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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FRASER ET AL.,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

No. 2:13-cv-00520-TLN-DAD

**ORDER**

This matter is before the Court pursuant to Plaintiffs Fraser et al.'s ("Plaintiffs") Motion for Class Certification. (ECF No. 15.) Defendant Wal-Mart Stores, Inc. ("Defendant") filed an opposition to Plaintiffs' motion. (ECF No. 16.) For the reasons discussed below, the Court GRANTS Plaintiffs' Motion for Class Certification.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs Amy Fraser and Paula Haug submitted a Memorandum of Points and Authorities in Support of their Motion for Class Certification. (ECF No. 15-1.) Plaintiffs allege that Defendant violated the Song-Beverly Credit Card Act of 1971 Section 1747.08(a)(2) ("Section 1747.08(a)(2) of the California Civil Code") by requesting and recording customers' ZIP codes in conjunction with credit card transactions. (ECF No. 16 at 1.)

Section 1747.08(a)(2) of the California Civil Code provides that:

1 (a) Except as provided in subdivision (c), no person, firm, partnership,  
2 association, or corporation that accepts credit cards for the transaction of business  
3 shall do any of the following:

4 (2) Request, or require as a condition to accepting the credit card as payment in  
5 full or in part for goods or services, the cardholder to provide personal  
6 identification information, which the person, firm, partnership, association, or  
7 corporation accepting the credit card writes, causes to be written, or otherwise  
8 records upon the credit card transaction form or otherwise.

9 Cal. Civ. Code §1747.08(a)(2).

10 Plaintiffs contend that Defendant has a company policy where, in each of its California  
11 retail stores, credit card customers are asked or even sometimes required to input their ZIP codes  
12 into the electronic pin pad device adjacent to the cashier at the checkout stand. (ECF No. 15-1 at  
13 4.) Defendant acknowledged that it did request and record the ZIP codes from those customers  
14 using an American Express credit card for purchases exceeding \$50. (ECF No. 15-1 at 4.)  
15 Furthermore, Defendant admits to requesting and recording the ZIP codes from customers using  
16 Discover credit cards for transactions exceeding \$200. (ECF No. 15-1 at 4.)

17 Plaintiff Haug further alleges that she utilized a Visa credit card on multiple occasions at  
18 Defendant's stores and was requested to provide her ZIP code during those transactions as well.  
19 Defendant denies that it requested and recorded the ZIP codes of its customers utilizing a Visa credit  
20 card.

21 Plaintiff Haug alleges that she entered into multiple credit card purchase transactions at  
22 Defendant's stores in California where she was required to input her ZIP code. (ECF No. 15-1 at  
23 4.) When Defendant asked Plaintiff Haug to identify all of the credit card transactions she based  
24 her claim on, she pointed to the following:

25 **Visa:** (1) a November 17, 2012 transaction for \$64.61; (2) a December 5, 2012  
26 for \$35.37; (3) a December 7, 2012 for \$75.08; and (4) a December 16, 2012 for  
27 \$30.14.

28 **AmEx:** (1) a December 1, 2012 transaction for \$85.09; (2) a September 3, 2013  
for \$54.05; and (3) a September 7, 2013 for \$60.36.

(ECF No. 16 at 3.) However, in the billing statements that Plaintiff Haug produced, the  
December 7, 2012 transaction does not appear. (ECF No. 16 at 4.) As for the American Express

1 transactions, Plaintiff Haug presented no receipt or account statement for the December 1, 2012,  
2 transaction. Furthermore, the two September, 2013, American Express transactions mentioned  
3 occurred seven months after Plaintiff Haug commenced this action. (ECF No. 16 at 4.)

4 Plaintiff Fraser points to two American Express credit card transactions where the credit  
5 card pin pad “requested [her] to confirm the transaction amount and to input [her] ZIP code.”  
6 (ECF No. 16 at 5.)

