalty amount as to Medellin and Medellin appealed the decertification order. ER0001-2; ER0294. Medellin's appeal on the decertification order is fully briefed.

### **III. SUBJECT MATTER JURISDICTION DOES NOT EXIST**

#### **A. *Spokeo, Inc. v. Robins***

Just a few weeks ago, the Supreme Court in *Spokeo* decided the question of whether a plaintiff can satisfy the injury in fact requirement of Article III by alleging nothing more than a statutory violation.

The Court began by recognizing the importance of subject matter jurisdiction under Article III. The Court stated: “[N]o principle is more fundamental to the judiciary’s proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.” *Spokeo*, 2016 U.S. LEXIS 3046, at \*11 (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). Article III maintains this role by “limit[ing] the

category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong.” *Id.*

At issue in *Spokeo* was the Fair Credit Reporting Act of 1970 (“FCRA”), 15 U.S.C. §1681, *et seq.*, 2016 U.S. 3046, at \*6. FCRA regulates the creation and use of consumer reports by, *inter alia*, requiring “consumer reporting agencies to ‘follow reasonable procedures to assure maximum possible accuracy of’ consumer reports.”” *Id.* (quoting 15 U.S.C. §1681e(b)). If a consumer reporting agency willfully violates FCRA as to a consumer, the consumer reporting agency is liable to the consumer for either actual or statutory damages of \$100 to \$1,000 per violation. *Id.* at \*7-8 (citing 15 U.S.C. §1681n(a)).

The plaintiff in *Spokeo* alleged the defendant violated FCRA by issuing a consumer report with false information. *Id.* at \*9. The plaintiff further alleged that the misinformation resulted in harm to his employment prospects. *Id.* at \*29. On defendant’s motion to dismiss, the district court in *Spokeo* granted the motion based on the plaintiff’s failure to allege “an injury in fact as required by Article III.” *Id.* On appeal from that dismissal, this Court held that the plaintiff’s alleged violations of his statutory rights as permitted by FCRA were sufficient to satisfy injury in fact under Article III. *Id.* at \*9-10.

On a grant of certiorari, the *Spokeo* court disagreed with this Court and found that although “Congress may ‘elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate at law,’ . . . a

bare procedural violation, divorced from any concrete harm,” would not “satisfy the injury-in-fact requirement of Article III.” 2016 U.S. LEXIS 3046, at \*15-16. Thus, the *Spokeo* Court found that a plaintiff must allege something more than just a violation of the law to satisfy Article III.

In the context of FCRA, the *Spokeo* Court further concluded that although “Congress plainly sought to curb the dissemination of false information by adopting procedures designed to decrease that risk . . . [plaintiff] cannot satisfy the demands of Article III by alleging a bare procedural violation.” *Id.* at \*17. That is because, the Court continued, “[a] violation of one of the FCRA’s procedural requirements may result in no harm.” *Id.* at \*17-18. Accordingly, the *Spokeo* Court instructed this Court to determine “whether the particular procedural violations alleged . . . entail a degree of risk sufficient to meet the concreteness requirement.” *Id.* at \*18.

#### **B. Article III Is Not Satisfied**

“[F]ederal courts are always ‘under an independent obligation to examine their own jurisdiction,’ and a federal court may not entertain an action over which it has no jurisdiction.” *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000). As *Spokeo* instructed, if Article III is not satisfied, the court does not have jurisdiction to hear the case. 2016 U.S. LEXIS 3046, at \*11.

Here, Medellin alleges a single claim under the Credit Card Act. The Credit Card Act prohibits, *inter alia*, retailers from requesting and recording PII,

including ZIP codes, from consumers during credit card transactions. Cal. Civ. Code §1747.08(a)(2). The Credit Card Act does not require proof of any damages to recover for a violation. Rather, any person who violates the Credit Card Act “shall be subject to a civil penalty . . . to be assessed and collected in a civil action brought by the person paying with a credit card, by the Attorney General, or by the district attorney or city attorney of the county or city in which the violation occurred.” *Id.* §1747.08(e).

Although the district court decertified the case after the trial on liability and thus, never decided the issue of civil penalties (*see* ER0013), the district court never would have received any evidence from Medellin (or IKEA) concerning Medellin’s injury in fact. That is because, all parties, and the district court, agreed that Medellin did not allege any injury in fact.

Medellin simply alleged that “[a]s a direct and proximate result of IKEA’s unlawful conduct . . . [she] and the other Class members are entitled to civil penalties in an amount of up to one thousand dollars per violation pursuant to Civil Code §1747.08(e).” ER1017 (¶28).

On its motion for decertification before trial, IKEA argued that Medellin’s failure to allege injury made her an inadequate class representative because she “has no standing to sue.” ER0950. The district court rejected IKEA’s argument, finding that “the actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates

standing. . . .” ER0951 (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)). The district court held that the Credit Card Act “created a legal right for consumers to be free from requests for personally identifiable information in conjunction with credit card transactions” and thus, because Medellin “asserted a claim against Defendant for an alleged invasion of that right, . . . the Court finds that she has Article III standing to do so.” *Id.* (citing *Warth*, 422 U.S. at 500).

