

1 SEMNAR & HARTMAN, LLP
Babak Semnar (SBN 224890)
2 bob@sandiegoconsumerattorneys.com
Jared M. Hartman, Esq. (SBN 254860)
3 jared@sandiegoconsumerattorneys.com
400 S. Melrose Dr., Suite 209
4 Vista, CA 92081
Telephone (951) 234-0881; Fax (888) 819-8230

5 Attorneys for Plaintiff
6 MARK LEGACY

7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN DIEGO**

9 MARK LEGACY, an individual,
10 Plaintiff,

11 vs.

12 WELLS FARGO BANK, a National
Association; and DOES 1-10,
13 Defendants.

Case No.: 37-2016-00001004-CU-MC-CTL

**COMPLAINT FOR VIOLATIONS
OF:**

**1. CALIFORNIA IDENTITY
THEFT**

14 TO THE CLERK OF THE COURT, ALL PARTIES, AND THE HONORABLE
15 SUPERIOR COURT JUDGE:

16 Plaintiff, MARK LEGACY, an individual, by and through his attorneys of
17 record, hereby complains and alleges as follows:

18 **INTRODUCTION**

19 1. Plaintiff, through his attorneys, brings this action to challenge the actions
20 of Defendant WELLS FARGO BANK, N.A. (hereinafter "Defendant WF") in
21 persisting its efforts to collect from him upon a line of credit that Plaintiff had

1 previously notified Defendant in writing, signed under oath and notarization, that
2 included a copy of a police report, that the loan had been obtained in his name as
3 personal guaranty through means of identity theft.

4 JURISDICTION & VENUE

5 5. This action arises out of Defendant's violations of the State of California
6 Identity Theft protection statute, which creates a private right of action in Calif. Civ.
7 Code §1798.93.

8 6. Because Defendant conducts business within the State of California by
9 maintaining a registered agent for service of process at 2710 Gateway Oaks Drive, Suite
10 150N, in the City of Sacramento, personal jurisdiction is established.

11 7. Because all tortious conduct occurred while Plaintiff resided in the County
12 of San Diego, venue properly lies in this court.

13 FACTUAL ALLEGATIONS

14 8. Sometime in February 2015, an employee of the business that Plaintiff was
15 president of—Brothers Auto Repair & Fleet—applied for an obtained two commercial
16 business loans in the business name.

17 9. The employee's name is Michael Moore.

18 10. Mr. Moore used Plaintiff's name as the personal guaranty for these loans
19 without Plaintiff's knowledge, consent, or authorization.

20 11. Mr. Moore forged Plaintiff's signature on the loan without Plaintiff's
21 knowledge, consent, or authorization.

1 12. Mr. Moore used Plaintiff's personal identification information—such as
2 Plaintiff's name, social security number, address, telephone number, place of
3 employment, and driver's license—in connection with this application, all without
4 Plaintiff's knowledge, consent, or authorization.

5 13. On or about August 18, 2015, Plaintiff received a call from Defendant's
6 collection agent "Patty", who claimed to Plaintiff that he was past due on these loans.

7 14. Plaintiff informed Patty that he had just paid all of his bills and he should
8 not be late on any loans in his name.

9 15. Patty called Plaintiff again approximately two days later and again claimed
10 to Plaintiff that he was late on these two loans.

11 16. Plaintiff then went to a physical branch of Defendant's to investigate
12 further, and for the first time ever learned of these loans being taken out in his name as
13 personal guaranty.

14 17. This was the first that Plaintiff had ever learned of any alleged obligation
15 in his name upon these loans.

16 18. On or about August 20, 2015, Plaintiff had a telephone conversation with
17 Defendant's agent "Nancy", at which time Plaintiff informed her that he did not take
18 out these loans in his name and he needed paperwork to investigate.

19 19. Nancy faxed to Plaintiff documentation of the loans, which is the first time
20 Plaintiff had ever seen any documentation in relation to these loans.