7 Defendant explains that in order to allow credit cards as a form of payment, Defendant  
8 must enter into acceptance agreements with credit card companies. (ECF No. 16 at 5.) In  
9 furtherance of preventing criminal activity, many credit card companies have developed ZIP code  
10 verification protocols that systematically and instantaneously match the ZIP code entered at the  
11 point of sale with the billing ZIP code on the credit card account. (ECF No. 16 at 5.) American  
12 Express has such a program, which is included in Defendant’s agreement with American Express.  
13 (ECF No. 16 at 5.) Following this agreement, Defendant is contractually obligated to provide  
14 American Express with the cardholder’s billing ZIP code during the authorization process. (ECF  
15 No. 16 at 6.) Defendant has no such agreement with Visa. (ECF No. 16 at 6.) Defendant uses a  
16 customer activated terminal (“CAT”) whenever a customer pays with a credit card. (ECF No. 16  
17 at 6.) When a card is swiped, the CAT prompts the customer to provide any additional  
18 information needed depending on the card type. (ECF No. 16 at 6.) For American Express cards,  
19 in transactions equal to or greater than \$50, the CAT is programmed to require a 5-digit ZIP code  
20 from the customer. (Decl. of Matt Howarter (“Howarter Decl.”), ECF No. 16-3 ¶ 3.) Defendant  
21 claims that the CAT system is not programmed to request ZIP codes in Visa transactions because  
22 the Wal-Mart and Visa acceptance agreement does not require it. Howarter Decl. (ECF No. 16-3  
23 ¶ 4.)<sup>1</sup>

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25 <sup>1</sup> In response to Plaintiffs’ allegations that Defendant violated Cal. Civ. Code § 1747.08(a)(2), Defendant points to  
26 Cal. Civ. Code § 1747.08(c)(3)(A), which provides that personal identification information may be collected if the  
27 merchant accepting the credit card “is contractually obligated to provide personal information in order to complete  
28 the credit card transaction.” (ECF No. 16 at 12, *citing to* Cal. Civ. Code § 1747.08(c)(3)(A)). Defendant’s credit  
card acceptance agreement with American Express requires that it transmit to American Express the cardholder’s ZIP  
code for certain transactions in order to authenticate the cardholder’s identity. This argument is misplaced and does  
not speak to class certification. Therefore, the Court does not address it at this time

1 In the current motion, Plaintiffs move to certify the following class pursuant to Federal  
2 Rule of Civil Procedure (“FRCP”) 23(a) and 23(b)(3):

3  
4 All persons in California whom Defendant requested and recorded  
5 personal identification information in conjunction with a credit card  
6 purchase transaction at a California retail store during the period of time  
7 beginning January 29, 2012 and continuing through the date of trial (the  
8 “Class”).

(ECF No. 15-1 at 1.)

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10 **II. LEGAL STANDARD**

11 The legal standard to obtain class certification is found under FRCP 23. A class action  
12 may be maintained only if all four prerequisites of FRCP 23(a) are met along with at least one of  
13 the requirements of subpart (b). *Blake v. Arnett*, 663 F.2d 906, 912 (9th Cir. 1981). In deciding  
14 whether to certify a class, a district court “will resolve factual disputes by a preponderance of the  
15 evidence and make findings that each Rule 23 requirement is met or is not met, having considered  
16 all relevant evidence and arguments presented by the parties.” *In re Hydrogen Peroxide Antitrust*  
17 *Litig.*, 552 F.3d 305, 320 (3rd Cir. 2008).

18 **III. ANALYSIS**

19 **A. *FRCP Rule 23(a)***

20 The four requirements of FRCP Rule 23(a) are presented as the following:

- 21 (a) Prerequisites. One or more members of a class may sue or be sued as  
22 representative parties on behalf of all members only if:  
23 (1) the class is so numerous that joinder of all members is impracticable;  
24 (2) there are questions of law or fact common to the class;  
25 (3) the claims or defenses of the representative parties are typical of the  
26 claims or defenses of the class; and  
27 (4) the representative parties will fairly and adequately protect the interests  
28 of the class.

The Court will address each prerequisite individually.

i. **Numerosity of Class**

Rule 23(a)(1) specifies that class action is appropriate where the class is so numerous that joinder of all members is impracticable. Impracticability does not mean impossibility, but rather

1 the focus is on the “difficulty or inconvenience of joining all members of the class.” *Harris v.*  
2 *Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 914 (9th Cir. 1964) (citing to *Advertising*  
3 *specialty Nt. Ass’n v. FTC*, 238 F.2d 108, 119 (1st Cir. 1956)). Although the numerosity  
4 requirement does not focus exclusively on the number of members in the potential class, case  
5 law does suggest that very large numbers may be considered impracticable.<sup>2</sup>

6 Here, Plaintiffs are defining the class as all persons in California whom Defendant  
7 requested and recorded personal identification information during a credit card transaction.  
8 Although Defendant does not acknowledge that this was done with VISA cards, Defendant does  
9 admit to recording ZIP codes from American Express cardholders. (ECF No. 15-1 at 8.) The  
10 size of the class is estimated to exceed 100,000 individuals. (Decl. of James M. Lindsay in  
11 Support of Motion for Class Certification, ECF No. 15-2 at ¶ 5). Joinder of this large number of  
12 individuals would cause difficulties and inconvenience for the various parties, as well as the  
13 court, and is therefore impracticable.