In light of *Spokeo*, Medellin does not satisfy Article III because the alleged statutory violation of the Credit Card Act is not sufficient by itself to satisfy the injury in fact requirement. Unlike in *Spokeo* where the plaintiff alleged some risk of harm (*see* 2016 U.S. LEXIS 3046, at \*29), Medellin does not allege any harm (ER1017). She simply alleges the “bare procedural violation.” *Spokeo*, 2016 U.S. LEXIS 3046, at \*17. Under *Spokeo*, this is not sufficient to confer Article III standing.

#### **IV. REMAND IS REQUIRED**

Section 1447(c) is clear on its face: “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. §1447(c); *see also International Primate Prot. League v. Administrators of Tulane Educ. Fund*, 500 U.S. 72, 88 (1991); *Albingia Vesicherungs A.G. v. Schenker Int’l Inc.*, 344 F.3d 931, 938 (9th Cir. 2003); *Bruns v. National Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997).

The Supreme Court has noted the literal words of Section 1447(c) “give . . . no discretion to dismiss rather than remand an action.” *Int’l Primate*, 500 U.S. at 89. Rather, “[t]he statute declares that, where subject matter jurisdiction is lacking, the removed case ‘shall be remanded.’” *Id.* (quoting 28 U.S.C. §1447(c)).

This is true even where, as here, all requirements of the relevant removal statute were met. In *Powerex Corp. v. Reliant Energy Servs.*, 551 U.S. 224 (2007), the Supreme Court held that remand is required if the federal court does not have subject matter jurisdiction, despite satisfaction of removal requirements:

The principal submission of the Solicitor General and petitioner is that the District Court’s remand order was not based on a lack of “subject matter jurisdiction” within the meaning of § 1447(c) because that term is properly interpreted to cover *only* “a defect in subject matter jurisdiction *at the time of removal* that rendered *the removal itself* jurisdictionally improper.” ...

We reject this narrowing construction of § 1447(c)’s unqualified authorization of remands for lack of “subject matter jurisdiction.” Nothing in the text of § 1447(c) supports the proposition that a remand for lack of subject-matter jurisdiction is not covered so long as the case was properly removed in the first instance.

*Id.* at 230-31. The Supreme Court expressly held that “when a district court remands a properly removed case because it nonetheless lacks subject-matter jurisdiction, the remand is covered by § 1447(c).” *Id.* at 232; *see also Wallace v. ConAgra Foods, Inc.*, 747 F.3d 1025, 1032-33 (8th Cir. 2014) (“Congress clearly incorporated Article III’s traditional limits into CAFA.”).

Accordingly, because Medellin does not allege injury in fact and does not satisfy Article III, subject matter jurisdiction does not exist.

## V. CONCLUSION

For the foregoing reasons, Plaintiff/Appellant Medellin requests that the Court dismiss her appeal, vacate the district court's decertification order and judgment, and instruct the district court to remand the action back to the Superior Court of the County of San Diego.

Respectfully Submitted,

Dated: May 31, 2016

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### CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 31, 2016.

*s/ Timothy G. Blood*  
\_\_\_\_\_  
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Case No. 15-55174

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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RITA MEDELLIN, On Behalf of Herself and All Others Similarly Situated,

*Plaintiff-Appellant,*

v.

IKEA U.S. WEST, INC.,

*Defendant-Appellee.*

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Appeal from the United States District Court  
for the Southern District of California, San Diego  
No. 3:11-cv-00701-BAS-BGS  
The Honorable Cynthia A. Bashant

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**DECLARATION OF TIMOTHY G. BLOOD IN SUPPORT OF  
PLAINTIFF/APPELLANT'S MOTION TO DISMISS APPEAL FOR LACK  
OF SUBJECT MATTER JURISDICTION WITH DIRECTIONS TO  
DISTRICT COURT TO REMAND**

---

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*Attorneys for Plaintiff-Appellant*

I, Timothy G. Blood, declare and state:

1. I am an attorney duly licensed to practice before all of the courts of the State of California. I am a partner at Blood Hurst & O'Reardon, LLP, one of Class Counsel and counsel for Plaintiff/Appellant in the above-captioned matter. The following is based on my personal knowledge, and if I am called and sworn in as a witness, I could and would testify competently thereto. I make this declaration in support of Plaintiff/Appellant's Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction with Directions to the District Court to Remand.

2. This class action was originally filed by Medellin and Reid Yeoman as separate actions in the Superior Court for the County of San Diego. Attached hereto as Exhibit A is a true and correct copy of Medellin's original complaint. IKEA removed both cases to federal court pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. §1442. Attached hereto as Exhibit B is a true and correct copy of IKEA's Notice of Removal as to Medellin's case. Once removed, the cases were consolidated under the *Yeoman* case and a consolidated amended complaint was filed. *See* ER1011. Yeoman's case was later dismissed and is not part of this appeal. ER1058 (Dkt. 273).

