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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION

NYREE HINTON,	)	CASE NO.:
)	
	)	COMPLAINT
Plaintiff,	)	1. Violation of Unfair Competition Law
	)	(Cal. Business & Professions Code
-vs-	)	§§ 17200 <i>et seq.</i> ;
	)	2. Violation of the California Consumer
CAPITAL ONE FINANCIAL	)	Credit Reporting Agencies Act (Cal.
CORPORATION; EXPERIAN	)	Code of Civ. Pro. § 1785 <i>et seq.</i>)
INFORMATION SOLUTIONS, INC.; TRANS	)	3. Violation of the Fair Credit
UNION LLC; EQUIFAX INFORMATION	)	Reporting Agencies Act (15 U.S.C. §
SERVICES LLC.; and DOES 1-10 inclusive,	)	1681 <i>et seq.</i> ;
	)	4. Violation of the Rosenthal Fair Debt
Defendants.	)	Collection Practices Act (Cal. Civ.
	)	Code § 1788 <i>et seq.</i> ;
	)	5. Breach of Duty of Good Faith and
	)	Fair Dealing.
	)	(Amount to Exceed \$35,000)
)	
	)	<u>Jury Trial Demanded</u>

I. INTRODUCTION

1. Plaintiff, NYREE HINTON ("Plaintiff"), brings this action for damages and all other due and proper relief against Defendant CAPITAL ONE FINANCIAL CORPORATION

1 (“Capital One”) for Defendant Capital One’s violations of California’s Unfair Competition Law,
2 Rosenthal Fair Debt Collection Practices Act, Consumer Credit Reporting Agencies Act and the
3 federal Fair Credit Reporting Act, all of which protect consumers such as Plaintiff from unfair
4 lending and credit reporting by creditors. Plaintiff further alleges that by engaging in the conduct
5 described herein, Defendant Capital One has breached its duty of good faith and fair dealing to
6 Plaintiff.

7 2. Furthermore, this is an action for damages brought by an individual consumer for
8 Defendants EXPERIAN INFORMATION SOLUTIONS, INC. (“XP”), TRANS UNION LLC
9 (“TU”) and EQUIFAX INFORMATION SERVICES LLC’s (“EF”) violations of the federal Fair
10 Credit Reporting Act which places regulations on consumer reporting agencies.

11 II. PARTIES

12 3. Plaintiff, NYREE HINTON (“Plaintiff”), is a natural person residing in Los
13 Angeles County in the state of California and a consumer.

14 4. Furthermore, Plaintiff is a “consumer” as defined by the FCRA, 15 U.S.C.
15 §1681a, a “debtor” as defined by the RFDCPA, Cal. Civ. Code § 1788.2(h), and a “person” as
16 defined by 47 U.S.C. § 153(39).

17 5. At all relevant times herein, Defendant Capital One regularly provides
18 information to consumer reporting agencies, and is therefore an “information furnisher” as
19 defined by the FCRA and CCRAA. Defendant is also a “person” as defined by Cal. Civ. Code
20 §1785.3(j).

21 6. At all relevant times herein, Defendant EF was a “consumer reporting agency” as
22 defined by 15 U.S.C. §1681a(f) and Cal. Civ. Code §1785.3(d).

23 7. At all relevant times herein, Defendant XP was a “consumer reporting agency” as
24 defined by 15 U.S.C. §1681a(f) and Cal. Civ. Code §1785.3(d).

25 8. At all relevant times herein, Defendant TU was a “consumer reporting agency” as
26 defined by 15 U.S.C. §1681a(f) and Cal. Civ. Code §1785.3(d).

27 9. Defendants EF, XP, and TU will hereinafter be collectively referred to as “CRA
28 Defendants.”

10. Defendants Capital One, EF, XP, and TU will hereinafter be collectively referred to as “Defendants.”

11. At all relevant times, credit reports as alleged in this pleading are “consumer reports” as that term is defined by 15 U.S.C. §1681a(d).

12. The above named Defendants, and their subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

13. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

III. JURISDICTION & VENUE

14. This Court has personal jurisdiction over Defendants because Defendants conduct business in the State of California, as well as maintain contacts therewith, sufficient to demonstrate purposeful availment of the protection and obligations of this State's laws.

15. The Superior Court of the State of California for the County of Los Angeles is the proper venue for this matter because a significant portion of the events giving rise to this action occurred within this County.

IV. FACTUAL ALLEGATIONS

16. On or around November 9, 2022, Plaintiff purchased a Tesla from IQAutos, and financed that purchase with a loan from Defendant Capital One.

1 17. Over the following six months, the vehicle experienced several service issues,
2 which went unresolved. As a result, in or around July of 2023, Plaintiff filed a lawsuit against
3 the car dealership and Capital One Auto Financing.

