

Honorable James L. Robart

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

VERIDIAN CREDIT UNION, on behalf of itself  
and a class of similarly situated financial  
institutions,

Plaintiff,

v.

EDDIE BAUER LLC,

Defendant.

No. 2:17-cv-00356-JLR

DEFENDANT’S ANSWER TO  
PLAINTIFF’S SECOND  
AMENDED CLASS ACTION  
COMPLAINT

COMES NOW Defendant Eddie Bauer, LLC, (“Defendant” or “Eddie Bauer”) by and through its undersigned counsel of record, and for its Answer to the Second Amended Class Action Complaint, admits, denies and avers as follows:

**INTRODUCTION**

1. Eddie Bauer admits that plaintiff purports to bring a class-action against Eddie Bauer concerning the alleged conduct in paragraph 1 of the Second Amended Class Action Complaint (“SAC”). Except as expressly admitted, Eddie Bauer denies the remaining allegations contained in this paragraph.

2. Eddie Bauer expressly denies the allegations contained in paragraph 2.

3. Eddie Bauer expressly denies the allegations contained in paragraph 3.

4. Eddie Bauer admits the allegations contained in the first sentence of paragraph 4.

The remainder of the allegations contained in paragraph 4 are not directed to Eddie Bauer, and

1 therefore no response is required. To the extent a response is required, Eddie Bauer lacks  
2 sufficient information to admit or deny the allegations in paragraph 4, and therefore denies same.

3 5. The second and third sentences of paragraph 5 contain allegations not directed to  
4 Eddie Bauer, and therefore no response is required. To the extent a response is required, Eddie  
5 Bauer lacks sufficient information to admit or deny the allegations in paragraph 5, and therefore  
6 denies same. Eddie Bauer expressly denies the remaining allegations contained in paragraph 5.

7 6. Eddie Bauer expressly denies the allegations contained in paragraph 6.

8 7. Eddie Bauer expressly denies the allegations contained in paragraph 7.

9 8. Eddie Bauer expressly denies the allegations contained in paragraph 8.

10 9. Eddie Bauer expressly denies the allegations contained in paragraph 9.

11 10. Eddie Bauer admits that plaintiff purports to bring a class action for negligence,  
12 violation of RCW 19.255.020, violation of RCW Chapter 19.86, and seeks damages and  
13 declaratory and injunctive relief. Eddie Bauer specifically denies that plaintiff is entitled to such  
14 relief.

#### 15 **PARTIES**

16 11. Paragraph 11 contains allegations not directed to Eddie Bauer, and therefore no  
17 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
18 information to admit or deny the allegations in paragraph 11, and therefore denies same.

19 12. Eddie Bauer admits that it is headquartered at 10401 NE 8<sup>th</sup> Street, Ste. 500,  
20 Bellevue, WA 98004. Eddie Bauer lacks sufficient information to admit or deny the remaining  
21 allegations in paragraph 12, and therefore denies same.

#### 22 **JURISDICTION AND VENUE**

23 13. Eddie Bauer admits that Defendant Eddie Bauer is a citizen of Washington, where  
24 it maintains its principal place of business. Except as expressly admitted, Eddie Bauer denies the  
25 remaining allegations contained in paragraph 13.

26 14. Eddie Bauer admits that the Western District of Washington has personal  
27 jurisdiction over Defendant.

1 15. Eddie Bauer admits that venue in this court is proper. Eddie Bauer expressly  
2 denies the remaining allegations contained in paragraph 15.

3 **FACTUAL BACKGROUND**

4 16. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
5 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
6 information to admit or deny the allegations in paragraph 16, and therefore denies same.

7 17. Eddie Bauer admits that it accepts customer payment cards for the purchase of  
8 goods. Eddie Bauer expressly denies the remaining allegations contained in this paragraph.

9 18. The first two sentences in paragraph 18 contain allegations not directed to Eddie  
10 Bauer, and therefore no response is required. To the extent a response is required, Eddie Bauer  
11 lacks sufficient information to admit or deny the allegations in paragraph 18, and therefore  
12 denies same. Eddie Bauer expressly denies the allegations contained in the third sentence of  
13 paragraph 18.

