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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

NYREE HINTON,)	Case No: 2:24-cv-03039-CBM-JPR
)	
Plaintiff,)	
)	
vs.)	
	)	<u>NOTICE OF ERRATA</u>
CAPITAL ONE FINANCIAL)	
CORPORATION; EXPERIAN)	
INFORMATION SOLUTIONS, INC.;)	
TRANS UNION LLC; EQUIFAX)	
INFORMATION SERVICES LLC; and)	
DOES 1-10 inclusive,)	
)	
Defendants.)	
)	

PLEASE TAKE NOTICE that Document [19] of the Case Docket, The First Amended Complaint, was inadvertently filed without Exhibit A attached to the document. The corrected document, with the exhibit attached is attached hereto as EXHIBIT 1.

1 Respectfully Submitted this 4 day of June, 2024.

2 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

3 By: /s/ Todd M. Friedman

4 Todd M. Friedman

5 Law Offices of Todd M. Friedman

6 Attorney for Plaintiff

EXHIBIT 1

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 12 **Attorneys for Plaintiff**

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12	NYREE HINTON,	)	CASE NO.: 2:24-cv-03039-CBM-JPR
13)	
14	Plaintiff,	)	FIRST AMENDED COMPLAINT
15	-vs-	)	1. Violation of Unfair
16		)	Competition Law (Cal.
17	CAPITAL ONE FINANCIAL	)	Business & Professions Code
18	CORPORATION; EXPERIAN	)	§§ 17200 <i>et seq.</i> ;
19	INFORMATION SOLUTIONS, INC.;	)	2. Violation of the California
20	TRANS UNION LLC; EQUIFAX	)	Consumer Credit Reporting
21	INFORMATION SERVICES LLC.; and	)	Agencies Act (Cal. Code of
22	DOES 1-10 inclusive,	)	Civ. Pro. § 1785 <i>et seq.</i>)
23		)	3. Violation of the Fair Credit
24	Defendants.	)	Reporting Agencies Act (15
25		)	U.S.C. § 1681 <i>et seq.</i> ;
26		)	4. Violation of the Rosenthal Fair
27		)	Debt Collection Practices Act
28		)	(Cal. Civ. Code § 1788 <i>et seq.</i>);
		)	5. Breach of Duty of Good Faith
		)	and Fair Dealing;
		)	6. Violation of Consumer Legal
		)	Remedies Act (Cal. Civ Code §
		)	1770 <i>et seq.</i>).
		)	<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 (“Capital One”) for Defendant Capital One’s violations of California’s Unfair Competition Law, Rosenthal Fair Debt Collection Practices Act, Consumer Credit Reporting Agencies Act and the federal Fair Credit Reporting Act, all of which protect consumers such as Plaintiff from unfair lending and credit reporting by creditors. Plaintiff further alleges that by engaging in the conduct described herein, Defendant Capital One has breached its duty of good faith and fair dealing to Plaintiff.

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

II. PARTIES

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

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

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

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

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

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

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

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

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

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

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

25 **III. JURISDICTION & VENUE**

26 14. This Court has personal jurisdiction over Defendants because
27 Defendants conduct business in the State of California, as well as maintain contacts
28

1 therewith, sufficient to demonstrate purposeful availment of the protection and
2 obligations of this State's laws.

3 15. Subject matter jurisdiction exists pursuant to 28 U.S.C. § 1331, as this
4 matter arises under a federal statute, namely the Fair Credit Reporting act. This
5 Court has supplemental jurisdiction over Plaintiff's California state law claims
6 pursuant to 28 U.S.C. § 1367(a) because they are so related to his federal claims as
7 to form part of the same case or controversy.

8 16. Venue is proper in the Central District of California because this case
9 was removed from Los Angeles County Superior Court which is within this judicial
10 district.

11 **IV. FACTUAL ALLEGATIONS**

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

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

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

22 20. As a result, on or around September 18, 2023, October 19, 2023, and
23 November 20, 2023, Defendant Capital One reported the auto loan as thirty-days
24 past due.

25 21. On or around December 10, 2023, Defendant Capital One reported the
26 auto loan as "Charged-Off."
27
28

1 22. On information and belief, however, the only reason the auto loan was
2 past-due was because Capital One wrongfully restricted Plaintiff's access to its
3 online portal preventing him from timely making his payments.

4 23. Defendant Capital One thus furnished inaccurate, false, or incomplete
5 information to the consumer credit reporting agencies. This has resulted in a
6 negative effect on Plaintiff's credit score.