3. On May 26, 2016, I spoke to counsel for IKEA, Michael Geibelson, regarding this motion. Mr. Geibelson informed me that he needed to speak with him client regarding his client's position on the motion. On May 31, 2016, IKEA submitted the Rule 28(j) letter attached hereto as Exhibit C, agreeing that Medellin

does not have Article III standing under *Spokeo*. After IKEA's filing, my colleague, Paula Brown, sent an email asking if there was any further information regarding IKEA's position. As of the filing of this motion, IKEA has not stated whether it opposes or supports this motion other than what can be deduced from IKEA's Rule 28(j) letter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on May 31, 2016, at San Diego, California.

By:                   *s/ Timothy G. Blood*                    
TIMOTHY G. BLOOD

**CERTIFICATE OF SERVICE**

I hereby certify that on May 31, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 31, 2016.

*s/ Timothy G. Blood*  
\_\_\_\_\_  
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# **EXHIBIT A**

**EXHIBIT "1"**

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO**

RITA MEDELLIN, an individual, on  
behalf of herself and all others similarly  
situated,  
  
Plaintiff,  
  
vs.  
  
IKEA U.S. WEST, INC., a Delaware  
corporation; and DOES 1 through 50, inclusive,  
  
Defendants.

CASE NO.: 37-2011-00000000-CU-NP-CTL  
**CLASS ACTION**  
**COMPLAINT FOR VIOLATIONS OF  
CALIFORNIA CIVIL CODE § 1747.08**

Plaintiff Rita Medellin, on behalf of herself and all others similarly situated, complains and alleges upon information and belief based, among other things, upon the investigation made by Plaintiff by and through her attorneys, as follows:

**I. INTRODUCTION**

1. California Civil Code section 1747.08 generally states that when a merchant is engaged in a retail transaction with a customer, the merchant may neither (1) request personal identification information from a customer paying for goods with a credit card, and then record that personal identification information upon the credit card transaction form or otherwise; nor (2) require as a condition to accepting the credit card as payment the cardholder to provide the customer's personal identification information which the retailer causes to be written, or

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1 otherwise records upon the credit card transaction form or otherwise.<sup>1</sup>

2           2. Defendant operates retail stores under the name IKEA throughout the United  
3 States, including California. Defendant is engaging in a pattern of unlawful and deceptive  
4 business practices by utilizing an “Information Capture Policy” whereby Defendant’s cashiers  
5 both request and record personal identification information, in the form of zip codes, and credit  
6 card numbers from customers using credit cards at the point-of-sale in Defendant’s retail  
7 establishments. Defendant’s acts and practices as herein alleged were at all times intentional.

8           3. On information and belief, Defendant uses the zip codes and additional  
9 information obtained from its customers’ credit cards, including names and credit card numbers  
10 (or portions thereof) to obtain its customers’ residential addresses. Defendant obtains these  
11 addresses with the help of third-party vendors such as Acxiom that maintain proprietary software  
12 and databases containing hundreds of millions of individual consumers’ contact information.  
13 For example, Acxiom advertises its “Shopper Registration” software on its website claiming:  
14 “All you have to do is capture the shopper’s name from a check or a third-party credit card at the  
15 point of sale and ask for the shopper’s zip code . . . and Address Append takes the name,  
16 combined with the collected zip code, and matches them to Acxiom’s [database]. Acxiom  
17 provides a match rate report that tells you how many addresses were matched and appended.”<sup>2</sup>

18           4. Defendant does not disclose its intentions to its customers, and instead relies on  
19 the common misbelief of consumers that Defendant is using the zip code information to verify  
20 cardholders’ identities similar to “pay-at-the-pump” gas station transactions where a zip code is  
21 required because there is no live clerk to verify identification. Defendant, however, is not using  
22 zip codes to verify cardholders’ identities during credit card transactions and the credit card

23  
24 <sup>1</sup> California Civil Code section 1747.08 states in relevant part:  
25 “(a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation which accepts  
26 credit cards for the transaction of business shall do either of the following:  
27 (2) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services,  
28 the cardholder to provide personal identification information, which the person, firm, partnership, association, or  
29 corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card  
30 transaction form or otherwise.  
31 (b) For purposes of this section ‘personal identification information,’ means information concerning the cardholder,  
32 other than information set forth on the credit card, and including, but not limited to, the cardholder’s address and  
33 telephone number.”

2 <sup>2</sup> See [www.acxiom.com/119441/fact\\_sheet\\_IB\\_TS\\_Shopper\\_Recognition\\_200707.pdf](http://www.acxiom.com/119441/fact_sheet_IB_TS_Shopper_Recognition_200707.pdf). Acxiom is but one of  
numerous third-party vendors that Defendant might use to obtain its customers’ addresses.

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1 companies do not require zip codes to complete in-person “card present” credit card transactions.

2 5. Plaintiff does not seek any relief greater than or different from the relief sought  
3 for the Class of which Plaintiff is a member. If successful, this action will enforce an important  
4 right affecting the public interest and will confer a significant benefit, whether pecuniary or non-  
5 pecuniary, on a large class of persons. Private enforcement is necessary and places a  
6 disproportionate financial burden on Plaintiff in relation to Plaintiff’s stake in the matter.