14 19. Eddie Bauer admits that it makes a portion of its sales to customers who use credit  
15 or debit cards. Eddie Bauer lacks sufficient information to admit or deny the remaining  
16 allegations in paragraph 19, and therefore denies same.

17 20. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
18 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
19 information to admit or deny the allegations in paragraph 20, and therefore denies same.

20 21. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
21 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
22 information to admit or deny the allegations in paragraph 21, and therefore denies same.

23 22. Eddie Bauer admits that it stores some Payment Card Data in its computer  
24 systems which is used to process payment card transactions. Except as expressly admitted,  
25 Eddie Bauer denies the remaining allegations in paragraph 22.

26 23. Eddie Bauer admits the allegations contained in paragraph 23 that Eddie Bauer is,  
27 and at all relevant times has been aware that some of the Payment Card Data it maintains is

1 highly sensitive. Eddie Bauer expressly denies the remaining allegations contained in paragraph  
2 23.

3 24. Eddie Bauer admits the allegation contained in paragraph 24 that Eddie Bauer is  
4 aware of the importance of safeguarding its customers' Payment Card Data. Eddie Bauer denies  
5 that Plaintiff has incurred significant costs as a result of the alleged security breach. Eddie Bauer  
6 lacks sufficient information and belief as to the remaining allegations in paragraph 24, and  
7 therefore denies same.

8 25. Eddie Bauer admits that Brian Krebs reached out to Eddie Bauer but denies that it  
9 was on July 5, 2016. Eddie Bauer lacks sufficient information to admit or deny the remaining  
10 allegations in paragraph 25, and therefore denies same.

11 26. Eddie Bauer expressly denies the allegations in paragraph 26.

12 27. Eddie Bauer admits that it issued a statement on August 18, 2016 advising of a  
13 data security incident but expressly denies the remaining allegations contained in paragraph 27.

14 28. Eddie Bauer lacks sufficient information to admit or deny the allegations in  
15 paragraph 28, and therefore denies same.

16 29. To the extent a response is required, Eddie Bauer lacks sufficient information to  
17 admit or deny the allegations in paragraph 29, and therefore denies same.

18 30. Eddie Bauer admits that it offered to its customers whose credit and debit card  
19 information was potentially captured by the malware, 12 months of credit monitoring from Kroll.  
20 Eddie Bauer expressly denies that it offered identity protection services.

21 31. Eddie Bauer admits the allegations in the first sentence of paragraph 31. Except  
22 as expressly admitted, Eddie Bauer denies the allegations contained in paragraph 31.

23 32. Eddie Bauer lacks sufficient information to admit or deny the allegations in  
24 paragraph 32, and therefore denies same.

25 33. Eddie Bauer lacks sufficient information to admit or deny the allegations in  
26 paragraph 33, and therefore denies same.

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1 34. Eddie Bauer lacks sufficient information to admit or deny the allegations in  
2 paragraph 33, and therefore denies same.

3 35. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
4 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
5 information to admit or deny the allegations in paragraph 35, and therefore denies same.

6 36. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
7 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
8 information to admit or deny the allegations in paragraph 36, and therefore denies same.

9 37. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
10 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
11 information to admit or deny the allegations in paragraph 37, and therefore denies same.

12 38. Eddie Bauer expressly denies the allegations contained in paragraph 38.

13 39. Eddie Bauer expressly denies the allegations contained in paragraph 39, including  
14 the allegations contained in (a) through (f).

15 40. Eddie Bauer expressly denies the allegations contained in paragraph 40.

16 41. This paragraph contains allegations not directed to Eddie Bauer, therefore no  
17 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
18 allegations contained in paragraph 41.

19 42. Eddie Bauer expressly denies the allegations contained in paragraph 42.

20 43. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
21 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
22 information to admit or deny the allegations in paragraph 43, and therefore denies same.

23 44. Eddie Bauer expressly denies the allegations contained in paragraph 44.

