

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PEDRO CARO RIVERA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

MASTERCARD INC.,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

(JURY TRIAL DEMANDED)

Plaintiff Pedro Caro Rivera, individually and on behalf of all others similarly situated, by and through his attorneys, makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to allegations specifically pertaining to himself and his counsel, which are based on personal knowledge.

INTRODUCTION

1. Unsatisfied with interchange fee revenue alone, Defendant Mastercard Inc. (“Mastercard”) sold, rented, and continues to sell and rent, mailing lists containing Plaintiff’s and all of its other customers’ names and addresses (as well as age, gender, religion, and purchase-related data, and information pertaining to their use of MasterCard cards to make purchases (hereinafter, “Personal Identifying Transactional Data”)) on the open market to data miners, data aggregators, data appenders, data cooperatives, list brokers, aggressive marketing companies, and various other parties interested in purchasing them. Prior to monetizing Plaintiff’s and its other customers’ Personal Identifying Transactional Data in this way, Mastercard did not ask for much less obtain consent from any of these individuals.

2. Documented evidence confirms these facts. For example, Mastercard, either directly or through one or more intermediaries acting on its behalf and at its direction (including

through NextMark and/or one or more “list manager” and/or “list broker”), and during the time period relevant to this action, sold and rented to various parties the mailing list titled “MASTERCARD® AUDIENCES Mailing List”, which contains the names, addresses, and other Personal Identifying Transactional Data of all individuals who used MasterCard cards to make purchases (including the types of purchases made), including Plaintiff and each member of the Class, at a base price of “\$110/M [per thousand],” (i.e., 11 cents apiece), as shown in pertinent part in the screenshot below from list broker NextMark, Inc.’s website:

| MASTERCARD® AUDIENCES Mailing List | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|-----------|---|-----|-----------|------------|-----------|------------|----------|---------------|-----------|-----|-----------|----------|-----------|-----|----------|-------|----------|-----|----------|------------|----------|-------|-----------|-----|-----------|
| A World Beyond Cash® Every day, everywhere consumers are pulling out their Mastercard® to purchase everything from apparel and travel to entertainment and small business supplies plus everything in-between. | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Get Count Get Pricing Get More Information | | | | | | | | | | | | | | | | | | | | | | | | | | |
| SEGMENTS 31,328,300 TOTAL UNIVERSE / BASE RATE 31,328,300 MONTHLY HOTLINE 12,500,625 EMAIL ADDRESSES 18,797,579 FACEBOOK USERS FUNDRAISER RATE | | COUNTS THROUGH 04/14/2021 \$110.00/M \$110.00/M \$150.00/M \$85.00/M | | | | | | | | | | | | | | | | | | | | | | | | |
| DESCRIPTION A World Beyond Cash® Every day, everywhere consumers are pulling out their Mastercard® to purchase everything from apparel and travel to entertainment and small business supplies plus everything in-between. The credit card industry has a huge effect on everyday life in the U.S. with credit cards being more popular than cash. Credit card ownership and usage are up due to benefits such as convenience, easy access to credit and universal acceptance. A Statista survey carried out in June 2018 revealed that 83 percent of Americans between 30 and 49 years own a credit card. Mastercard® Audiences gives marketers the ability to target any consumer audience via email, Facebook, and direct mail. Additional Mastercard® Audiences, along with a full suite of enhanced elements, available for additional segmentation - please inquire. | | POPULARITY: ***** 100 MARKET: CONSUMER CHANNELS: <input type="checkbox"/> SOURCE: TRANSACTIONAL, MULTI SOURCED PRIVACY: UNKNOWN DMA?: YES - MEMBER STATUS: STANDARD PROVIDER GEO: USA GENDER: 50% FEMALE 45% MALE | | | | | | | | | | | | | | | | | | | | | | | | |
| ORDERING INSTRUCTIONS <ul style="list-style-type: none"> To order this list, contact your List Broker and ask for NextMark List ID #529895 or click here to place your request. Use NextMark List Order Entry Software or Bionic Media Planning Software \$0.00 MINIMUM PAYMENT PLEASE INQUIRE ABOUT NET NAME EXCHANGE IS AVAILABLE REUSE IS AVAILABLE | | SELECTS <table border="1"> <tr><td>AGE</td><td>\$15.00/M</td></tr> <tr><td>CATEGORIES</td><td>\$15.00/M</td></tr> <tr><td>GENDER/SEX</td><td>\$5.00/M</td></tr> <tr><td>INCOME SELECT</td><td>\$15.00/M</td></tr> <tr><td>MOB</td><td>\$10.00/M</td></tr> <tr><td>RELIGION</td><td>\$15.00/M</td></tr> <tr><td>SCF</td><td>\$5.00/M</td></tr> <tr><td>STATE</td><td>\$5.00/M</td></tr> <tr><td>ZIP</td><td>\$5.00/M</td></tr> </table> ADDRESSING <table border="1"> <tr><td>KEY CODING</td><td>\$5.00/M</td></tr> <tr><td>EMAIL</td><td>\$65.00/F</td></tr> <tr><td>FTP</td><td>\$65.00/F</td></tr> </table> RELATED LISTS <ul style="list-style-type: none"> <input type="checkbox"/> WILAND <input type="checkbox"/> NONPROFIT/FUNDRAISING/DONOR DATABASE <input type="checkbox"/> DISABLED AMERICAN VETERANS <input type="checkbox"/> ACTIVE DONORS <input type="checkbox"/> I-BEHAVIOR DATABASE <input type="checkbox"/> ALLIANT DIRECT AUDIENCES - DONORS <input type="checkbox"/> MEREDITH DATABASE - MASTERFILE <input type="checkbox"/> CHANNELS <input type="checkbox"/> ARBOR DAY FOUNDATION DONORS/MEMBERS <input type="checkbox"/> KIPLINGER ENHANCED MASTERFILE <input type="checkbox"/> PUBLISHERS CLEARING HOUSE MERCHANDISE BUYERS <input type="checkbox"/> COLONY BRANDS CATALOGS - MASTERFILE FOR FUNDRAISERS | AGE | \$15.00/M | CATEGORIES | \$15.00/M | GENDER/SEX | \$5.00/M | INCOME SELECT | \$15.00/M | MOB | \$10.00/M | RELIGION | \$15.00/M | SCF | \$5.00/M | STATE | \$5.00/M | ZIP | \$5.00/M | KEY CODING | \$5.00/M | EMAIL | \$65.00/F | FTP | \$65.00/F |
| AGE | \$15.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| CATEGORIES | \$15.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| GENDER/SEX | \$5.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| INCOME SELECT | \$15.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| MOB | \$10.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| RELIGION | \$15.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| SCF | \$5.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| STATE | \$5.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| ZIP | \$5.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| KEY CODING | \$5.00/M | | | | | | | | | | | | | | | | | | | | | | | | | |
| EMAIL | \$65.00/F | | | | | | | | | | | | | | | | | | | | | | | | | |
| FTP | \$65.00/F | | | | | | | | | | | | | | | | | | | | | | | | | |

See Exhibit A hereto.

3. Puerto Rico’s Right of Publicity Act clearly prohibits what Mastercard has done.

See P.R. LAWS tit. 32, §3151 (2011), *et seq.* (the “PRRPA”). Generally speaking, the PRRPA

prohibits using a person's name or likeness on or in connection with a product, good, piece of merchandise, or a service without the person's prior consent. Mastercard directly violated the PRRPA by selling and renting, on the open market to any member of the public interested in purchasing, mailing lists that contained Plaintiff's and all of its other Puerto Rico customers' names, addresses, and other Personal Identifying Transactional Data.