21 20. Plaintiff promptly contacted the police to complete a report of identity

1 theft, but due to scheduling issues with the investigator in charge of taking such reports
2 Plaintiff was not able to meet with the investigator right away.

3 21. Ultimately, on October 5, 2015, Plaintiff met with an investigator with the
4 City of San Diego police department to complete an identity theft report.

5 22. Plaintiff provided the documentation to this investigator that was given to
6 him by Nancy, and Plaintiff provided all facts and details known by him to the
7 investigator surrounding Mr. Moore's fraudulent use of Plaintiff's name, signature, and
8 personal identifying information to obtain these loans.

9 23. Prior to his meeting with the investigator on October 5th, Plaintiff received
10 collection letters from Defendant upon the two loans in September 2015, despite his
11 having informed both Patty and Nancy previously that the loans were the subject of
12 fraud and identity theft.

13 24. On October 8, 2015, Plaintiff's attorneys of record caused to be delivered a
14 letter to Defendant's corporate offices informing Defendant of their representation of
15 Plaintiff upon these loans, informing Defendant of the identity theft/fraud, requesting
16 that Defendant not contact Plaintiff directly, requesting that Defendant remove
17 Plaintiff's name as an obligor upon these loans, removing Plaintiff's name and contact
18 information as a person of contact for the loans, and enclosed with the letter a copy of
19 the promissory note that was provided to Plaintiff by Nancy as well as a copy of the
20 October 5th police report.

21 25. Defendant received this letter and the enclosures on October 13, 2015, as

1 evidenced by the certified mail return receipt that was provided to Plaintiff's attorneys
2 from the U.S. Postal Service.

3 26. Defendant delivered a letter to Plaintiff's counsel dated November 5, 2015
4 requesting that Plaintiff complete their identity theft/fraud packet.

5 27. Plaintiff completed said packet in writing on November 16, 2015, and
6 therein provided all circumstances and details known by him surrounding the identity
7 theft/fraud committed by Mr. Moore, enclosed therein a copy of the police report as
8 well as a photocopy of his driver's license and social security card as requested by
9 Defendant, signed the packet under oath, and had the packet notarized.

10 28. This packet was furnished to the place of mailing requested by Defendant
11 and identified by Defendant as the address designated for claims related to credit
12 reporting issues relating to identity theft.

13 29. By letter dated November 30, 2015, Defendant acknowledged its receipt of
14 Plaintiff's completed identity theft packet and stated therein that no further information
15 would be needed for Defendant to conduct its investigation into Plaintiff's report.

16 30. Unfortunately, however, by letters dated December 21, 2015, Defendant
17 sent two collection letters directly to Plaintiff's home address attempting to collect upon
18 each account identified by Plaintiff as being the subject of identity theft.

19 31. Plaintiff's home address in the City of La Mesa is different than the
20 business address in the City of San Diego, which Defendant clearly knows since it has
21 sent correspondence in the business name to the business address in the City of San

1 Diego.

2 32. Each letter contained the ominous statement: "We regret to inform you that
3 this is the final notice before your account will charge off as a bad debt. The time has
4 come for you to decide how you would like to resolve this situation. Please contact us
5 immediate to discuss payment options to prevent your account from reaching a charge
6 off status. Please send the payment due today or contact the undersigned within seven
7 (7) days for payment arrangements."

8 33. Each letter also contains the amount of the "current balance" and the "total
9 amount due" upon each account.

10 34. By sending the letters to what Defendant clearly knows is Plaintiff's home
11 address in the City of La Mesa, it is clear Defendant is attempting to collect from
12 Plaintiff directly.

13 35. By threatening to charge off the debt as a bad debt, it is clear that
14 Defendant's intention is to submit negative information upon Plaintiff's individual
15 consumer credit reports, which confirms that Defendant's intention with these two
16 letters is to collect from Plaintiff directly.