14 In addition, under the numerosity requirement, the class must be adequately defined and  
15 clearly ascertainable. *DeBremaecker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970). Here, the class  
16 meets this standard. Plaintiffs adequately defined the class.<sup>3</sup> Furthermore, given the class  
17 definition, Defendant should have a record of all the potential class members because they  
18 requested and recorded their information. There is no indication that class membership cannot  
19 be readily determined here from Defendant’s records. Thus, the class is clearly ascertainable and  
20 meets the numerosity requirement.

21 ii. Commonality of questions of law and fact

22 The second prerequisite for class certification is that there must be a common question of  
23 law or fact to the class. Fed. R. Civ. P. 23(a)(2). The class members must share a “common  
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25 <sup>2</sup> The courts provide no strict number, but when a class is very large joinder is typically impracticable. *See Gen. Tel.*  
26 *Co. of the NW. v. EEOC*, 446 U.S. 318, 330 (1980) (suggesting 15 is too few); *Hayes v. Wal-Mart Stores,*  
27 *Incorporated*, 725 F.3d 349, 357 (3d Cir. 2013) (presuming numerosity at 40); *Consol. Rail Corp. v. Town of Hyde*  
28 *Park*, 47 F.3d 473, 483 (2d Cir. 1995) (same).

<sup>3</sup> The class definition once again is: “all persons in California whom Defendant requested and recorded personal  
identification information in conjunction with a credit card purchase transaction at a California retail store during the  
period of time beginning January 29, 2012 and continuing through the date of trial.” (ECF No. 15-1 at 1.)

1 contention of such a nature that it is capable of class-wide resolution – which means that  
2 determination of its truth or falsity will resolve an issue that is central to the validity of each one  
3 of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2545 (2011). The  
4 commonality requirement is generally satisfied where “the lawsuit challenges a system-wide  
5 practice or policy that affects all of the putative class members.” *See LaDuke v. Nelson*, 762  
6 F.2d 1318, 1332 (9th Cir. 1985). Even just one single question common to the class members  
7 will satisfy this requirement. *Wal-Mart*, 131 S. Ct. at 2562.

8 Here, the common question is whether Defendant violated Section 1747.08 of the  
9 California Civil Code by requesting and recording personal identification information during  
10 credit card transactions. (ECF No. 15-1 at 1.) The class members maintain that Defendant had a  
11 common practice or policy in California stores of requesting and recording ZIP codes from class  
12 members in conjunction with their credit card purchase transactions. The class members all  
13 share this common contention. The legality of Defendant’s conduct will determine the outcome  
14 of all of the class members’ claims. Therefore, the second prerequisite is met.

15 iii. Typicality of the claims and defenses

16 The third prerequisite is that the claims or defenses of the representative parties must be  
17 typical of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). The Supreme Court has  
18 held that “a class representative must be part of the class and possess the same interest and suffer  
19 the same injury as the class members.” *General Telephone Co. of Southwest v. Falcon*, 457 U.S.  
20 147, 156 (1982). Typicality does not necessitate completely identical claims, but rather the focus  
21 is whether the class representative’s claims have the same essential characteristics of the class  
22 members. *Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002). Here the class  
23 representatives allege that they experienced the same exposure to Defendant’s common practice  
24 of requesting and recording customers’ ZIP codes when they used credit cards. The  
25 representatives’ claims are the same as the class members’ claims, therefore the typicality  
26 requirement is met.

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1 class members predominate over any questions affecting only  
2 individual members, and that a class action is superior to other  
3 available methods for fairly and efficiently adjudicating the  
4 controversy. The matters pertinent to these findings include:

- 5 (A) the class members' interests in individually controlling the  
6 prosecution or defense of separate actions;  
7 (B) the extent and nature of any litigation concerning the  
8 controversy already begun by or against class members;  
9 (C) the desirability or undesirability of concentrating the litigation  
10 of the claims in the particular forum; and  
11 (D) the likely difficulties in managing a class action.

