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GABRIELA CHAVEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

GABRIELA CHAVEZ)	Case No. 37-2019-00045414-CU-MC-CTL
)	
)	
Plaintiff,)	COMPLAINT FOR DAMAGES
)	
vs.)	
)	
)	[DEMAND FOR JURY TRIAL]
WELLS FARGO BANK N.A. and DOES)	
1 through 20,)	
)	
)	
Defendants.)	
)	

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/28/2019 at 12:47:21 PM
Clerk of the Superior Court
By Erika Engel, Deputy Clerk

Plaintiff GABRIELA CHAVEZ (“Plaintiff”) alleges the following:

INTRODUCTION

1. Plaintiff brings this lawsuit against Defendant Wells Fargo Bank, N.A. and Does 1 through 20 (hereinafter referred to as “Defendants”) for violations of the California Identity Theft Act (“CITA”), the Rosenthal Fair Debt Collection Practices Act (“Rosenthal FDCPA”), and the California Consumer Credit Reporting Agencies Act (“CCRAA”).

2. Plaintiff seeks actual damages, statutory damages, statutory penalties, civil penalties, injunctive relief, declaratory relief, attorneys’ fees and costs, and other relief the Court deems appropriate.

PARTIES

3. Plaintiff is a “victim of identity theft” as the term is defined by CITA, a “debtor” as the term is defined by the Rosenthal FDCPA, and a “consumer” as the term is defined by the CCRAA.

4. Plaintiff is informed and believes, and thereupon alleges, that Defendants are, and at all times mentioned herein were, conducting and engaging in business in the County of San Diego, California.

5. Plaintiff is informed and believes, and thereupon alleges that Defendants are claimant as the term defined by Civil Code section 1798.92(a).

6. Plaintiff is informed and believes, and thereupon alleges that Defendants are a debt collector as the term is defined by Civil Code section 1788.2(c).

7. Defendants attempted to collect a consumer debt as the term is defined by the FDCPA and Rosenthal FDCPA.

8. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned each of the defendant’s agents, servants, employees, or partners, in committing the acts and omissions hereinafter alleged, was acting within the course and scope of such agency, employment, partnership, or other business relationship, and the defendant is responsible for their acts and omissions alleged in this complaint.

JURISDICTION AND VENUE

9. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is proper in the Superior Court of California, County of San Diego, State of California because Plaintiff alleges claims arising under California law.

10. This Court has jurisdiction over the Defendant because it conducts substantial business in the State of California, County of San Diego.

11. Pursuant to California Code of Civil Procedure section 395, venue is proper in the Superior Court of California for the County of San Diego because this is where Defendant does business.

RELEVANT FACTS

12. On or about February 8, 2019, Plaintiff went to a Wells Fargo Bank (“Wells Fargo”) branch and opened up a credit card account with Wells Fargo entitled “Propel American Express.”

13. The account was activated by Plaintiff on or about February 27, 2019. During a conversation with a Wells Fargo representative, Plaintiff specifically requested that Wells Fargo initiate a balance to transfer to pay off her Navy Federal Credit Union (“NFCU”) account in the amount of \$9,837.49. Plaintiff was told that the balance transfer would take several days and would be done electronically, as is generally the case for balance transfers.

14. Approximately ten (10) days went by and Plaintiff realized that the balance transfer was not done and that her Navy Federal account still had an outstanding balance of \$9,837.49. Plaintiff went to a Wells Fargo branch to inquire about the balance transfer. Mr. Javier Hernandez, a banker at Wells Fargo, assisted Plaintiff. Mr. Hernandez ultimately informed Plaintiff that Wells Fargo was unable to conduct a wire transfer electronically and that Wells Fargo had issued a check in the amount of \$9,837.49 instead. Plaintiff was told that this process will take about ten (10) days. Wells Fargo never contacted Plaintiff to inform her about the supposed unsuccessful write transfer, nor did they notify Plaintiff that a check was going to be

1 issued in lieu of a wire transfer. Furthermore, when Mr. Hernandez informed Plaintiff
2 that a check was being issued in lieu of a wire transfer, Plaintiff asked Mr. Hernandez
3 to verify the name on the purported check. Mr. Hernandez informed Plaintiff that the
4 check was made to the name of “Gabriela Chavez and T.D. Retail Services.” Plaintiff
5 informed Mr. Hernandez that she did not know who “T.D. Retail Services” was. Mr.
6 Hernandez asked Plaintiff to call NFCU to verify if they are associated with “T.D.
7 Retail Services”, which NFCU denied. Plaintiff informed Mr. Hernandez that the
8 check contained inaccurate information and was issued to someone Plaintiff was not
9 familiar with. Plaintiff was told to wait for the check in the mail in order to cancel it,
10 since it had already been processed.

11 15. Approximately ten (10) days went by and Plaintiff did not receive the
12 check, as promised by Wells Fargo. As a result, Plaintiff went back to the branch and
13 spoke to Mr. Hernandez. Mr. Hernandez informed Plaintiff that someone had cashed
14 the check. Bewildered, Plaintiff stated that she never received a check from Wells
15 Fargo and that she would like a copy of the cashed check.