7 24. On or around December 31, 2023, Plaintiff submitted his first dispute
8 of the Capital One auto loan to CRA Defendants.

9 25. Thereafter, Plaintiff disputed the accuracy of Defendant Capital One's
10 credit reporting with Defendant XP on at least seven different occasions through
11 December of 2023, January of 2024, and February of 2024.

12 26. Plaintiff disputed the accuracy of Defendant Capital One's credit
13 reporting with Defendant TU on at least six different occasions through December
14 of 2023, January of 2024, and February of 2024.

15 27. Plaintiff submitted a second dispute to Defendant EF on or around
16 February 1, 2024.

17 28. Plaintiff additionally sent notices directly to Defendant Capital One of
18 these disputes on January 10, 2024, and January 19, 2024.

19 29. On or around January 25, 2024, Plaintiff faxed another dispute notice
20 to Defendant Capital One requesting Defendant Capital One remove the charge-off
21 from his credit reports.

22 30. On or around February 5, 2024, Defendant Capital One responded by
23 providing Plaintiff a copy of his payment history.

24 31. CRA Defendants, however, continue to report payment history that is
25 inconsistent with the documents Defendant Capital One provided Plaintiff.

26 32. Specifically, Defendant XP reported—and continues to report—the
27 following inaccuracies that are inconsistent with the documents Defendant Capital
28 One provided Plaintiff:

- a) Total balances that do not match the balance reflected in Defendant Capital One's records;
- b) Charge-off dates and amounts that do not match the records kept by Defendant Capital One;
- c) Reporting the account as "open" instead of "charged off;"
- d) Noting that Plaintiff disputed information for a completely different account that Plaintiff did not dispute;
- e) Failing to report certain payments that were timely made;
- f) Reporting "no data" for the month of December where data was in fact reported by Defendant Capital One;
- g) Reporting the account was suddenly charged off in February of 2024 with no prior delinquencies, when such reporting is not true;
- h) Failing to report that Plaintiff's access to the account had been restricted by Defendant Capital One.

33. Further, Defendant XP failed to respond to at least one of Plaintiff's disputes altogether.

34. Defendant EF reported—and continues to report—the following inaccuracies that are inconsistent with the documents Defendant Capital One provided Plaintiff:

- a) Total balances that do not match the balance reflected in Defendant Capital One's records;
- b) Failing to report certain payments that were timely made;
- c) No payment history reported after July of 2023 despite Defendant Capital One reporting payment history until December of 2023;
- d) Payment amounts that do not match the records provided by Defendant Capital One;

1 e) Failing to report that Plaintiff's access to the account had been
2 restricted by Defendant Capital One.

3 35. Defendant TU reported—and continues to report—the following
4 inaccuracies that are inconsistent with the documents Defendant Capital One
5 provided Plaintiff:

- 6 a) Total balances that do not match the balance reflected in Defendant
7 Capital One's records;
8 b) Failing to report certain payments that were timely made, including
9 payments in January through July of 2023;
10 c) Failing to report data for months in which Defendant Capital One
11 reported credit information;
12 d) Payment dates that do not match the records provided by
13 Defendant Capital One;
14 e) Inaccurate minimum payment and loan term;
15 f) Failing to report that Plaintiff's access to the account had been
16 restricted by Defendant Capital One.
17

18 36. Defendant TU failed to respond to three of Plaintiff's disputes
19 altogether.

20 37. CRA Defendants also did not provide Plaintiff with a description of
21 the procedure used to determine the accuracy of the information he had disputed,
22 as required by 15 U.S.C. § 1681i(a)(6)(B)(iii). As a result, Plaintiff was unable to
23 adequately supplement his disputes with information supporting his case because
24 he was not informed of what information Defendants utilized in reinvestigating his
25 disputes.

26 38. CRA Defendants are aware that the information they disseminate will
27 be used by various other persons or parties who will be reviewing this information
28

1 for the purpose of extending credit, insurance or employment and that they have
2 already done so.

3 39. The inaccurate information negatively reflects upon the Plaintiff,
4 Plaintiff's credit repayment history, Plaintiff's financial responsibility as a debtor,
5 and Plaintiff's credit worthiness.

6 40. The credit reports have been and continue to be disseminated to
7 various persons and credit grantors, both known and unknown.