12 i. Predominance of Common Questions of Law or Fact

13 The Rule 23(b)(3) predominance test assesses whether proposed classes are “sufficiently  
14 cohesive to warrant adjudication by representation.” *Amchem Products, Inc. v. Windsor*, 521  
15 U.S. 591, 594 (1997). A court should look to the common questions because “when common  
16 questions present a significant aspect of the case and they can be resolved for all members of the  
17 class in a single adjudication, there is clear justification for handling the dispute on a  
18 representative rather than on an individual basis.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,  
19 1022 (9th Cir. 1998). The common question here is whether Defendant violated Section  
20 1747.08(a)(2) of the California Civil Code by requesting and recording personal identification  
21 information.

22 Defendant argues that there are dissimilarities within the proposed class that should be  
23 considered. (ECF No. 16 at 10.) Defendant explains that their defenses may vary as to each class  
24 member based upon the particular circumstances of their transaction. (ECF No. 16 at 10.)  
25 Defendant points to California Civil Code §1747.08(c)(3)(A) as a defense. (ECF No. 16 at 11.)  
26 This section provides that personal information may be collected if the merchant is “contractually  
27 obligated to provide PII [(Personal Identification Information)] in order to complete the credit  
28 card transaction.” Cal. Civ. Code §1747.08(c)(3)(A). This defense will be common to many of  
the class members, specifically those using American Express credit cards.<sup>4</sup> Therefore, the Court

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<sup>4</sup> As discussed in the factual background section, Defendant and American Express have a credit card acceptance agreement which requires that Defendant transmit to American Express the cardholder’s ZIP code for certain transactions in order to authenticate the cardholder’s identity. (ECF No. 16 at 12.)



1 disagrees with Defendant and finds that Defendant does not need to address each class member  
2 individually.

3 Defendant further contends that Plaintiffs have offered no evidence to prove that they are  
4 “cardholders” under the Song Beverly Credit Card Act and that the inclusion of persons in the  
5 class who are not “cardholders” is a dissimilarity within the proposed class which should preclude  
6 certification. (ECF No. 16 at 11.) Defendant did not challenge the class definition at the pleading  
7 stage but now argues that the class definition is too broad and might include persons who utilized  
8 a business card which would exclude them from privacy protection under the Song-Beverly  
9 Credit Card Act. (ECF No. 16 at 11.) Plaintiffs respond to this argument by explaining that  
10 classes cannot be defined to anticipate every unannounced affirmative defense a Defendant may  
11 want to forward. (ECF No. 20 at 8.) The Court agrees with Plaintiffs’ response. Perhaps, in the  
12 process of litigation there will be evidence of class members using business cards, however, at  
13 this time there is no evidence of this.

14 The Court also acknowledges a recent decision in the Southern District of California  
15 where a class was decertified in a case with similar facts to the present one. In *Yeoman v. Ikea*  
16 *U.S.A. W., Inc.*, No. 11-CV-00701-BAS BGS, 2014 WL 6865699, at \*1 (S.D. Cal. Dec. 4, 2014)  
17 Plaintiffs alleged that Ikea instituted a process to capture ZIP codes from customers in California  
18 at the time a customer paid for an item. The ZIP codes were recorded in transaction logs. *Id.* at  
19 \*2. The court decertified the class relying on the fact that the plaintiff failed to prove the  
20 existence of a uniform policy of requesting and recording ZIP codes that was uniformly applied  
21 or followed. *Id.* at \*6. There were some unknowns and differences among the various class  
22 members’ transactions. For example, customers who went through the self-check kiosks were  
23 clearly notified by a large button and a voice prompt that providing a ZIP code was voluntary and  
24 thus not required to complete the transaction. *Id.* at \*2. Furthermore, cashiers at Ikea were taught  
25 that customers were not required to provide ZIP codes and cashiers were instructed on how to  
26 circumvent entry of a ZIP code (by pushing “00000”.) *Id.* at \*2. In addition, Ikea explained that  
27 the ZIP codes that were acquired were highly unreliable; they included ZIP codes that were non-  
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1    existent. *Id.* There was no way to tell from the transaction logs whether a customer had gone  
2    through a self-check kiosk at some point and knew that providing the information was voluntary.  
3    *Id.* at \*3. Nor was there any way to tell whether the ZIP code recorded was actually the  
4    customer’s ZIP code. *Id.* The court found that it was appropriate to decertify the class given the  
5    clear lack of available class-wide proof and common answers, as well as the persistence of  
6    individual questions. *Id.* at \*4. The court determined that there was not a common answer to the  
7    essential threshold question of whether requests for ZIP codes were made to each customer. *Id.* at  
8    \*6. Furthermore, the court explained that a class action is only superior where “classwide  
9    litigation of common issues will reduce litigation costs and promote greater efficiency.” *Id.* at \*6,  
10   *citing to Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9<sup>th</sup> Cir. 1996). The court  
11   concluded that individual trials would be needed to decide the question of whether requests for  
12   personal identification information were in fact made to each class member and the circumstances  
13   of any requests (for example, whether customers knew it was voluntary or not). *Id.* at 6.  
14   Individual trials would be needed to decide the ultimate question of whether there was a violation  
15   of the Song Beverly Credit Card Act. Therefore, the court found that individual issues  
16   predominated and thus prosecution of the action as a class action is not superior to individual  
17   actions. *Id.* at 7.