16 16. Wells Fargo subsequently provided a copy of the cashed check to
17 Plaintiff. After examining the copy of the check, Plaintiff noticed that the check had
18 been made out to “Gabriela Chavez & TD Retail Card Services.” Additionally,
19 Plaintiff noticed that the check was endorsed on March 27, 2019, and that her
20 signature on the back of the check—on the endorsement line—was not hers, e.g. it
21 was forged. Additionally, she noticed that below her forged signature, there appears
22 to be another signature by an individual with the name of “Eufrey Maturdan.”
23 Plaintiff has no idea who that is.

24 17. On or about May 23, 2019, after reviewing the copy of the \$9,837.49
25 forged check, Plaintiff filed a police report with the San Diego County’s Sheriff’s
26 Department. Plaintiff also filed a fraud claim with Wells Fargo, informing them that
27 someone had forged her name on the check.

28 18. On or about May 29, 2019, Wells Fargo sent Plaintiff a letter, informing

1 her that they had completed their investigation and that no fraud occurred.

2 19. Plaintiff was forced to seek the assistance of an attorney.

3 20. Plaintiff subsequently completed the FTC Identity Theft Victim's
4 Complaint and Affidavit ("ID Theft Affidavit").

5 21. On or about June 13, 2019, after hiring an attorney to assist her with her
6 identity theft claim, Plaintiff sent by and through her counsel, via certified mail, a
7 written notice to Wells Fargo, informing Wells Fargo that she was disputing the
8 \$9,837.49 debt because she was a victim of identity theft and that someone had
9 fraudulently signed and cashed the \$9,837.49 check without her knowledge, consent
10 or authorization. A copy of the ID Theft Affidavit and police report was attached to
11 the written notice. The written notice also informed Wells Fargo that all
12 communications should be addressed to Plaintiff's attorney.

13 22. On or about June 13, 2019, Plaintiff also sent written notices, via
14 certified mail, to Experian, TransUnion, and Equifax informing each of them that
15 Plaintiff was disputing the debt because she was a victim of identity theft. A copy of
16 the (i) June 13, 2019 written notice to Wells Fargo, (ii) ID Theft Affidavit, and (iii)
17 and police report was attached to each of the notices.

18 23. Upon information and belief, Equifax, Trans Union and/or Experian
19 notified Wells Fargo of Plaintiff's dispute and identity theft claim within the statutory
20 required time under the Fair Credit Reporting Act.

21 24. The tracking number of the certified mail receipt confirms that Wells
22 Fargo received Plaintiff's June 13, 2019 written notice on or about June 17, 2019.

23 25. On or about July 5, 2019, Wells Fargo sent a collection notice directly to
24 Plaintiff, even though it knew that Plaintiff was represented by counsel, attempting to
25 collect part of the debt from Plaintiff, even though the debt was subject to Plaintiff's
26 Identity theft dispute/claim.

27 26. On or about July 9, 2019, Wells Fargo sent a letter directly to Plaintiff,
28 informing Plaintiff that she was responsible for the alleged debt.

1 27. Upon information and belief, Wells Fargo continues to report the debt on
2 Plaintiff's credit report.

3 28. Wells Fargo has yet to cease any of its collection efforts, and has
4 continued its collection efforts in a manner that has caused Plaintiff stress and
5 anxiety.

6 **FIRST CAUSE OF ACTION**
7 **(Violations of the CITA against all Defendants)**

8 29. Plaintiff re-alleges paragraphs 1 through 28, above, as if fully set forth
9 herein.

10 30. Plaintiff is a victim of identity theft under California Civil Code section
11 1798.92(d).

12 31. Plaintiff sent written notice that she is a victim of identity theft, as
13 required by Civil Code section 1798.93, to Wells Fargo on June 13, 2019 via certified
14 mail. This notice included a copy of the ID Theft Affidavit and police report. Wells
15 Fargo received Plaintiff's written notice on or about June 17, 2019.

16 32. The written notice was provided to Wells Fargo at least thirty days prior
17 to filing this action.

18 33. After receiving Plaintiff's written notice which included a copy of the ID
19 Theft Affidavit as well as a copy of the police report, Wells Fargo failed to diligently
20 investigate Plaintiff's identity theft claim.

21 34. Despite Plaintiff's June 13, 2019 written notice, informing Wells Fargo
22 that she was a victim of identity theft, Wells Fargo continued to pursue its claim
23 against Plaintiff.

24 35. Pursuant to Civil Code section 1798.93(c)(1), Plaintiff is entitled to a
25 declaration that she is not obligated on any claim of Wells Fargo for money or
26 property.

27 36. Pursuant to Civil Code section 1798.93(c)(2), Plaintiff is entitled to a
28 declaration that any security interest or other interest that Wells Fargo may have is

void and/or unenforceable.

37. Pursuant to Civil Code section 1798.93(c)(3), Plaintiff is entitled to an injunction restraining Wells Fargo from collecting or attempting to collect from her on its alleged claims, from enforcing or attempting to enforce any security interest or other interest in connection with Wells Fargo's claims, and from enforcing or executing on any judgment against Plaintiff on such claims.