8 41. Plaintiff has been damaged, and continues to be damaged, in the
9 following ways:

- 10 a. Emotional distress and mental anguish associated with having
11 incorrect derogatory personal information transmitted about
12 Plaintiff to other people both known and unknown;
13 b. Denial and reduction of credit based on the incorrect, incomplete,
14 and/or misleading reporting by Defendant Capital One;

15 42. At all times pertinent hereto, Defendants were acting by and through
16 their agents, servants and/or employees who were acting within the course and
17 scope of their agency or employment, and under the direct supervision and control
18 of Defendants herein.

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

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

- 25 a. Willfully and negligently continuing to furnish and disseminate
26 inaccurate and derogatory credit, account and other information
27
28

concerning the Plaintiff to credit reporting agencies and other entities despite knowing that said information was inaccurate; and,

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

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

- a. Willfully and negligently failing to reinvestigate and properly respond to Plaintiff's dispute such that Defendants disseminated inaccurate and derogatory credit, account and other information concerning the Plaintiff despite knowing that said information was inaccurate;
- b. Willfully and negligently failing to consider relevant information submitted by Plaintiff regarding disputed information;
- c. Willfully and negligently failing to provide Plaintiff with a description of the procedure used to determine the accuracy and completeness of the disputed information.

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

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

48. Defendants' conduct was a direct and proximate cause, as well as a substantial factor, in causing the injuries, damages and harm to Plaintiff that are outlined more fully above, and as a result, Defendants are liable to compensate

1 Plaintiff for the full amount of statutory, actual and punitive damages, along with
2 attorneys' fees and costs, as well as such other relief permitted by law.

3 49. As a result of the above violations of the FCRA and CCCRA, Plaintiff
4 suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation,
5 embarrassment, mental anguish and emotional distress, and Defendants are liable
6 to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and
7 attorney's fees.

8 50. Furthermore, at various and multiple times prior to the filing of the
9 instant complaint, including within the one year preceding the filing of this
10 complaint, Defendant Capital One contacted Plaintiff in an attempt to collect an
11 alleged outstanding debt.

12 51. §1788.17 of the RFDCPA mandates that every debt collector
13 collecting or attempting to collect a consumer debt shall comply with the provisions
14 of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in
15 Section 1692k of, Title 15 of the United States Code statutory regulations contained
16 within the FDCPA, 15 U.S.C. §1692d, and §1692d(5).

17 52. Defendant Capital Ones' conduct violated the RFDCPA in multiple
18 ways, including without limitation the following:

- 19 a) Engaging in conduct the natural consequences of which is to
20 harass, oppress, or abuse Plaintiff (15 U.S.C. § 1692d);
21 b) Using unfair or unconscionable means to collect or attempt to
22 collect any debt from Plaintiff (15 U.S.C. § 1692e).

23 53. As a result of the above violations of the RFDCPA, Plaintiff suffered
24 and continues to suffer injury to Plaintiff's feelings, personal humiliation,
25 embarrassment, mental anguish and emotional distress, and Defendant Capital One
26 is liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and
27 attorney's fees.
28

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

COUNT I: VIOLATION OF THE UNFAIR COMPETITION LAW

(Against Defendant Capital One Only)

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

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

UNFAIR

57. California Business & Professions Code § 17200 prohibits any "unfair ... business act or practice." Defendant's acts, omissions, misrepresentations, and practices as alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that its conduct is substantially injurious to purchasers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the

1 conduct described herein. Plaintiff reserves the right to allege further conduct
2 which constitutes other unfair business acts or practices. Such conduct is ongoing
3 and continues to this date.

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

8 59. Here, Defendant Capital One’s conduct has caused and continues to
9 cause substantial injury to Plaintiff. Plaintiff has suffered injury in fact due to
10 Capital One’s decision to unjustifiably restrict Plaintiff’s ability to timely make
11 payments on his auto loan, thereby causing injury to his credit and causing him to
12 incur unowed late fees. Thus, Capital One’s conduct has caused substantial injury
13 to Plaintiff.

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

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

27 62. Thus, Capital One’s conduct has violated the “unfair” prong of
28 California Business & Professions Code § 17200.

UNLAWFUL

63. California Business and Professions Code Section 17200, et seq. prohibits “any unlawful...business act or practice.”

64. As explained above, Defendant Capital One’s conduct constitutes numerous violations of the CCRAA and RFDCPA.

65. These representations by Defendants are therefore an “unlawful” business practice or act under Business and Professions Code Section 17200 et seq.