18           The factors the court considered in *Yeoman* do not exist in the instant case. There does  
19   not appear to be the same persistence of individual questions. There is no evidence that  
20   Defendant provided any training to its cashiers on how to circumvent the entry of ZIP codes, or  
21   any evidence that customers were told providing this information was voluntary. Furthermore,  
22   there is no mention of self-checkout kiosks which clearly alerted customers that providing a ZIP  
23   code was voluntary. There is nothing to suggest that the individual transactions here were  
24   dissimilar.

25           Plaintiffs are claiming a common policy by Defendant of requesting and recording ZIP  
26   codes during credit card transactions. Defendant acknowledges doing so for American Express  
27   credit card transactions exceeding \$50 and Discover card transactions exceeding \$200. However,  
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1 Defendant argues that it did not do so with Visa cards. Plaintiffs dispute this contention and  
2 allege that Defendant requested and recorded ZIP codes for all three credit card types. Plaintiff  
3 Haug points to specific instances where she used a Visa credit card and was required to input her  
4 ZIP code in order to complete the transaction.

5 There does not appear to be dissimilarities between the various transactions, nor is there  
6 the need to ask each individual member specific questions about their particular transaction.  
7 There remains the common question of whether or not customers were requested and required to  
8 provide their ZIP code when using a credit card. This question predominates over any individual  
9 issue, and the Court finds that the present case differs from the Southern District court case.

10 Despite Defendant's arguments, the Court finds that all the class members are alleging the  
11 same conduct by Defendant and the same common policy. The common question the class  
12 members share is a significant aspect of the case and can be resolved in a single adjudication.  
13 Therefore, the first part of Rule 23(b)(3) is met.

14 ii. Superiority of Class Action

15 Federal Rule of Civil Procedure 23(b)(3) provides several factors to determine whether a  
16 class action is the superior method for handling the claim when compared to other potential  
17 methods. The Court will address each in turn below.

18 a. *Interest in individual litigation*

19 The first consideration is whether the class members have any interest in individually  
20 controlling the prosecution. There is no indication that any individual class member here would  
21 want to pursue litigation individually. The aggregate damages may be large, but each class  
22 member's individual recovery will most likely be small. With litigation costs being high, and the  
23 individual rewards small, it is unlikely that individual class members would have any desire to  
24 pursue prosecution independently.

25 b. *Litigation already commenced*

26 The next factor addresses whether any litigation concerning the controversy has already  
27 begun by any class members. Plaintiffs indicate that they are unaware of any other actions  
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1 pending against Defendant alleging violations of Section 1747.08 other than the current action.  
2 (ECF No. 15-1 at 13.) The Court is also unaware of any evidence that other litigation has  
3 commenced involving the Plaintiffs and Defendant.

4 *c. Desirability of particular forum*

5 The third factor to consider under FRCP 23(b) is the desirability of litigating in this  
6 particular forum. Defendant does business in this District and has removed the action to this  
7 Court. (ECF No. 15-1 at 13.) Defendant does not dispute the desirability of litigating the action  
8 in this forum. This Court has jurisdiction over the action and there is no evidence to suggest that  
9 this Court is not the appropriate forum.