24 45. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
25 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
26 information to admit or deny the allegations in paragraph 45, and therefore denies same.

27 46. Eddie Bauer admits that it was aware of the threat of a data breach. The

1 remaining allegations contained in paragraph 46 contain allegations not directed at Eddie Bauer,  
2 and therefore no response is required. To the extent a response is required, Eddie Bauer lacks  
3 sufficient information to admit or deny the allegations in paragraph 46, and therefore denies  
4 same.

5 47. Eddie Bauer lacks sufficient information to admit or deny the allegations in  
6 paragraph 47, and therefore denies same.

7 48. Eddie Bauer lacks specific information to admit or deny that in November 2015,  
8 Visa issued a security alert notifying merchants of additional malware infections, and therefore  
9 denies same. The second and third sentences contain allegations not directed at Eddie Bauer,  
10 and therefore no response is required. To the extent a response is required, Eddie Bauer lacks  
11 sufficient information to admit or deny the allegations in paragraph 48, and therefore denies  
12 same. Eddie Bauer expressly denies the allegations contained in the fourth and fifth sentences  
13 of paragraph 48.

14 49. Eddie Bauer expressly denies the allegations contained in paragraph 49.

15 50. Paragraph 50 contains allegations not directed at Eddie Bauer, and therefore no  
16 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
17 allegations contained in paragraph 50.

18 51. Eddie Bauer expressly denies the allegations contained in paragraph 51.

19 52. Eddie Bauer admits that it was aware of the threat of data breaches and the danger  
20 of malware infiltration. The second sentence of paragraph 52 contains allegations not directed at  
21 Eddie Bauer, and therefore no response is required. To the extent a response is required, Eddie  
22 Bauer lacks sufficient information to admit or deny the allegations in paragraph 52, and therefore  
23 denies same. Eddie Bauer expressly denies the allegations contained in the last sentence of  
24 paragraph 52.

25 53. Eddie Bauer lacks sufficient information to admit or deny the allegations  
26 contained in paragraph 53, and therefore denies same.

27 54. Eddie Bauer expressly denies the allegations contained in paragraph 54.

1 55. Eddie Bauer expressly denies the allegations contained in paragraph 55.

2 56. Eddie Bauer expressly denies the allegations contained in paragraph 56.

3 57. Paragraph 57 contains allegations not directed at Eddie Bauer, therefore no  
4 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
5 allegations contained in paragraph 57.

6 58. Paragraph 58 contains allegations not directed at Eddie Bauer, therefore no  
7 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
8 allegations contained in paragraph 5.

9 59. The first sentence of paragraph 59 contains allegations not directed to Eddie  
10 Bauer, and therefore no response is required. To the extent a response is required, Eddie Bauer  
11 lacks sufficient information to admit or deny the allegations in paragraph 59, and therefore  
12 denies same. Eddie Bauer expressly denies the remaining allegations contained in paragraph 59.

13 60. Paragraph 60 contains allegations not directed at Eddie Bauer, therefore no  
14 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
15 allegations contained in paragraph 60.

16 61. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
17 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
18 information to admit or deny the allegations in paragraph 61, and therefore denies same.

19 62. The first four sentences contain allegations not directed to Eddie Bauer, and  
20 therefore no response is required. To the extent a response is required, Eddie Bauer lacks  
21 sufficient information to admit or deny the allegations in paragraph 62, and therefore denies  
22 same. Eddie Bauer expressly denies the remaining allegations contained in paragraph 62.

23 63. Paragraph 63 contains allegations not directed at Eddie Bauer, therefore no  
24 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
25 allegations contained in paragraph 63.

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1           64. Paragraph 64 contains allegations not directed at Eddie Bauer, therefore no  
2 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
3 allegations contained in paragraph 64.

4           65. Paragraph 65 contains allegations not directed at Eddie Bauer, therefore no  
5 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
6 allegations contained in paragraph 65.

7           66. Paragraph 66 contains allegations not directed at Eddie Bauer, therefore no  
8 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
9 allegations contained in paragraph 66.