7 **II. JURISDICTION AND VENUE**

8 6. Plaintiff is informed and believes that Defendant’s principal place of business is  
9 in California. Defendant has accepted credit cards for the transaction of business throughout  
10 California, including the County of San Diego, which has caused both obligations and liability of  
11 Defendant to arise in the County of San Diego.

12 7. The amount in controversy exceeds the jurisdictional minimum of this Court.

13 **III. THE PARTIES**

14 **A. Plaintiff**

15 8. Plaintiff Rita Medellin (herein referred to as “Plaintiff”) is a resident of  
16 California, and entered into a retail transaction with Defendant at one of Defendant’s California  
17 stores located in San Diego County.

18 9. Plaintiff brings this class action against Defendant, pursuant to California Code of  
19 Civil Procedure section 382, on behalf of herself and all persons in California from whom  
20 Defendant requested and recorded personal identification information in conjunction with a  
21 credit card transaction (herein referred to as the “Class”). Excluded from the Class are  
22 Defendant, its corporate parents, subsidiaries and affiliates, officers and directors, any entity in  
23 which Defendant has a controlling interest, and the legal representatives, successors or assigns of  
24 any such excluded persons or entities.

25 **B. Defendant**

26 10. Defendant IKEA U.S. West, Inc. (herein referred to as “Defendant”), is a  
27 Delaware corporation. Plaintiff is informed and believes that Defendant’s principal place of  
28 business is in California. Defendant operates retail stores under the name IKEA, throughout

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1 California, including stores in San Diego County.

2 C. **Doe Defendants**

3 11. Except as described herein, Plaintiff is ignorant of the true names of Defendants  
4 sued as DOES 1 through 50, inclusive, and the nature of their wrongful conduct, and therefore  
5 sues these DOE Defendants by such fictitious names. Plaintiff will seek leave of the Court to  
6 amend this complaint to allege their true names and capacities when ascertained.

7 D. **Agency/Aiding And Abetting**

8 12. At all times herein mentioned, Defendants, and each of them, were an agent or  
9 joint venturer of each of the other Defendants, and in doing the acts alleged herein, were acting  
10 within the course and scope of such agency. Each Defendant had actual and/or constructive  
11 knowledge of the acts of each of the other Defendants, and ratified, approved, joined in,  
12 acquiesced and/or authorized the wrongful acts of each co-Defendant, and/or retained the  
13 benefits of said wrongful acts.

14 13. Defendants, and each of them, aided and abetted, encouraged and rendered  
15 substantial assistance to the other Defendants in breaching their obligations to Plaintiff and the  
16 Class, as alleged herein. In taking action, as particularized herein, to aid and abet and  
17 substantially assist the commissions of these wrongful acts and other wrongdoings complained  
18 of, each of the Defendants acted with an awareness of his/its primary wrongdoing and realized  
19 that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct,  
20 wrongful goals, and wrongdoing.

21 IV. **CONDUCT GIVING RISE TO VIOLATIONS OF THE LAW**

22 A. **Plaintiff's Contact with Defendant**

23 14. Within the last 12 months, Plaintiff went to Defendant's retail store located in San  
24 Diego County, California.

25 15. Plaintiff entered Defendant's store and proceeded to select a product from the  
26 store that Plaintiff intended to purchase.

27 16. After selecting the item, Plaintiff proceeded to the cashiers' section of  
28 Defendant's store to pay for the item selected through the use of a credit card.

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1           17. Defendant’s employee saw that Plaintiff had selected products that Plaintiff  
2 wished to purchase from Defendant and, as part of Defendant’s Information Capture Policy, then  
3 requested personal identification information from Plaintiff in the form of Plaintiff’s zip code,  
4 without informing Plaintiff of the consequences if Plaintiff did not provide Defendant’s  
5 employee with Plaintiff’s zip code.

6           18. Plaintiff, believing that she was required to provide her zip code to complete the  
7 transaction, told Defendant’s employee Plaintiff’s zip code.

8           19. Defendant’s employee then typed and recorded Plaintiff’s zip code into an  
9 electronic cash register at the checkout counter adjacent to both the employee and Plaintiff.

10           20. Defendant’s employee then proceeded to inform Plaintiff of the amounts due to  
11 Defendant for said product. Plaintiff handed Defendant’s employee Plaintiff’s credit card, after  
12 which said employee proceeded to swipe, enter, and/or record the credit card number into an  
13 electronic cash register at the checkout counter adjacent to both the employee and Plaintiff.  
14 At this point in the transaction, Defendant has Plaintiff’s credit card number, name and zip code  
15 recorded in its databases.

16           21. Defendant’s employee made no attempt to erase, strikeout, eliminate, or otherwise  
17 delete Plaintiff’s personal identification information from the electronic cash register after  
18 Plaintiff’s credit card number was recorded.

19           22. Defendant’s employee and Plaintiff completed the transaction and Plaintiff left  
20 Defendant’s store with her purchased items.