4 18. Thereafter, in or around August of 2023, Defendant Capital One—a different
5 business entity tasked with the servicing and collection of loans owed to Capital One Auto
6 Financing—restricted Plaintiff’s access to its online portal effectively preventing him from being
7 able to make payments or otherwise manage his auto loan.

8 19. As a result, on or around October 19, 2023, Defendant Capital One reported the
9 auto loan as thirty-days past due.

10 20. On information and belief, however, the only reason the auto loan was past-due
11 was because Capital One wrongfully restricted Plaintiff’s access to its online portal preventing
12 him from timely making his payments.

13 21. Defendant Capital One thus furnished inaccurate, false, or incomplete information
14 to the consumer credit reporting agencies. This has resulted in a negative effect on Plaintiff’s
15 credit score.

16 22. Prior to the filing of this Complaint, Plaintiff informed Defendant Capital One of
17 the nature of the information they are furnishing, namely that it is false, misleading, or
18 incomplete, as well as harmful to Plaintiff’s credit score.

19 23. Plaintiff has requested that Defendant Capital One cease furnishing such
20 information.

21 24. However, Defendant Capital One refuses to correct the information reported on
22 Plaintiff’s consumer credit report.

23 25. Within two years of filing the instant complaint, Plaintiff disputed the accuracy
24 of this reporting with CRA Defendants in writing.

25 26. CRA Defendants are aware that the information they disseminate will be used by
26 various other persons or parties who will be reviewing this information for the purpose of
27 extending credit, insurance or employment and that they have already done so.
28

1 27. The inaccurate information negatively reflects upon the Plaintiff, Plaintiff's credit
2 repayment history, Plaintiff's financial responsibility as a debtor, and Plaintiff's credit
3 worthiness.

4 28. The credit reports have been and continue to be disseminated to various persons
5 and credit grantors, both known and unknown.

6 29. Plaintiff has been damaged, and continues to be damaged, in the following ways:

7 a. Emotional distress and mental anguish associated with having incorrect
8 derogatory personal information transmitted about Plaintiff to other people
9 both known and unknown;

10 b. Denial and reduction of credit based on the incorrect, incomplete, and/or
11 misleading reporting by Defendant Capital One;

12 30. At all times pertinent hereto, Defendants were acting by and through its agents,
13 servants and/or employees who were acting within the course and scope of their agency or
14 employment, and under the direct supervision and control of Defendants herein.

15 31. At all times pertinent hereto, the conduct of Defendants, as well as that of their
16 agents, servants and/or employees, was malicious, intentional, willful, reckless, and in grossly
17 negligent disregard for federal and state laws and the rights of Plaintiff herein.

18 32. Defendant Capital One violated sections 1681n and 1681o of the FCRA by
19 engaging in the following conduct that violates 15 U.S.C. §1681s-2(b):

20 a. Willfully and negligently continuing to furnish and disseminate inaccurate
21 and derogatory credit, account and other information concerning the Plaintiff
22 to credit reporting agencies and other entities despite knowing that said
23 information was inaccurate; and,

24 b. Willfully and negligently failing to comply with the requirements imposed on
25 furnishers of information pursuant to 15 U.S.C. §1681s-2.

26 33. CRA Defendants violated sections 1681n and 1681o of the FCRA by engaging in
27 the following conduct that violates 15 U.S.C. §1681i:
28

1 a. Willfully and negligently failing to reinvestigate and properly respond to
2 Plaintiff's dispute such that Defendant disseminated inaccurate and
3 derogatory credit, account and other information concerning the Plaintiff
4 despite knowing that said information was inaccurate.

5 34. Additionally, CRA Defendants did not maintain and follow reasonable procedures
6 to assure maximum possible accuracy of the information it disseminated, thus violating 15 U.S.C.
7 §1681e(b).

8 35. Similarly, CRA Defendants violated Cal. Civ. C. § 1785.16 by failing to
9 reasonably reinvestigate and correct the inaccurate and false information on Plaintiff's credit
10 report after receiving a dispute from Plaintiff.

11 36. Defendants' conduct was a direct and proximate cause, as well as a substantial
12 factor, in causing the injuries, damages and harm to Plaintiff that are outlined more fully above,
13 and as a result, Defendants are liable to compensate Plaintiff for the full amount of statutory,
14 actual and punitive damages, along with attorneys' fees and costs, as well as such other relief
15 permitted by law.

16 37. As a result of the above violations of the FCRA and CCCRA, Plaintiff suffered
17 and continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental
18 anguish and emotional distress, and Defendants are liable to Plaintiff for Plaintiff's actual
19 damages, statutory damages, and costs and attorney's fees.