10          67. The first two sentences contain allegations not directed to Eddie Bauer, and  
11 therefore no response is required. To the extent a response is required, Eddie Bauer lacks  
12 sufficient information to admit or deny the allegations in paragraph 67, and therefore denies  
13 same. Eddie Bauer expressly denies the remaining allegations contained in paragraph 67.

14          68. Paragraph 68 contains allegations not directed to Eddie Bauer, and therefore no  
15 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
16 information to admit or deny the allegations in paragraph 68, and therefore denies same.

17          69. The first two sentences contain allegations not directed to Eddie Bauer, and  
18 therefore no response is required. To the extent a response is required, Eddie Bauer lacks  
19 sufficient information to admit or deny the allegations in paragraph 69, and therefore denies  
20 same. Eddie Bauer expressly denies the remaining allegations contained in paragraph 69.

21          70. Paragraph 70 contains allegations not directed at Eddie Bauer, therefore no  
22 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
23 allegations contained in paragraph 70.

24          71. Eddie Bauer expressly denies the allegations contained in paragraph 71.

25          72. Eddie Bauer expressly denies the allegations contained in paragraph 72.

26          73. The first sentence contains allegations not directed to Eddie Bauer, and therefore  
27 no response is required. To the extent a response is required, Eddie Bauer lacks sufficient



1 information to admit or deny the allegations in paragraph 73, and therefore denies same. Eddie  
2 Bauer expressly denies the remaining allegations contained in paragraph 73.

3 74. Paragraph 74 contains allegations not directed to Eddie Bauer, and therefore no  
4 response is required. To the extent a response is required, Eddie Bauer expressly denies the  
5 allegations in paragraph 74.

6 75. Eddie Bauer expressly denies the allegations contained in the first sentence of  
7 paragraph 75. The remaining allegations in paragraph 75 contain allegations not directed to  
8 Eddie Bauer, and therefore no response is required. To the extent a response is required, Eddie  
9 Bauer lacks sufficient information to admit or deny the allegations in paragraph 75, and therefore  
10 denies same.

11 76. Eddie Bauer expressly denies the allegations contained in paragraph 76.

12 77. Paragraph 77 contains allegations not directed to Eddie Bauer, and therefore no  
13 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
14 information to admit or deny the allegations in paragraph 77, and therefore denies same.

15 78. Eddie Bauer lacks specific information to admit or deny the allegations contained  
16 in the first sentence of paragraph 78 and therefore denies same. Eddie Bauer expressly denies  
17 the second sentence of paragraph 78.

18 79. Paragraph 79 contains allegations not directed to Eddie Bauer, and therefore no  
19 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
20 information to admit or deny the allegations in paragraph 79, and therefore denies same.

21 80. Paragraph 80 contains allegations not directed to Eddie Bauer, and therefore no  
22 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
23 information to admit or deny the allegations in paragraph 80, and therefore denies same.

24 81. Eddie Bauer expressly denies the allegations contained in paragraph 81.

25 82. Eddie Bauer expressly denies the allegations contained in paragraph 82.

26 83. The first two sentences of paragraph 83 contain allegations not directed to Eddie  
27 Bauer, and therefore no response is required. To the extent a response is required, Eddie Bauer

1 lacks sufficient information to admit or deny the allegations in paragraph 83, and therefore  
2 denies same. Eddie Bauer expressly denies the remaining allegations contained in paragraph 83.

3 84. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
4 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
5 information to admit or deny the allegations in paragraph 84, and therefore denies same.

6 85. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
7 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
8 information to admit or deny the allegations in paragraph 85, and therefore denies same.

9 86. Eddie Bauer expressly denies the allegations contained in paragraph 86.

10 87. The first sentence contains allegations not directed to Eddie Bauer, and therefore  
11 no response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
12 information to admit or deny the allegations in paragraph 87, and therefore denies same. Eddie  
13 Bauer expressly denies the remaining allegations contained in paragraph 87.

14 88. Eddie Bauer expressly denies the allegations contained in paragraph 88.

