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Superior Court of California,
County of San Francisco

03/11/2024
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BY: SHENEQUA GLADNEY
Deputy Clerk

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN FRANCISCO**

9 **CGC-24-613020**

10 LISA CHONG-VIZCARRA, individually and
11 on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 JANIE AND JACK LLC,

15 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Lisa Chong-Vizcarra (“Plaintiff”), individually and on behalf of all other persons
2 similarly situated, by and through her attorneys, makes the following allegations pursuant to the
3 investigation of her counsel and based upon information and belief, except as to allegations
4 specifically pertaining to herself and her counsel, which are based on personal knowledge.

5 **NATURE OF THE ACTION**

6 1. This is a class action suit brought against Defendant Janie and Jack LLC
7 (“Defendant”) for violating the California Invasion of Privacy Act (“CIPA”).

8 2. Defendant owns and operates the website, www.janieandjack.com (the “Website”),
9 which sells children’s clothing and accessories.

10 3. Unbeknownst to Plaintiff and consumers, Defendant knowingly and willfully assists
11 a third party with intercepting confidential communications that contain consumers’ sensitive
12 financial information.

13 4. Plaintiff brings this action for damages and other legal and equitable remedies
14 resulting from Defendant’s violation of the CIPA.

15 **PARTIES**

16 5. Plaintiff Lisa Chong-Vizcarra is, and has been at all relevant times, a citizen of
17 California who resides in San Francisco, California.

18 6. Ms. Chong-Vizcarra purchased a jacket, a romper, leggings, socks, and pants for her
19 daughter from Defendant’s Website on or about November 26, 2022. When purchasing the
20 products on the Website, Ms. Chong-Vizcarra entered her personally identifiable information
21 (“PII”) and credit card information to complete the transaction.

22 7. When entering her PII and credit card information on the Website, Ms. Chong-
23 Vizcarra reasonably expected that Defendant would keep this information private and not disclose
24 it to third parties. However, Defendant disclosed such information to a third party, Adyen, without
25 Ms. Chong-Vizcarra’s knowledge or consent.

26 8. Ms. Chong-Vizcarra would not have completed a transaction on Defendant’s
27 Website if she knew Defendant was disclosing her sensitive information to a third party.

1 costing each one an average of \$146.⁵ From these hacks, only fraudsters benefit, with identity
2 thieves buying and selling personal information “by the millions” through illicit, online
3 marketplaces.⁶ There is such a glut of supply, in fact, that prices are relatively low; banking
4 information costs around \$100, for example, while credit card information costs as low as \$10.⁷

5 14. Despite these concerns, online retailers, like Defendant, intentionally disclose
6 information to other companies that is sensitive and confidential. When completing a transaction,
7 for example, a consumer often conveys details about her credit card and mailing address.
8 Undoubtedly, consumers expect this information to be private and used only for the purposes of
9 completing the transaction.

10 15. However, merchants, like Defendant, assist third parties in intercepting this
11 sensitive information to protect themselves from fraudulent transactions.

12 16. Once that information is received, third parties dissect it for inferences, taking
13 anything they can glean and retooling it into products that they can sell to other customers.

14 17. As an industry, online retailers have failed to protect consumers’ personal
15 information. Not only have they failed to protect that information, but they have also shared it
16 voluntarily and intentionally, without obtaining consumer consent to do so.

17 18. Consumers in California have a right to know if private companies intend on
18 sharing their sensitive information with third parties. Such disclosures are typically contained in a
19 privacy policy on a company’s website.

20 19. In fact, California law requires companies to “conspicuously post” their privacy
21 policies. *See* Cal. Bus. & Prof. Code §§ 22575–79. As California courts have held, a notice is
22 conspicuous if a reasonably prudent person would have seen it.

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24 ⁵ IBM Security, *Cost of a data breach Report (2020)*, [https://www.ibm.com/security/digital-
assets/cost-data-breach-report/1Cost%20of%20a%20Data%20Breach%20Report%202020.pdf](https://www.ibm.com/security/digital-assets/cost-data-breach-report/1Cost%20of%20a%20Data%20Breach%20Report%202020.pdf).