21 **V. PLAINTIFF’S CLASS ACTION ALLEGATIONS**

22           23. This lawsuit is brought on behalf of an ascertainable statewide class consisting of  
23 all persons in California from whom Defendant requested and recorded personal identification  
24 information in conjunction with a credit card transaction (the “Class”). Excluded from the Class  
25 are Defendant, its corporate parents, subsidiaries and affiliates, officers and directors, any entity  
26 in which Defendant has a controlling interest, and the legal representatives, successors or assigns  
27 of any such excluded persons or entities.

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A Professional Corporation

1           24.    The members of the Class are so numerous that joinder of all members is  
2 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,  
3 such information can be ascertained through appropriate discovery, from records maintained by  
4 Defendant and its agents.

5           25.    A class action is superior to other available methods for the fair and efficient  
6 adjudication of this controversy because joinder of all members is impracticable, the likelihood  
7 of individual Class members prosecuting separate claims is remote and individual Class  
8 members do not have a significant interest in individually controlling the prosecution of separate  
9 actions. Relief concerning Plaintiff's rights under the laws alleged herein and with respect to the  
10 Class as a whole would be appropriate. Plaintiff knows of no difficulty to be encountered in the  
11 management of this action which would preclude its maintenance as a class action.

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

15           27.    Common questions of law and fact exist as to all members of the Class and  
16 predominate over any questions affecting solely individual members of the Class. Among the  
17 questions of law and fact common to the Class are:

- 18           a.    whether each Class member engaged in a credit card transaction with Defendant;
- 19           b.    whether Defendant requested the cardholder to provide personal identification  
20 information and recorded the personal identification of the cardholder, during credit card  
21 transactions with Class members;
- 22           c.    whether Defendant's conduct of requesting the cardholder to provide personal  
23 identification information during credit card transactions and recording the personal  
24 identification information of the cardholder constitutes violations of California Civil Code  
25 section 1747.08; and
- 26           d.    the proper amount of civil penalties to be awarded to Plaintiff and the Class.

27           28.    Plaintiff's claims are typical of those of the other Class members because  
28 Plaintiff, like every other Class member, was exposed to virtually identical conduct and is

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1 entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation  
2 pursuant to California Civil Code section 1747.08(e).

3 29. Plaintiff can fairly and adequately represent the interests of the Class, she has no  
4 conflicts of interest with other Class members, and has retained counsel competent and  
5 experienced in class action and civil litigation.

6 **CAUSE OF ACTION FOR VIOLATIONS OF**  
7 **CALIFORNIA CIVIL CODE § 1747.08**  
8 **[SONG-BEVERLY CREDIT CARD ACT OF 1971]**

9 30. Plaintiff refers to and incorporates by reference as though set forth fully herein  
10 paragraphs 1 through 29 of this Complaint.

11 31. California Civil Code section 1747.08 prohibits any corporation, which accepts  
12 credit cards for the transaction of business, from requesting the cardholder to provide personal  
13 identification information which the corporation then records in conjunction with a credit card  
14 transaction.

15 32. Defendant is a corporation that accepts credit cards for the transaction of business.  
16 During credit card transactions entered into at Defendant's stores on each and every day during  
17 the one-year period preceding the filing of this class action complaint through the present,  
18 Defendant utilized, and continues to utilize, an "Information Capture Policy" whereby  
19 Defendant's cashiers both request and record zip codes and credit card numbers from customers  
20 using credit cards at the point-of-sale in Defendant's retail establishments.

21 33. It is and was Defendant's routine business practice to intentionally engage in the  
22 conduct described in this cause of action with respect to every person who, while using a credit  
23 card, purchases any product from any of Defendant's stores in the State of California.  
24 Due to Defendant's violations as set forth herein, Plaintiff and the Class are entitled to civil  
25 penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to California  
26 Civil Code section 1747.08(e).

27 WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

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**PRAYER FOR RELIEF**

- 1. That the Court certifies this action as a class action appointing Plaintiff as Class Representative and Plaintiff's counsel as Class counsel;
- 2. For an award to Plaintiff and to each member of the Class the civil penalty to which he or she is entitled under California Civil Code section 1747.08(e);
- 3. For distribution of any moneys recovered on behalf of the Class of similarly situated consumers via fluid recovery or *cy pres* recovery where necessary to prevent Defendant from retaining the benefits of its wrongful conduct;
- 4. For an award of attorneys' fees as authorized by statute including, but not limited to, the provisions of California Code of Civil Procedure § 1021.5, and as authorized under the "common fund" doctrine;
- 5. For costs of the suit;
- 6. For prejudgment interest at the legal rate;
- 7. And for such other relief as the Court may deem proper.