15 89. Paragraph 89 contains allegations not directed to Eddie Bauer, and therefore no  
16 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
17 information to admit or deny the allegations in paragraph 89, and therefore denies same.

18 90. Paragraph 90 contains allegations not directed to Eddie Bauer, and therefore no  
19 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
20 information to admit or deny the allegations in paragraph 90, and therefore denies same.

21 91. Paragraph 91 contains allegations not directed to Eddie Bauer, and therefore no  
22 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
23 information to admit or deny the allegations in paragraph 91, and therefore denies same.

24 92. Paragraph 92 contains allegations not directed to Eddie Bauer, and therefore no  
25 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
26 information to admit or deny the allegations in paragraph 92, and therefore denies same.

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1 93. Eddie Bauer expressly denies that any duty was owed to Plaintiff and members of  
2 the class.

3 94. Eddie Bauer expressly denies the allegations contained in paragraph 94.

4 95. Eddie Bauer expressly denies the allegations contained in paragraph 95.

5 96. Eddie Bauer expressly denies the allegations contained in paragraph 96.

6 97. Eddie Bauer expressly denies the allegations contained in paragraph 97.

7 98. Eddie Bauer expressly denies the allegations contained in paragraph 98.

8 **CLASS ACTION ALLEGATIONS**

9 99. Eddie Bauer admits that Plaintiff brings an action individually and on behalf of all  
10 other financial institutions similarly situated. Except as expressly admitted, Eddie Bauer  
11 expressly denies the remaining allegations contained in paragraph 99.

12 100. Paragraph 100 contains allegations not directed to Eddie Bauer, and therefore no  
13 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
14 information to admit or deny the allegations in paragraph 100, and therefore denies same.

15 101. Eddie Bauer expressly denies the allegations contained in paragraph 101.

16 102. Eddie Bauer expressly denies the allegations contained in paragraph 102.

17 103. Eddie Bauer expressly denies the allegations contained in paragraph 103.

18 104. Eddie Bauer expressly denies the allegations contained in paragraph 104.

19 105. Eddie Bauer expressly denies the allegations contained in paragraph 105.

20 106. Eddie Bauer expressly denies the allegations contained in paragraph 106.

21 107. Eddie Bauer expressly denies the allegations contained in paragraph 107.

22 108. Eddie Bauer expressly denies the allegations contained in paragraph 108.

23 109. Eddie Bauer expressly denies the allegations contained in paragraph 109.

24 110. Eddie Bauer expressly denies the allegations contained in paragraph 110.

25 111. Eddie Bauer expressly denies the allegations contained in paragraph 111,  
26 including the allegations contained in (a) through (i).

**CHOICE OF LAW**

112. Eddie Bauer expressly denies that Washington law applies to this claim.

113. Eddie Bauer expressly denies the allegations contained in paragraph 113.

114. Eddie Bauer expressly denies the allegations contained in paragraph 114.

115. Eddie Bauer admits the first sentence of paragraph 115. Except as expressly admitted, Eddie Bauer expressly denies the remaining allegations contained in paragraph 115.

116. Eddie Bauer expressly denies the allegations contained in paragraph 116.

117. Eddie Bauer expressly denies the allegations contained in paragraph 117.

118. Eddie Bauer expressly denies the allegations contained in paragraph 118.

**COUNT ONE - NEGLIGENCE**

119. Eddie Bauer incorporates each of its responses as if fully set forth herein.

120. Eddie Bauer expressly denies the allegations contained in paragraph 120.

121. Eddie Bauer expressly denies the allegations contained in paragraph 121.

122. Eddie Bauer expressly denies the allegations contained in paragraph 122.

123. Eddie Bauer expressly denies the allegations contained in paragraph 123.

124. Eddie Bauer expressly denies the allegations contained in paragraph 124, specifically the allegations contained in (a) through (q).

125. Eddie Bauer expressly denies the allegations contained in paragraph 125.

126. Eddie Bauer expressly denies the allegations contained in paragraph 126.

**COUNT TWO – VIOLATION OF RCW 19.255.020**

127. Eddie Bauer incorporates each of its responses as if fully set forth herein.

128. This paragraph contains allegations not directed to Eddie Bauer, therefore no response is required. To the extent a response is required, Eddie Bauer lacks sufficient information to admit or deny the allegations in paragraph 128, and therefore denies same.