38. Pursuant to Civil Code section 1798.93(c)(6), Plaintiff is entitled to a civil penalty of up to \$30,000.00 against Wells Fargo.

39. As a result, Plaintiff has suffered actual damages and harm resulting from Defendants' actions as heretofore alleged, including but not limited to worry, emotional distress, anxiety, humiliation, and out-of-pocket expenses the exact amount of which is to be proven.

40. The forgoing act(s) by Defendants were willful and knowing violations of Civil Code section 1798.93.

41. Plaintiff has incurred reasonable and necessary costs and attorney fees in the preparation and prosecution of this action and seeks reimbursement of her attorney's fees and costs pursuant to California Civil Code section 1798.93(c)(5).

SECOND CAUSE OF ACTION
(Violation of the Rosenthal FDCPA against all Defendants)

42. Plaintiff re-alleges paragraphs 1 through 41, above, as if fully set forth herein.

43. Any violation of the Fair Debt Collection Practices Act ("FDCPA") is a violation of California Civil Code section 1788.17 of the Rosenthal FDCPA, because section 1788.17 incorporates the FDCPA.

COUNT 1

44. Defendants violated Civil Code section 1788.17 by violating 15 U.S.C. section 1692c(a)(2) because they contacted Plaintiff directly, in an attempt to collect a debt, despite knowing that Plaintiff was represented by an attorney.

COUNT 2

45. Defendants violated Civil Code section 1788.14 because they contacted Plaintiff directly, in an attempt to collect a debt, despite knowing that Plaintiff was represented by an attorney.

COUNT 3

46. Defendants violated Civil Code section 1788.17 because they violated 15 U.S.C. sections 1692e, 1692e(2)(A), 1692e(5), 1692e(10), 1692f, and 1692f(1) of the FDCPA. In particular, Defendants violated 15 U.S.C. sections 1692e, 1692e(2)(A), 1692e(5), 1692e(10), 1692f, and 1692f(1) by attempting to collect a debt, when in fact Plaintiff did not owe any debt to Defendants.

COUNT 4

47. Defendants violated Civil Code section 1788.18 by continuing to engage in collection activities after Plaintiff provided them with documents pursuant to California Civil Code sections 1788.18(a) and 1788.18(b). Defendants failed to determine in good faith that Plaintiff was a victim of identity theft and that she was not responsible for the incurred debt after Plaintiff provided Defendants with an ID Theft Affidavit and police report. Defendants also engaged in collection prior to making its determination.

48. As a result of each and every violation of the Rosenthal FDCPA, Plaintiff has suffered actual damages and harm resulting from Defendants' actions or inactions as heretofore alleged, including but not limited to worry, emotional distress, anxiety, humiliation, and out-of-pocket expenses the exact amount determined according to proof.

49. As a result of each and every violation of the Rosenthal FDCPA, Plaintiff is entitled to actual damages pursuant to California Civil Code section 1788.30(a); statutory damages pursuant to California Civil Code section 1788.17; civil penalties for a knowing or willful violation pursuant to California Civil Code section 1788.30(b); and reasonable attorneys' fees and costs pursuant to California

Civil Code section 1788.30(c).

THIRD CAUSE OF ACTION
(Violations of the CCRAA against all Defendants)

50. Plaintiff re-alleges paragraphs 1 through 49, above, as if fully set forth herein.

51. California Civil Code section 1785.25(a) states:

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.

52. Defendants violated the CCRAA by violating California Civil Code section 1785.25(a) because it furnished and continue to furnish to a consumer credit reporting agency, that Plaintiff owes a debt when in fact Plaintiff does not, because she was a victim of identity theft. Defendants were informed in writing by Plaintiff and, upon information and belief, by the credit bureaus that Plaintiff was a victim of identity theft, and therefore knew or should have known that the information it provided to the consumer credit reporting agency was incomplete or inaccurate.

53. As a result of each and every violation of the CCRAA, Plaintiff has suffered actual damages and harm resulting from Defendants actions or inactions as heretofore alleged, including but not limited to worry, emotional distress, anxiety, humiliation, damage to his credit report and credit score, and out-of-pocket expenses the exact amount of which is to be proven at trial.

54. As a result of each and every violation of the CCRAA, Plaintiff is entitled to actual damages, attorney's fees, and costs pursuant to California Civil Code section 1785.31(a)(1); and statutory damages for a knowing or willful violation in the amount of up to \$5,000.00 pursuant to California Civil Code section 1788.31(a)(2)(B).


PRAYER FOR DAMAGES AND OTHER REMEDIES

1. For actual damages;
2. For statutory damages;

3. For civil penalties;
4. For injunctive relief;
5. For declaratory relief;
6. For attorney's fees;
7. For costs of suit herein incurred;
8. For interest according to law; and
9. For other and further relief as the court may deem proper.

DATED: August 28, 2019

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By: 
Alex Asil Mashiri
Attorney for Plaintiff
Gabriela Chavez