20 38. Furthermore, at various and multiple times prior to the filing of the instant
21 complaint, including within the one year preceding the filing of this complaint, Defendant Capital
22 One contacted Plaintiff in an attempt to collect an alleged outstanding debt.

23 39. §1788.17 of the RFDCPA mandates that every debt collector collecting or
24 attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to
25 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the
26 United States Code statutory regulations contained within the FDCPA, 15 U.S.C. §1692d, and
27 §1692d(5).
28

1 40. Defendant Capital Ones' conduct violated the RFDCPA in multiple ways,
2 including without limitation the following:

3 a) Engaging in conduct the natural consequences of which is to harass, oppress,
4 or abuse Plaintiff (15 U.S.C. § 1692d);

5 b) Using unfair or unconscionable means to collect or attempt to collect any debt
6 from Plaintiff (15 U.S.C. § 1692e).

7 41. As a result of the above violations of the RFDCPA, Plaintiff suffered and
8 continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental
9 anguish and emotional distress, and Defendant Capital One is liable to Plaintiff for Plaintiff's
10 actual damages, statutory damages, and costs and attorney's fees.

11 42. The conduct described herein amount to numerous violations of California's
12 Unfair Competition Law, as well as the CA CCRAA, FCRA, RFDCPA, and TILA, and for such
13 violations, Plaintiff here and now seeks remediation of all of Defendants' wrongful acts in the
14 form of all due and proper legal and equitable relief.

15 **COUNT I: VIOLATION OF THE UNFAIR COMPETITION LAW**

16 **(Against Defendant Capital One Only)**

17 43. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
18 at length herein.

19 44. Actions for relief under the unfair competition law may be based on any business
20 act or practice that is within the broad definition of the UCL. Such violations of the UCL occur
21 as a result of unlawful, unfair, or fraudulent business acts and practices. A plaintiff is required
22 to provide evidence of a causal connection between a defendant's business practices and the
23 alleged harm--that is, evidence that the defendant's conduct caused or was likely to cause
24 substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct
25 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of
26 unfair competition covers any single act of misconduct, as well as ongoing misconduct.

27 **UNFAIR**

1 45. California Business & Professions Code § 17200 prohibits any “unfair ... business
2 act or practice.” Defendant’s acts, omissions, misrepresentations, and practices as alleged herein
3 also constitute “unfair” business acts and practices within the meaning of the UCL in that its
4 conduct is substantially injurious to purchasers, offends public policy, and is immoral, unethical,
5 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits
6 attributable to such conduct. There were reasonably available alternatives to further Defendant’s
7 legitimate business interests, other than the conduct described herein. Plaintiff reserves the right
8 to allege further conduct which constitutes other unfair business acts or practices. Such conduct
9 is ongoing and continues to this date.

10 46. In order to satisfy the “unfair” prong of the UCL, a consumer must show that the
11 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to purchasers or
12 competition; and, (3) is not one that purchasers themselves could reasonably have avoided.

13 47. Here, Defendant Capital One’s conduct has caused and continues to cause
14 substantial injury to Plaintiff. Plaintiff has suffered injury in fact due to Capital One’s decision
15 to unjustifiably restrict Plaintiff’s ability to timely make payments on his auto loan, thereby
16 causing injury to his credit and causing him to incur unowed late fees. Thus, Capital One’s
17 conduct has caused substantial injury to Plaintiff.

18 48. Moreover, Capital One’s conduct as alleged herein solely benefits Capital One
19 while providing no benefit of any kind to any consumer. Such conduct results in unowed late
20 fees and improper interest accruing on the auto loan, which Capital One claims Plaintiff owes.
21 In reality, the only reason these fees and interest are accruing is because Capital One will not
22 allow Plaintiff to timely make payments. Thus, the injury suffered by Plaintiff is not outweighed
23 by any countervailing benefits to purchasers.

24 49. Finally, the injury suffered by Plaintiff is not an injury that Plaintiff could
25 reasonably have avoided. After Plaintiff filed suit to protect his rights with respect to his vehicle
26 purchase, Capital One—a completely separate business entity not named in that litigation—
27 wrongfully restricted Plaintiff’s access to the only portal he uses to make payments on his auto
28

1 loan. Therefore, the injury suffered by Plaintiff is not an injury which Plaintiff could reasonably
2 have avoided.

3 50. Thus, Capital One's conduct has violated the "unfair" prong of California
4 Business & Professions Code § 17200.

5 **UNLAWFUL**

6 51. California Business and Professions Code Section 17200, et seq. prohibits "any
7 unlawful...business act or practice."

8 52. As explained above, Defendant Capital One's conduct constitutes numerous
9 violations of the CCRAA and RFDCPA.