129. Eddie Bauer lacks sufficient information to admit or deny the allegations in paragraph 129, and therefore denies same.

130. Eddie Bauer admits the allegations contained in paragraph 130.

1 131. Eddie Bauer lacks sufficient information to admit or deny the allegations in  
2 paragraph 131, and therefore denies same.

3 132. Eddie Bauer expressly denies the allegations contained in paragraph 132.

4 133. Eddie Bauer expressly denies the allegations contained in paragraph 133.

5 134. Eddie Bauer expressly denies the allegations contained in paragraph 134.

6 **COUNT THREE – VIOLATION OF RCW CH. 19.86**

7 135. Eddie Bauer incorporates each of its responses as if fully set forth herein.

8 136. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
9 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
10 information to admit or deny the allegations in paragraph 136, and therefore denies same.

11 137. This paragraph contains allegations not directed to Eddie Bauer, and therefore no  
12 response is required. To the extent a response is required, Eddie Bauer lacks sufficient  
13 information to admit or deny the allegations in paragraph 137, and therefore denies same.

14 138. Eddie Bauer expressly denies the allegations contained in paragraph 138.

15 139. Eddie Bauer expressly denies the allegations contained in paragraph 139.

16 140. Eddie Bauer expressly denies the allegations contained in paragraph 140.

17 141. Eddie Bauer expressly denies the allegations contained in paragraph 141.

18 142. Eddie Bauer expressly denies the allegations contained in paragraph 142.

19 143. Eddie Bauer expressly denies the allegations contained in paragraph 143.

20 144. Eddie Bauer expressly denies the allegations contained in paragraph 144.

21 145. Eddie Bauer expressly denies the allegations contained in paragraph 145.

22 146. Eddie Bauer expressly denies the allegations contained in paragraph 146.

23 147. Eddie Bauer admits that Plaintiff and the class seek actual damages plus interest  
24 on damages at the legal rate, but expressly denies that Plaintiffs are entitled to any relief afforded  
25 by the CPA.

26 148. Eddie Bauer expressly denies the allegations contained in paragraph 148.

27

**PRAYER FOR RELIEF**

Eddie Bauer states that Plaintiffs are not entitled to any relief.

**AFFIRMATIVE DEFENSES**

By way of further answer and affirmative defenses, Defendant alleges as follows:

1. The Veridian Complaint fails to state a claim upon which relief can be granted.

2. Eddie Bauer was certified compliant with the payment card industry data security standards adopted by the payment card industry security standards council, and in force at the time of the alleged breach. This is a defense to each of the claims alleged against this Defendant, including Plaintiff's Count Two- Violation of RCW 19.255.020.

3. The act and/or practices of Eddie Bauer were done in good faith under an arguable interpretation of existing law and were reasonable. Plaintiff therefore fails to state a claim under Count 3 - Violation of RCW 19.86.

4. Plaintiff, and/or other financial institutions on whose behalf Plaintiff purports to bring this claim, entered into agreements with Visa, Inc. MasterCard, Bank of America Merchant Services, American Express, Discover and/or other entities that maintain procedures for allocating risk of loss and loss in the event of a data breach event. Plaintiff, and/or other financial institutions on whose behalf Plaintiff purports to bring this claim, agree to be bound by the rules and regulations of those organizations. Pursuant to those rules and regulations, those organizations (e.g., MasterCard, Bank of America Merchant Services, American Express, etc.) have or will make assessments against Eddie Bauer, collect money from Eddie Bauer and distribute the money to Plaintiff, and/or other financial institutions on whose behalf Plaintiff purports to bring this claim pursuant to the organizations rules and regulations to satisfy, in whole or in part, financial losses by financial institutions. Plaintiff and/or other financial institutions on whose behalf Plaintiff purports to bring this claim, are barred from seeking double recovery, once through the contractual risk allocation and assessment system and a second time

1 via this or other suits. Alternatively, Eddie Bauer is entitled to an offset for any amount it has or  
2 will pay to those organizations.