25 ⁶ NordVPN, *Analyzing 4 million payment card details found on the dark web*,
<https://nordvpn.com/research-lab/payment-card-details-theft/>.

26 ⁷ Ryan Smith, *Revealed – how much is personal information worth on the dark web?*, *Ins. Bus.*
27 *Mag.* (May 1, 2023), [https://www.insurancebusinessmag.com/us/news/breaking-news/revealed-
how-much-is-personal-information-worth-on-the-dark-web-
444453.aspx#:~:text=Online%20banking%20login%20information%20costs,be%20purchased%20
for%20about%20%241%2C000](https://www.insurancebusinessmag.com/us/news/breaking-news/revealed-how-much-is-personal-information-worth-on-the-dark-web-444453.aspx#:~:text=Online%20banking%20login%20information%20costs,be%20purchased%20for%20about%20%241%2C000).

1 20. Such policies are crucial so that consumers are aware of what companies, like
2 Defendant, are doing with their sensitive information.

3 21. As stated by California Attorney General Xavier Becerra, “California consumers
4 have the right to know, the right to delete, and the right to opt-out of the sale of the personal
5 information collected by businesses.”

6 22. This does not stop some companies, like Defendant, from assisting third parties in
7 intercepting their customers’ sensitive information, without their customers’ knowledge or consent.

8 **Adyen’s Payment Processing Services**

9 23. Adyen, a Dutch payment company, offers merchants an online payment processing
10 platform which merchants can integrate into their website for the purported purpose of processing
11 consumer purchases.⁸

12 24. However, Adyen does not merely process transactions. Instead, Adyen intercepts
13 and indefinitely stores consumer PII and financial information into its fraud prevention network.

14 25. This network allows Adyen to provide additional services to merchants, including
15 services related to risk management.⁹

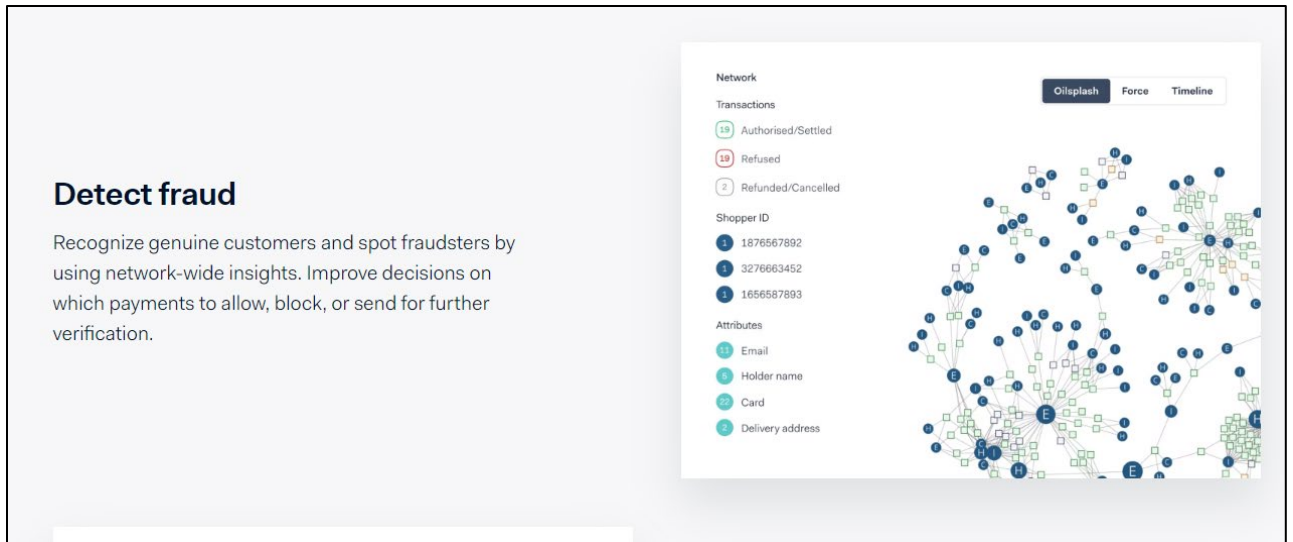
16 26. These risk management services are designed to protect merchants, rather than
17 consumers, from fraud.