10 *d. Manageability of the class action*

11 The final factor involves the difficulties of managing a class action. Plaintiffs argue that  
12 there are no significant issues regarding the manageability of Plaintiffs' claims as a class. (ECF  
13 No. 15-1 at 13.) Plaintiffs explain that given the number and importance of the common  
14 questions that the class members share, the adjudication of class claims is much more efficient  
15 than pursuing the claims individually. (ECF No. 15-1 at 14.) Defendant contends that Plaintiffs  
16 failed to indicate how class membership will be determined or how notice will be given. (ECF  
17 No. 16 at 18.) Plaintiffs have not clearly provided the Court with any details or any clear plan  
18 regarding managing the proposed class action. Plaintiffs simply indicate that Defendant has  
19 recorded personal identification information from class members who can be appropriately  
20 notified of the action. (ECF No. 15-1 at 14.)

21 As the Eleventh Circuit has indicated, the manageability assessment is not based on  
22 whether the class action will create significant management problems, but rather whether it will  
23 create more management problems than the alternative methods. *Williams v. Mohawk Industries,*  
24 *Inc.*, 568 F.3d 1350, 1358 (11th Cir. 2009). The Eleventh Circuit further provided that "if a  
25 district court determines that issues common to all class members predominate over individual  
26 issues, then a class action will likely be more manageable than and superior to individual  
27 actions." *Williams*, 568 F.3d at 1358. Here, the Court has determined that the class members are  
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1 alleging the same conduct by Defendant and the same common policy. The Court found that the  
2 issues that the class members share predominate over any individual issues. Therefore, following  
3 the Eleventh Circuit’s reasoning, it is likely that a class action will be more manageable than  
4 individual lawsuits.

5 Although Plaintiff has failed to provide a clear and detailed explanation of how  
6 management of the class members will be handled, manageability of a class alone has rarely  
7 prevented certification of a class. *Campbell v. PricewaterhouseCoopers, LLP*, 253 F.R.D. 586,  
8 605 (E.D. Cal. 2008). The Ninth Circuit, along with at least seven other circuits, has held that  
9 there is a presumption against dismissing a class action on manageability grounds or that such  
10 dismissals are typically disfavored. *See In re Live Concert Antitrust Litigation*, 247 F.R.D. 98,  
11 148 (C.D. Cal. 2007).<sup>5</sup> The Eastern District of California indicated that “manageability concerns  
12 must be weighed against alternatives and will rarely, if ever, be in itself sufficient to prevent  
13 certification of a class.” *Campbell*, 253 F.R.D. at 605. Furthermore, the Eastern District of  
14 California provided that even if there are manageability issues present, they are only significant if  
15 they “create a situation that is less fair and efficient than other available techniques.” *Campbell*,  
16 253 F.R.D. at 605. Given that the class members are all alleging the same claim that Defendant  
17 violated Section 1747.08(a)(2) of the California Civil Code, it seems much more efficient (for the  
18 parties and the courts) to allow a class action rather than to use other available techniques.

19 There is not sufficient evidence or information to lead the Court to rule against the  
20 presumption held by the Ninth Circuit. The Plaintiffs may not have presented a detailed plan for  
21 managing the class action, but at the same time there is no indication that a class action would be  
22 less fair or efficient than other methods. The Court therefore follows the trend of disfavoring  
23 dismissal of a class action based on manageability grounds.

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27 <sup>5</sup> Newberg on Class Actions provides that courts within at least seven circuits have held that there is  
28 a presumption against dismissing a class action on manageability grounds or that such dismissals are disfavored.  
These circuits include the Second, Fourth (District Court), Fifth (District Court), Seventh, Eight (District Court),  
Ninth, and Eleventh Circuit. *See Newberg on Class Actions*, §4:72 *Four Factor test—Manageability—Overview*.

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**IV. CONCLUSION**

All four prerequisites of FRCP 23(a) are met, as well as at least one of the requirements of subpart (b), specifically 23(b)(3). Therefore, the class action can be maintained and the Court hereby GRANTS Plaintiffs' Motion for Class Certification.

IT IS SO ORDERED.

Dated: December 23, 2014



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Troy L. Nunley  
United States District Judge