4. Mastercard's practices of monetizing its customers' names and likenesses for commercial purposes without their consent is not only unlawful, but also dangerous because it allows any member of the public willing to purchase or rent this data to target particular customers, including vulnerable members of society, using their identities, interests and other demographic data. For example, anyone could buy or rent a list that contains the names, addresses, and other Personal Identifying Transactional Data of all Christian women over the age of 50 who reside in Puerto Rico, earn over \$100,000 per year, and purchased a plane ticket with a MasterCard in the past six months. Such a list is available for sale or rental on the open market for approximately \$165 per thousand customers listed.

5. So, while Mastercard profits handsomely from the use of its customers' names, likenesses, and other personal identifying attributes in this way, it does so at the expense of its customers' statutory rights of publicity. Accordingly, Plaintiff brings this Class Action Complaint against Mastercard for its plainly unlawful use of its Puerto Rico customers' names and likenesses in reckless disregard of Plaintiff's and the Class' statutorily protected rights under the PRRPA.

PARTIES

6. Plaintiff is, and at all times relevant to this action has been, a living, natural person and a domiciled resident and citizen of Puerto Rico. During the time period relevant to this action, Plaintiff used a MasterCard card (or cards) to make purchases while residing in, being a citizen of, and physically being present in, Puerto Rico.

7. Defendant Mastercard Inc. is a Delaware corporation that maintains its headquarters and principal place of business in Purchase, New York. Mastercard is a technology company in the global payments industry that enables the use of electronic forms of payment, including credit and debit cards, by consumers, financial institutions, merchants, governments, digital partners, businesses and other organizations worldwide.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. §1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from Mastercard.

9. The Court has personal jurisdiction over Mastercard because Mastercard maintains its corporate headquarters and principal place of business in Purchase, New York.

10. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Mastercard is subject to personal jurisdiction in this judicial District, because Mastercard resides in this judicial District, and because a substantial part of the events giving rise to Plaintiff's claims took place within this judicial District.

THE PRRPA

11. The PRRPA prohibits any person from, *inter alia*, using an individual's name or likeness, in any manner, on or in a product, good, merchandise or service. *See*. Specifically, the PRRPA states, in pertinent part:

Any natural or juridical person who uses another's likeness for commercial, trade, or advertising purposes without the previous consent of said person, the person who possesses a license for said likeness, his/her heirs if the person is deceased, or the authorized agent of any of the forgoing shall be liable for damages.

P.R. LAWS tit. 32, §3152 (2011). The term “likeness” means a “[n]ame, photograph, portrait, voice, signature, attribute or any representation of a person through which an average observer or listener may identify the same, produced using any reproduction procedure or technique.” P.R. LAWS tit. 32, §3151(c) (2011). “Commercial purpose” is defined as “[t]he use of a person’s likeness in connection with an advertisement, offer, or sale of a product, merchandise, good or service in the market.” P.R. LAWS tit. 32, §3151(h) (2011).

12. “The law provides for both injunctive relief and compensatory damages to a plaintiff who sues for misappropriation or violation of the right of publicity.” P.R. LAWS tit. 32, §3153 (2011). In lieu of actual compensatory damages, a prevailing plaintiff may seek statutory damages of “an amount of no less than \$750 and no greater than \$20,000 per violation, as deemed to be fair by the court. Whenever a violation is determined to be deliberate or due to gross negligence, the court may freely increase the amount of statutory damages to a sum no greater than \$100,000 per violation.” *See id.*

MASTERCARD DIRECTLY VIOLATES THE PRRPA

13. Mastercard maintains a vast digital database comprised of its customers’ information, including their names, addresses, likenesses, and various other forms of personal identifying information, including, and highly sensitive, Personal Identifying Transactional Data.

14. Mastercard, either directly or through one or more intermediaries acting on its behalf and at its direction (including through NextMark and/or one or more “list manager” and/or “list broker”), sold and rented during the relevant time period, and continues to sell and rent to this day, lists on which all of its customers’ names, addresses, and other Personal Identifying Transactional Data appear. Mastercard has sold and rented (and continues to sell and rent) these lists on the open market to anyone willing to pay for them, including on a regular basis to data

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