18 27. For example, Adyen allows merchants to access its “network-wide insights” to
19 detect fraud:

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27 _____
28 ⁸ <https://www.adyen.com/online-payments>.

⁹ <https://www.adyen.com/risk-management>.

1 **Figure 1:**



12 28. As shown in Figure 1, this network includes at least consumers names, email

13 29. Adyen has built this vast network of consumer data by intercepting and indefinitely

14 storing consumer information every time a consumer completes a transaction on a website that

15 hosts its payment platform.

16 30. This network allows Adyen to identify consumers across devices, networks, and

17 identities and share this information with the merchants it partners with.

18 **Defendant's Use of Adyen's Services**

19 31. Consumers visit Defendant's Website to make online purchases for children's

20 clothing and accessories.

21 32. Defendant integrated Adyen's payment platform on its Website to process customer

22 transactions.

23 33. Defendant's Website does not include any identifying information or identification

24 to alert consumers that their transactions are being processed by a third party.

25 34. Specifically, there is no branding on the payment screens indicating that Adyen is

26 involved, and consumers cannot tell that Adyen is obtaining or storing sensitive information,

27 including financial information.

1 35. Moreover, as shown in Figures 2 and 3, there is no privacy policy that alerts
2 consumers that their sensitive information is being shared with and indefinitely stored by a third
3 party.

4 **Figures 2-3:**

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JANIE AND JACK

Sign In / Shipping

CHECKOUT AS GUEST [Redacted] Edit

SHIPPING & GIFT OPTIONS

First Name

Last Name

United States Zip/Postal Code

Shipping Internationally?

Address 1

Address 2 (Optional) APO/FPO

City Select a State

Phone ?

USE AS DEFAULT BILLING ADDRESS

ORDER SUMMARY Edit

TARTAN FLANNEL SHIRT
Item: 100047628
Color: Berry Mauve Plaid
Size: 2T
Qty: 1 \$42.00

Subtotal \$42.00
Estimated Shipping Economy \$7.00
Estimated Tax \$0.00

Order Total \$49.00

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PROMOTIONS

Promo Code ENTER ?

You may only use one promotion code per order. Exclusions may apply.

GIFT CARDS

Number PIN ENTER Check Balance ?

PAYMENT METHODS

CREDIT CARD PAYPAL

CARD NUMBER

1234 5678 9012 3456

EXPIRY DATE CVC / CVV

MM/YY 3 digits

NAME ON CARD

J. Smith

REVIEW YOUR ORDER

ORDER REVIEW

- 1 (c) whether Defendant unlawfully disclosed and continues to disclose its users’
2 PII and financial information in violation of the CIPA;
3 (d) whether Defendant’s disclosures were committed knowingly;
4 (e) whether Defendant disclosed Plaintiff’s and the Class’s PII and financial
5 information without consent;
6 (f) whether Defendant intentionally recorded Plaintiff and Class members’
7 communications under the CIPA; and
8 (g) whether Plaintiff and Class members’ PII and financial information are
9 content under the CIPA.

10 45. Typicality: Plaintiff is a member of the Class she seeks to represent. Plaintiff’s
11 claims are typical of the claims of each Class member in that every member of the Class was
12 susceptible to the same deceptive conduct. Plaintiff is entitled to relief under the same causes of
13 action as the other Class members.

14 46. Adequacy: Plaintiff is an adequate Class representative because her interests do not
15 conflict with the interests of the Class members she seeks to represent; her claims are common to
16 all other members of the Class and she has a strong interest in vindicating her rights; she has
17 retained counsel competent and experienced in complex class action litigation and she intends to
18 vigorously prosecute this action. Plaintiff has no interests which conflict with those of the Class.
19 The Class members’ interests will be fairly and adequately protected by Plaintiff and her counsel.
20 Defendant has acted in a manner generally applicable to the Class, making relief appropriate with
21 respect to Plaintiff and the Class members. The prosecution of separate actions by individual Class
22 members would create a risk of inconsistent and varying adjudications.