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Dated: February 14, 2011

STONEBARGER LAW, APC

By:   
 Gene J. Stonebarger  
 Richard D. Lambert  
 Attorneys for Plaintiff and the Class

# **EXHIBIT B**

1 Alfred De La Cruz, Esq. State Bar No. 151388  
Kenneth S. Kawabata, Esq. State Bar No. 149391  
2 **MANNING & KASS**  
**ELLROD RAMIREZ TRESTER LLP**  
3 550 West "C" Street, Suite 1900  
San Diego, California 92101  
4 Telephone: (619) 515-0269  
Facsimile: (619) 515-0268

5 Attorneys for Defendant  
6 IKEA U.S. WEST, INC.

7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 RITA MEDELLIN, an individual, on behalf of )  
herself and all others similarly situated, )  
12 )  
Plaintiff, )  
13 )  
vs. )  
14 )  
IKEA U.S. WEST, INC., a Delaware corporation;) )  
15 and DOES 1 through 50, inclusive, )  
16 )  
Defendant. )  
17 )

Case No. **'11CV0921 AJB BGS**  
**NOTICE OF REMOVAL OF CIVIL**  
**ACTION UNDER 28 U.S.C. §§1332, 1441**  
**and 1446**

18 **TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF**  
19 **CALIFORNIA, AND TO THE CLERK OF THAT COURT:**

20 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant IKEA  
21 U.S. WEST, INC. ("Defendant") hereby removes the state court action described below to the United  
22 States District Court for the Southern District of California. In support of this Notice of Removal,  
23 Defendant states as follows:

24 **PROCEDURAL BACKGROUND**

25 1. On or about February 17, 2011, RITA MEDELLIN, ("Plaintiff") commenced an action  
26 in the Superior Court of California, County of San Diego, captioned *Rita Medellin, an individual, on*  
27 *behalf of herself and all others similarly situated v. IKEA U.S. WEST, INC., a Delaware corporation;*  
28 *and DOES 1 through 50, inclusive*, Case No. 37-2011-00086086-CU-NP-CTL. ("Action"). A true and

1 correct copy of Plaintiff's Complaint for damages is attached hereto as Exhibit "1".

2 2. No process, pleadings, or orders have been served on Defendant in this action as of the  
3 date of filing of this Notice of Removal.

4 3. As noted above, a true and correct copy of Plaintiff's Complaint for Damages is attached  
5 as Exhibit "1". A true and correct copy of the Notice of Case Assignment is attached hereto as Exhibit  
6 "2". A true and correct copy of the Civil Case Cover Sheet is attached hereto as Exhibit "3". A true  
7 and correct copy of the Summons is attached hereto as Exhibit "4". A true and correct copy of the  
8 Service of Process Transmittal from CT Corporation is attached hereto as Exhibit "5".

9 4. As noted in the Summons (Exhibit "4") and the Service of Process Transmittal (Exhibit  
10 "5"), service was effected on Defendant on April 1, 2011. Because this Notice of Removal is filed  
11 within 30 days of service upon Defendant of the Complaint, Removal is timely pursuant to 28 U.S.C.  
12 §1446(b) and Rule 6(a) of the Federal Rules of Civil Procedure.

13 5. As of the date of filing of this Notice of Removal, Defendant is informed and believes  
14 that no other defendants have been served in this action. Therefore, joinder of other defendants in this  
15 Notice is not required. See, *Salveson v. Western States Bank Card Association*, 731 F.2d 1432, 1429  
16 (9<sup>th</sup> Cir. 1984) ("Those named as defendants but not yet served in the state court action need not join  
17 in the Notice of Removal.")

18 6. Pursuant to 28 U.S.C. §1446(d), Defendant will promptly file a Notice of Filing of  
19 Notice of Removal with the San Diego Superior Court to effectuate removal. Defendant will also  
20 promptly serve Plaintiff's attorney of record with this Notice of Removal and the Notice of Filing of  
21 Notice of Removal.

22 7. Nothing herein constitutes a waiver of any of Defendant's rights, objections or  
23 defenses, including without limitation its right to seek dismissal of the Complaint on any grounds.

24 8. All facts described herein are based on the allegations in Plaintiff's Complaint.  
25 Defendant will dispute these allegations at the appropriate time.

#### 26 **FACTUAL BACKGROUND**

27 9. In this action, Plaintiff sets forth a cause of action for violations of the Song-Beverly  
28 Credit Card Act of 1971 (California Civil Code §1747, et seq.). Plaintiff alleges that she is a resident

1 of California, and entered into a retail transaction with Defendant at one of Defendant's California  
2 stores located in San Diego County. (Plaintiff's Complaint at ¶8). Plaintiff alleges, that within the last  
3 12 months, she went to Defendant's retail store located in San Diego County and proceeded to select  
4 a product from the store that Plaintiff intended to purchase. (Id., at ¶¶14-15). Plaintiff then alleges that  
5 as she proceeded to the cashier's section of the store, which she intended to pay for the product with  
6 a credit card, a Defendant's employee requested Plaintiff's zip code which Plaintiff believed she was  
7 required to provide in order to complete the transaction. (Id., at ¶¶16-18.) Plaintiff alleges that the  
8 defendant's employee then typed and recorded Plaintiff's zip code into an electronic cash register at  
9 the checkout counter. Plaintiff alleges that the Defendant then had Plaintiff's credit card number, name  
10 and zip code recorded in its databases. (Id., at ¶¶19-20.)