3 5. Plaintiff's action is not properly maintained as a class action because the  
4 requirements under federal law for certification are not met and certification of the proposed  
5 class would result in a denial of due process to Eddie Bauer and the putative class.

6 6. Plaintiff and putative class members lack standing to assert their claims.

7 7. The asserted claims are barred to the extent Plaintiff and putative class members  
8 did not sustain any legal injury.

9 8. Any claim for damages, restitution, or other monetary recovery by Plaintiff or on  
10 behalf of other financial institutions claimed to be members of the purported class must be offset  
11 and reduced by any value received.

12 9. The claims of Plaintiff and putative class members are time-barred, in whole or in  
13 part, under the applicable statute of limitations, stats of repose, or by the doctrines of waiver,  
14 estoppel, and/or laches.

15 10. Plaintiff and putative class members may be barred, in whole or in part, from  
16 recovery because they have made statements or taken actions which stop them from asserting  
17 their claims.

18 11. To the extent Plaintiff and putative class members have alleged any damages, the  
19 sole and proximate cause of the alleged damage sustained by Plaintiff and putative class results  
20 from the actions, inactions or negligence, in whole or in part, of persons other than Eddie Bauer  
21 for whose actions, inactions or negligence, in whole or in part, Eddie Bauer is in no way liable.  
22 Plaintiff and putative class are not, therefore, entitled to recover from Eddie Bauer in this action.

23 12. Plaintiff and putative class have failed to include necessary and indispensable  
24 parties to this action, and their claims are further barred by their misjoinder of parties.

25 13. Plaintiff and putative class members may be barred from recovery, in whole or in  
26 part, due to the intervening cause of another party.

27

1 14. Plaintiff, and any putative class member, are barred from recovering any damages  
2 as a result of unreasonable conduct on their part and/or their damages, if any, must be reduced or  
3 precluded as a result of their own comparative fault.

4 15. To the extent Plaintiff purports to represent a claim of financial institutions that  
5 are residents and citizens of states other than Washington, there is no basis to apply the  
6 substantive law of Washington to its claims, and doing so would violate the Due Process and  
7 other Constitutions rights of Eddie Bauer and a choice of law analysis would result in the  
8 application of the substantive law of Iowa. Common issues of fact and law would not  
9 predominate. This is one of several factors that make certification of national class  
10 inappropriate.

11 16. Plaintiff has not alleged adequate damages in support of its claims.

12 17. Plaintiff cannot pursue its claims directly against Eddie Bauer, a participant in  
13 MasterCard's ADC Program, if Eddie Bauer resolves this claim with Bank of America Merchant  
14 Services ("BAMS").

15 18. Eddie Bauer presently has insufficient knowledge or information upon which to  
16 form a belief as to whether it may have additional, as yet unstated, affirmative defenses that  
17 govern the claims asserted by Plaintiff and on behalf of similarly situated financial institutions.  
18 Eddie Bauer reserves the right to assert additional affirmative defenses as appropriate and as  
19 discovery progresses.

20 **WHEREFORE**, having fully answered Plaintiff's Second Amended Class Action  
21 Complaint, defendant Eddie Bauer respectfully requests that the Court determine and adjudge:

- 22 1. That this suit cannot be maintained as a class action;  
23 2. That the Veridian Complaint be dismissed on the merits;  
24 3. That Plaintiff take nothing by its Second Amended Class Action Complaint;  
25 4. That Eddie Bauer be awarded its costs, disbursements, attorneys' fees, and  
26 expenses incurred herein; and  
27



1           5.       That Eddie Bauer be awarded such other and further relief as the Court may deem  
2 proper.

3  
4 DATED: December 19, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

5  
6 s/ Kathleen A. Nelson

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8  
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16 Attorneys for Defendant  
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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2017, 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 following:

Kim D. Stephens  
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Dated: December 19, 2017

*s/Tami L. Foster*

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