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

PRAYER FOR RELIEF

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

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

COUNT II: VIOLATION OF THE CALIFORNIA CONSUMER CREDIT

REPORTING AGENCIES ACT

(Against all Defendants)

67. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

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

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

PRAYER FOR RELIEF

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

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

COUNT III: VIOLATION OF THE FAIR CREDIT REPORTING ACT

70. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

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

PRAYER FOR RELIEF

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

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

COUNT IV: VIOLATION OF THE ROSENTHAL FAIR DEBT

COLLECTION PRACTICES ACT

(Against Defendant Capital One Only)

72. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

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

PRAYER FOR RELIEF

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

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

COUNT V: BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING **(Against Defendant Capital One Only)**

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

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

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

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

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

79. As a result, Plaintiff has suffered economic harm, stress and anxiety, and inconvenience.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

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

COUNT VI: VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT

(Against Defendant Capital One Only)

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

82. Defendant Capital One's actions as detailed above constitute the following violations of the Consumer Legal Remedies Act, Cal. Civ. Code §1770 ("CLRA"):

- a. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of Cal. Civ. Code §1770(7);
- b. Advertising goods or services with intent not to sell them as advertised, in violation of Cal. Civ. Code §1770(9);
- c. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of Cal. Civ. Code §1770(14); and
- d. Representing that the subject of a transaction has been supplied in accordance with a previous representation

when it has not, in violation of Cal. Civ. Code §1770(16).

83. On or about March 1, 2024, through his Counsel of record, using certified mail with a return receipt requested, Plaintiff served Defendant Capital One with notice of its violations of the CLRA, and asked that it correct, repair, replace or otherwise rectify the goods and services alleged to be in violation of the CLRA; this correspondence advised Capital One that it must take such action within thirty (30) calendar days, and pointed it to the provisions of the CLRA that Plaintiff believe to have been violated by Capital One. A true and correct copy of Plaintiff's CLRA notice letter is attached hereto as Exhibit A. Capital One has not replied favorably to this correspondence, and have thereby refused to timely correct, repair, replace or otherwise rectify the issues raised therein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

- d. Enter judgment against Defendants for all actual, punitive and other damages to which Plaintiff is entitled;
- e. Attorneys' fees; and
- f. Grant other relief deemed just and appropriate.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY

84. Plaintiff demands a trial by jury, pursuant to his right under the Seventh Amendment to the United States Constitution, on all issues so triable.

Respectfully submitted this 4th Day of June, 2024.

By: /s/ Todd M. Friedman
 Todd M. Friedman, Esq.
 Law Offices of Todd M. Friedman, P.C.
 Attorney for Plaintiff

EXHIBIT A

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

ATTORNEYS FOR CONSUMERS

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WRITER LICENSED IN:

CALIFORNIA

PENNSYLVANIA

ILLINOIS

March 1, 2024

Via Certified U.S. Mail

Capital One Financial Corporation.

1680 Capital One Dr,

Mc Lean, VA, 22102 – 3407

Capital One Financial Corporation

C/O Corporation Service Company

100 Shockoe Slip Fl 2,

Richmond, VA, 23219

**Confidential Settlement Communication Pursuant to FRE 408 and CEC 1152 and
Notice of Violations of CLRA Pursuant to Cal. Civ. Code §§1782(a)(2)**

Re: *Nyree Hinton v. Capital One Financial Corporation*

To Whom It May Concern:

Please be advised that our office represents Nyree Hinton (“Plaintiff”), in pursuing legal claims against Capital One Financial Corporation (“Defendant”), for violations of the Consumer Legal Remedies Act (“CLRA”).

Having been formally notified of our representation, we respectfully demand you not contact our client for any reason. Instead, please direct all future contact and correspondence to this office. We reserve the right to seek injunctive relief against you should you fail to honor these directives.

The purpose of this letter is to advise your company of its violations and to quickly resolve the matter of my client’s right to compensation for the same, without resorting to expensive and unnecessary litigation. Before additional damages accrue, including needless attorney fees, we should work together expeditiously to correct the inequity that occurred in connection with your company’s handling of the matters detailed below. Thus, please accept this correspondence as notice pursuant to the CLRA, of violations thereof. Be advised, you have thirty (30) calendar days from the date of receipt of this notice, to correct, repair, replace, or otherwise rectify the goods or services alleged to be in violation of § 1770 of the CLRA, as further outlined below.

Please review the violations set forth below and contact our offices immediately, to discuss settlement.

Facts

In or around November 9, 2022, Plaintiff purchased a vehicle and financed the vehicle loan through Defendant. During a period of the first six months after purchasing the vehicle, Plaintiff had constant issues with the vehicle that included over 7 repairs.