11 10. Plaintiff alleges that she brings the action on behalf of herself and others similarly  
12 situated as consumers in California from whom IKEA requested and recorded personal identification  
13 as part of a credit card transaction. Plaintiff alleges violations of the Song-Beverly Credit Card Act and  
14 seeks civil penalties. The action is styled as a Class Action as noted on the face page of the Complaint.

15 Moreover, the designation of Class Action is also indicated on the Civil Case Cover Sheet  
16 (Exhibit " 4"). Finally, Plaintiff sets forth Class Action allegations beginning at ¶23 of the Complaint.

17 11. Plaintiff seeks a certification of a Class consisting of: all persons from whom IKEA  
18 requested and recorded personal identification information as part of a credit card transaction in  
19 California, not including IKEA, its corporate parents, subsidiaries and affiliates, officers and directors,  
20 any entity in which Defendant has a controlling interest, and legal representatives, successors or assigns  
21 of any such excluded persons or entities. Id. at ¶23. Plaintiff alleges that the members of the Class are  
22 so numerous that joinder of all members is impracticable. Id. at ¶24.

23 12. Plaintiff goes on to allege Class Action allegations as to the existence and  
24 predominance of common questions of law and fact, typically, adequacy of representation, and  
25 superiority. Id. at ¶¶25-29.

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**FEDERAL JURISDICTION EXISTS UNDER THE CAFA**

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13. Removal of this action is proper because Plaintiffs’ claims, set forth as a class action, are subject to the Class Action Fairness Act of 2005 (“CAFA”). The CAFA grants District Courts original jurisdiction over civil class actions filed under federal or state law in which any member of a Class of Plaintiffs is a citizen of a state different from any defendant and the amount in controversy for the putative class members in the aggregate exceeds the sum or value of \$5,000,000, exclusive of interest and costs. 28 U.S.C. §1332(d)(2). In addition, the CAFA provides minimal diversity jurisdiction if the added element of a class exceeding 100 members is established. 28 U.S.C. §1332(d)(5)(B). The Act authorizes removal of such actions pursuant to 28 U.S.C. §1446.

14. In this case, Plaintiff alleges that she resides in California. See Complaint, ¶8. Plaintiff alleges that Defendant IKEA U.S. WEST, INC., is a Delaware Corporation. While Plaintiff alleges that Defendant’s principal place of business is in California, that allegation is incorrect. As noted in the Declaration of John Robinson, Defendant’s principal place of business is in the state of Pennsylvania at 420 Alan Wood Road, Conshohocken, Pennsylvania, 19428. In addition, the service of process transmittal from C.T. Corporation identifies the Defendant’s address as 420 Alan Wood Road, Conshohocke, Pennsylvania, 19428. Finally, records from the California Secretary of State website indicates the same Pennsylvania address for IKEA U.S. WEST, INC. (See Exhibit "6").

15. Traditionally, only the citizenship of the named parties in a class action (i.e., the representative plaintiff and the defendant) is considered for diversity purposes. That the action is maintained on behalf of other, potentially non-diverse class members does not affect diversity jurisdiction., *Snyder v. Harris*, 394 U.S. 332, 339-340 (1969).

16. However, as noted even under the CAFA, diversity jurisdiction exists based on the citizenship of the respective sides. Plaintiff alleges that she is a resident of the State of California; Defendant is a resident of the State of Pennsylvania. Moreover, as Plaintiff alleges in her Complaint, the members of the Class are so numerous that joinder of all members is impracticable. Therefore,

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1 given the allegation that the Class constitutes all persons in California from whom credit card purchases  
2 were made from IKEA and in which zip code information was obtained and record, the size of the  
3 Class likely exceeds 100 members based on the allegations of the Complaint.

4 17. Furthermore, the amount in controversy meets the \$5,000,000 threshold set forth  
5 under the CAFA. In this action, Plaintiff asserts damages under the Song-Beverly Credit Card Act of  
6 1971 and seeks penalties of an amount of up to \$1,000 per violation pursuant to California Civil Code  
7 §1747.08(e). See ¶33 of the Complaint. As the Plaintiff alleges that the subject action constitutes a  
8 proposed Class Action, the assertion of \$1,000 per violation in civil penalties makes the amount in  
9 controversy easily in excess of \$5,000,000 based on the allegations in the Complaint. Therefore, based  
10 on the allegations of the Complaint, removal is proper as Defendant satisfies the elements as set forth  
11 in 28 U.S.C. §1332(d)(2).

12 18. As noted in the Declaration of John Robinson, Treasurer for IKEA North America  
13 Services, LLP, IKEA U.S. West, Inc., Defendant processed approximately 2.7 million in-store credit  
14 card transactions in the California stores for the period of December 2009 through December 2010.  
15 (See ¶4 of the Declaration of John Robinson). Thus, the amount in controversy exceeds the \$5,000,000  
16 threshold set forth under the CAFA.

17 **INTRA DISTRICT ASSIGNMENT**

18 19. This action was originally filed in the San Diego County Superior Court. Therefore,  
19 this Action is properly removed to the San Diego Division of this Court pursuant to 28 U.S.C.  
20 §1446(a).