23 47. Superiority: Further, a class action is superior to other available methods for the fair
24 and efficient adjudication of this controversy because individual litigation of the claims of all
25 members of the Class is impracticable. Additionally, the expense and burden of individual
26 litigation would make it difficult or impossible for the individual Class members to redress the
27 wrongs done to them, especially given the costs and risks of litigation as compared to the benefits
28 that may be attained. Even if the Class members could afford individualized litigation, the costs to

1 the court system would be substantial and individual actions would also present the potential for
2 inconsistent or contradictory judgments. By contrast, a class action presents fewer management
3 difficulties and provides the benefit of single adjudication and comprehensive supervision by a
4 single forum.

5 48. Finally, Defendant has acted or refused to act on grounds generally applicable to the
6 entire Class, thereby making it appropriate for this Court to grant final injunctive relief and
7 declaratory relief with respect to the Class as a whole.

8 **CAUSES OF ACTION**

9 **COUNT I**

10 **Violation of the California Invasion of Privacy Act,
11 Cal. Penal Code § 631**

12 49. Plaintiff repeats the allegations contained in the paragraphs above as if fully set
13 forth herein and brings this count individually and on behalf of the members of the Class.

14 50. The California Invasion of Privacy Act (“CIPA”) is codified at Cal. Penal Code §§
15 630 to 638. CIPA begins with its statement of purpose – namely, that the purpose of CIPA is to
16 “protect the right of privacy of the people of [California]” from the threat posed by “advances in
17 science and technology [that] have led to the development of new devices and techniques for the
18 purpose of eavesdropping upon private communications” Cal. Penal Code § 630.

19 51. A person violates California Penal Code § 631(a), if:
20 by means of any machine, instrument, or contrivance, or in any other
21 manner, [s/he] intentionally taps, or makes any unauthorized connection,
22 whether physically, electrically, acoustically, inductively, or otherwise,
23 with any telegraph or telephone wire, line, cable, or instrument, including
24 the wire, line, cable, or instrument of any internal telephonic
25 communication system, or [s/he] willfully and without the consent of all
26 parties to the communication, or in any unauthorized manner, reads, or
27 attempts to read, or to learn the contents or meaning of any message,
28 report, or communication while the same is in transit or passing over any
wire, line, or cable, or is being sent from, or received at any place within
this state; or [s/he] uses, or attempts to use, in any manner, or for any
purpose, or to communicate in any way, any information so obtained

Cal. Penal Code § 631(a).

1 52. Further, a person violates § 631(a) if s/he “aids, agrees with, employs, or conspires
2 with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things
3 mentioned” in the preceding paragraph. *Id.*

4 53. To avoid liability under § 631(a), a defendant must show it had the consent of all
5 parties to a communication.

6 54. At all relevant times, Defendant aided, agreed with, and conspired with Adyen to
7 track and intercept Plaintiff’s and Class members’ internet communications while accessing
8 www.janieandjack.com. These communications were intercepted without the authorization and
9 consent of Plaintiff and Class members.

10 55. Defendant, when aiding and assisting Adyen’s wiretapping and eavesdropping,
11 intended to help Adyen learn some meaning of the content in the form fields entered by Plaintiff
12 and Class members.

13 56. The following items constitute “machine[s], instrument[s], or contrivance[s]” under
14 the CIPA, and even if they do not, Adyen’s payment platform falls under the broad catch-all
15 category of “any other manner”:

- 16 (a) The computer codes and programs Adyen used to track Plaintiff and Class members’
17 communications while they were navigating www.janieandjack.com;
- 18 (b) Plaintiff’s and Class members’ browsers;
- 19 (c) Plaintiff’s and Class members’ computing and mobile devices;
- 20 (d) The computer codes and programs used by Adyen to effectuate its tracking and
21 interception of Plaintiff’s and Class members’ communications while they were using
22 a browser to visit www.janieandjack.com; and
- 23 (e) The plan Adyen carried out to effectuate its tracking and interception of Plaintiff’s
24 and Class members’ communications while they were using a web browser or mobile
25 application to visit www.janieandjack.com.

26 57. The information that Defendant transmitted using Adyen’s payment platform
27 constituted sensitive and confidential personally identifiable information.

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