10 53. These representations by Defendants are therefore an "unlawful" business
11 practice or act under Business and Professions Code Section 17200 et seq.

12 54. Defendants have thus engaged in unlawful, unfair, and fraudulent business acts
13 entitling Plaintiff to the judgment and equitable relief against Defendants, as set forth in the
14 Prayer for Relief. Additionally, pursuant to Business and Professions Code section 17203,
15 Plaintiff and seeks an order requiring Defendants to immediately cease such acts of unlawful,
16 unfair, or fraudulent business practices and requiring Defendants to correct its actions.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendants
19 for the following:

- 20 A. Actual damages;
21 B. Costs and reasonable attorney's fees; and
22 C. For such other and further relief as the Court may deem just and proper.

23 **COUNT II: VIOLATION OF THE CALIFORNIA CONSUMER CREDIT REPORTING**

24 **AGENCIES ACT**

25 **(Against all Defendants)**

26 55. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
27 at length herein.
28

1 56. California Civil Code § 1785.25 (a) states that a "person shall not furnish
2 information on a specific transaction or experience to any consumer credit reporting agency if
3 the person knows or should know the information is incomplete or inaccurate."

4 57. Based on these violations of Civil Code § 1785.25 (a) by Capital One and Civil
5 Code § 1785.16 by CRA Defendants, Plaintiff is entitled to the remedies afforded by Civil Code
6 § 1785.31, including actual damages, attorney's fees, pain and suffering, injunctive relief, and
7 punitive damages in an amount not less than \$100 nor more than \$5,000, for each violation as
8 the Court deems proper.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendants
12 for the following:

- 13 A. Actual damages;
14 B. Statutory damages;
15 C. Costs and reasonable attorney's fees; and
16 D. For such other and further relief as the Court may deem just and proper.

17 **COUNT II: VIOLATION OF THE FAIR CREDIT REPORTING ACT**

18 58. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
19 at length herein.

20 59. To the extent that Defendants' actions, counted above, violated the FCRA, those
21 actions were done knowingly and willfully.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant
24 for the following:

- 25 A. Actual damages;
26 B. Statutory damages;
27 C. Costs and reasonable attorney's fees; and
28 D. For such other and further relief as the Court may deem just and proper

1 **COUNT IV: VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION**

2 **PRACTICES ACT**

3 **(Against Defendant Capital One Only)**

4 60. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
5 at length herein.

6 61. To the extent that Defendants' actions, counted above, violated the RFDCPA,
7 those actions were done knowingly and willfully.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendants
10 for the following:

- 11 A. Actual damages;
12 B. Statutory damages;
13 C. Costs and reasonable attorney's fees; and
14 D. For such other and further relief as the Court may deem just and proper

15 **COUNT V: BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING**

16 **(Against Defendant Capital One Only)**

17 62. Plaintiff includes by reference all previous paragraphs as if set forth herein.

18 63. All parties to a contract are obliged to refrain preventing one another from
19 receiving the reasonably expected benefits of the contract. To make out a claim for a violation
20 of this duty, Plaintiff must show the following: 1) there was a contract between Plaintiff and
21 Defendant; 2) Plaintiff performed their obligation or was relieved therefrom; 3) Defendant
22 unfairly prevented Plaintiff from receiving the benefits of the contract; and 4) as a result,
23 Plaintiff was harmed.

24 64. Plaintiff was engaged in a contractual relationship with Defendant Capital One,
25 namely with respect to the auto loan for Plaintiff's Tesla.

26 65. Plaintiff performed all obligations arising out of the contract and in no way
27 interfered with Defendant Capital One's ability to perform their own.

28 66. By engaging in the conduct herein described, Defendant Capital One unfairly
prevented Plaintiff from receiving the benefits of the contract.

1 67. As a result, Plaintiff has suffered economic harm, stress and anxiety, and
2 inconvenience.

3 68. Defendant Capital One is therefore liable to Plaintiff for their violation of their
4 duty of good faith and fair dealing, and Plaintiff is therefore entitled to recovery of all damages,
5 both economic and non-economic, and all other remedies the court deems appropriate.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests that the Court:

- 8 a. Enter judgment against Defendants for all actual, punitive and
9 other damages to which Plaintiff is entitled:
10 b. Attorneys' fees; and
11 c. Grant other relief deemed just and appropriate.

12 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**

13 69. Plaintiff demands a trial by jury, pursuant to his right under Article 1, Section 16
14 of the Constitution of the State of California, on all issues so triable.

15 Respectfully submitted this 11th Day of March, 2024.

16 By: Todd M. Friedman
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18 Law Offices of Todd M. Friedman, P.C.
19 Attorney for Plaintiff
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