21 20. In the event that the Court should be inclined to remand this action, Defendant requests  
22 that the Court issue an order to show cause why this case should not be remanded, giving Defendant  
23 (as well as Plaintiff) the opportunity to present proper briefing and argument prior to any possible  
24 remand. Such a procedure is appropriate because pursuant to 28 U.S.C. §1447(d), a remand order is  
25 not subject to appellate review.

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**WHEREFORE**, Defendant respectfully requests that this action proceed before this Court as an action properly removed. This Notice of Removal is signed pursuant to Federal Rule of Civil Procedure 11.

DATED: April 29, 2011

**MANNING & KASS  
ELLROD, RAMIREZ, TRESTER LLP**

By: /s/ Kenneth S. Kawabata  
Kenneth S. Kawabata  
Attorneys for Defendant  
IKEA U.S. WEST, INC.

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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

RITA MEDELLIN, an individual, on behalf of herself and all others similarly situated.

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gene J. Stonebarger, Esq., SONEBARGER LAW, 75 Iron Point Circle, Ste. 145, Folsom, CA 95630 (916-235-7140)

**DEFENDANTS**

IKEA U.S. WEST, INC., a Delaware Corporation; and DOES 1 through 50, inclusive.

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**'11CV0921 AJB BGS**  
Kenneth S. Kawabata, Manning & Kass, Ellrod Ramirez Trester, LLP, 550 W. "C" St., Ste. 1900, San Diego, CA 92101

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

California Civil Code Section 1747.08

Brief description of cause:

Alleged unlawful use of zip code information

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

UNSTATED

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

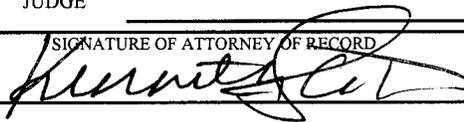
JUDGE

DOCKET NUMBER

DATE

04/29/2011

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# **EXHIBIT C**

MICHAEL A. GEIBELSON  
310-229-5823 TEL  
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May 31, 2016

Molly C. Dwyer, Clerk of the Court  
Office of the Clerk  
United States Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

Re: *Rita Medellin v. IKEA U.S.A. West Inc.*, No. 15-55174  
Supplemental Authority, Fed. R. App. P. 28(j)

Dear Ms. Dwyer:

Pursuant to FRAP 28(j), IKEA submits the opinion in *Spokeo, Inc. v. Robins*, No. 13-1339, 578 U.S. \_\_\_\_ (May 16, 2016). There, plaintiff Robins alleged that Spokeo violated the Fair Credit Reporting Act when it published inaccurate information about him. *Id.*, slip op. at 1. The district court dismissed for lack of Article III standing but the Ninth Circuit reversed, concluding Robins had alleged a particularized injury by alleging a violation of a statutory right. *Id.* at 1-2. The Supreme Court disagreed, holding the Ninth Circuit’s analysis of Article III’s injury-in-fact requirement was incomplete, as a plaintiff must allege his injury is both “concrete *and* particularized.” *Id.* at 2.

The Supreme Court then discussed whether an alleged violation of a statutory procedural right can constitute a “concrete” injury under Article III. Where a procedural violation creates “the risk of real harm,” standing may be established. *Id.* at 9-10. But allegations of “a bare procedural violation” resulting in no harm cannot satisfy Article III. *Id.* at 10.

To illustrate a procedural violation without resulting harm, the Court invoked an example directly on-point here—a consumer’s ZIP code. The Court reasoned, “In addition, not all inaccuracies cause harm or present any material risk of harm. An example that comes readily to mind is an incorrect

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zip code. It is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm.” *Id.* at 11.

*Spokeo*’s reasoning supports IKEA’s argument that the collection of ZIP codes without other information (e.g., the customer’s name) does not necessarily result in a concrete injury, and certainly not a common one. An injury may or may not occur from a violation of a statutory right. Actual injury was alleged in the removed complaint (Dkt. 1-2 at 2:17-18) and in the First Amended Complaint that was operative at trial (Dkt. 25 at 2:18-19), although Plaintiff Yeoman’s claim was dismissed after trial and is not part of this appeal (Dkt. 273). *Spokeo* therefore bolsters the district court’s conclusion that individual questions predominate over common ones, and decertification was proper.

Sincerely,

/s/ Michael A. Geibelson  
Michael A. Geibelson  
*Counsel for Defendant-Appellee*

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**CERTIFICATE OF COMPLIANCE**

I certify that pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28-6, the attached letter is proportionately spaced, has a typeface of 14 points or more in Microsoft Word Times New Roman font, and its body contains fewer than 350 words.

DATED: May 31, 2016

**ROBINS KAPLAN LLP**

By: /s/ Michael A. Geibelson  
Michael A. Geibelson  
*Counsel for Defendant-Appellee*

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 31, 2016.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

DATED: May 31, 2016

**ROBINS KAPLAN LLP**

By: /s/ Michael A. Geibelson  
Michael A. Geibelson  
*Counsel for Defendant-Appellee*