After many attempts of repairing the vehicle Plaintiff filed a lawsuit in July of 2023 against both the dealer and Capital One Auto Finance. In or around August of 2023 Defendant responded to Plaintiff adversely and proceeded to restrict Plaintiff from accessing her loan portal to continue to make payments while the lawsuit was proceeding. Furthermore, Defendant flagged plaintiff's account as late and reported Plaintiff's account as having late payments and sent the negative reporting to the credit bureaus. This has left a negative effect on Plaintiff's credit.

From October 19, 2023 – January of 2024, Plaintiff's Fico score has decreased over 70 points. Defendant knew of Plaintiff's dispute yet ignored Plaintiff's demands and responded negatively to Plaintiff's lawsuit by preventing Plaintiff from making the necessary payments to her loan account.

The aforementioned representations were false, misleading, and outright deceptive. Defendant's service does not meet the standards for which Defendant represented. Defendant's representations about allowing Plaintiff to make timely payments are material to Plaintiff's decision to transact with Defendant. That is, had Plaintiff known that even after filing a lawsuit Defendant would restrict her from making payments at the onset of transacting, Plaintiff would not have transacted with Defendant. Furthermore, Plaintiff had no reasonable opportunity to uncover such deception prior to transacting with Defendant.

Plaintiff has been harmed as an actual and proximate result of Defendant's deception, and he therefore request recompense as stated in this letter.

CLRA (Cal. Civ. Code §1750 et seq.) Violations

Among other things, the CLRA prohibits the following “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction to result or which results in the sale or lease of goods or services” to a consumer:

1. Passing off goods or services as those of another *Cal. Civ. Code* §1770(1)
2. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. *Cal. Civ. Code* §1770(7)
3. Advertising goods or services with intent not to sell them as advertised- *Cal. Civ. Code* §1770(9);

4. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; - *Cal. Civ. Code* §1770(14);
5. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not. *Cal. Civ. Code* §1770(16)

Further, under the CLRA, a consumer may recover actual damages, an order enjoining any such practices that are prohibited by the CLRA, restitution of property, punitive damages, civil penalties, and reasonably attorney's fees and costs. *Cal. Civ. Code* §§1780, *et seq.* .

By engaging in the conduct detailed above, dealer violated Sections §1770(1), (7), (9), (14), and (16) of the CLRA, thereby entitling Plaintiffs to attorney's fees and costs, and actual and punitive damages.

Unfair Competition Law (Cal. Bus. Prof. Code §17200)

The Unfair Competition Law, Cal. Bus. Prof. C. §17200 prohibits unlawful, unfair or fraudulent business acts or practices. Further, any person may bring an action to enjoy or restrain any violation of this act and recover actual damages resulting from such violations. *Cal. Bus. Prof. Code* §4381(b)-(c).

Defendant engaged in fraudulent, unfair and unlawful business practices through its conduct and violated the UCL. Defendant made representations to Plaintiffs that they would unlock his iPhone in exchange for money, when in fact it knew that was not true, and this amounts to fraudulent and unfair business practices. Further, as noted above, Defendant violated the CLRA, thus engaging in unlawful business practices. Defendant's conduct, as detailed above, violates numerous provisions of the CLRA; consequently, said conduct constitutes unlawful business practices. Defendant's conduct entitles Plaintiffs to restitution and injunctive relief.

Demand

Ultimately, I am sure you can appreciate the need to address this issue with my client and the need to avoid unnecessary litigation. My client, too, appreciates the hardships of protracted litigation. Therefore, we are willing today to settle this matter outside litigation, if you contact our office immediately upon receipt of this letter.

If you chose to ignore this letter seeking settlement, then we will have no choice but to pursue my client's CLRA claims in a court of law. Please be advised that if such circumstances should arise, my demand shall be deemed withdrawn upon the filing of our complaint. Again, we hope that this can be avoided.

Best regards,

A handwritten signature in dark ink, consisting of a stylized 'T' followed by a long, sweeping horizontal line that tapers off to the right.

Todd M. Friedman, Esq.
Attorney at Law

1 Filed electronically on this 4th Day of June, 2024, with:

2 United States District Court CM/ECF system.

3 Notification sent electronically on this 4th Day of June, 2024, to:

4 Honorable Consuelo B. Marshall

5 United States District Court

6 Central District of California

7 And All Counsel of Record as Recorded On The Electronic Service List

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9
10 /s/ Todd M. Friedman, Esq.

11 TODD M. FRIEDMAN
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