17 36. Defendant has yet to inform Plaintiff or his attorneys of the details of its
18 investigation into Plaintiff's report of identity theft/fraud, and has yet to inform Plaintiff
19 or his attorney of its conclusion of Plaintiff's report.

20 37. Defendant's conduct at ignoring Plaintiff's report of identity theft/fraud,
21 after Plaintiff repeatedly informed Defendant of the same both verbally and in writing

1 and complied with every request of Defendant's, and persisting in its efforts to collect
2 from Plaintiff upon the loan by sending collection letters to his home address—which is
3 different from the business address—and threatening to charge the debts off as bad
4 debts, Plaintiff has suffered mental anguish by way of fear, anxiety, nervousness, loss
5 of sleep, and feelings of hopelessness and despair.

6 38. As a result of Defendant's persistent efforts to collect upon the loans
7 forcing Plaintiff to pursue the instant litigation, Plaintiff has also suffered out of pocket
8 expense, and loss of time and resources.

9 **FIRST CAUSE OF ACTION**
10 **CALIFORNIA IDENTITY THEFT PROTECTION ACT**
11 **Calif. Civ. Code § 1798.93**

12 39. Plaintiff repeats, re-alleges, and incorporates by reference, all other
13 paragraphs as if fully stated herein.

14 40. Mr. Moore used Plaintiff's "personal identifying information" within the
15 meaning of Calif. Civ. Code §1798.92(c), as he used Plaintiff's name, address,
16 telephone number, social security number, and place of employment to secure the loans,
17 all without Plaintiff's knowledge, consent, or authorization.

18 41. By Mr. Moore using Plaintiff's name as personal guaranty, forging
19 Plaintiff's signature, and using Plaintiff's personal identification information in
20 connection with the application and thereby securing the loans, all without Plaintiff's
21 knowledge, consent, or authorization, the loans are the subject of "identity theft" within
the meaning of Calif. Civ. Code §1798.92(b) and Plaintiff is a "victim of identity theft"

1 within the meaning of Calif. Civ. Code §1798.92(d).

2 42. By Defendant claiming to Plaintiff that they are owed money from him
3 upon the loans that were obtained through identity theft, Defendant is therefore a
4 “claimant” within the meaning of Calif. Civ. Code §1798.92(a).

5 43. By persisting in its claim that Plaintiff owes them money on these loans by
6 way of collection letters dated December 21, 2015, after Plaintiff had already provided
7 written notice to Defendant by letter to their corporate offices on October 5, 2015 and
8 by delivering the completed and notarized fraud packet to Defendant’s fraud claim
9 department on November 16, 2015, Defendant has therefore violated its obligation to
10 diligently investigate Plaintiff’s claim of identity theft and pursued its claim after being
11 presented with sufficient facts of the identity theft in violation of Calif. Civ. Code
12 §1798.93(c)(6)(B)-(C).

13 44. Plaintiff has waited at least 30 days before pursuing the instant claim after
14 having provided a copy of the police report as well as written notice to Defendant’s
15 address for processing identity theft claims on November 16, 2015, as required by Calif.
16 Civ. Code §1798.93(c)(5) & §1798.93(c)(6)(A).

17 45. As a result, Plaintiff is entitled to pursue this action to establish that he is
18 the victim of identity theft pursuant to Calif. Civ. Code §1798.93(a) and is entitled to
19 the relief specified in Calif. Civ. Code §1798.93(c)(1)-(6).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and

1 Plaintiff be awarded damages from Defendant as follows:

2 1. Actual damages for mental anguish, loss of time and resources, and out of
3 pocket expenses in the amount of \$75,000.00, or as the jury may award, pursuant to
4 Calif. Civ. Code §1798.93(c)(5); plus

5 2. In addition to any actual damages specified above, statutory damages of
6 \$30,000.00 f pursuant to Calif. Civ. Code §1798.93(c)(6); plus

7 3. A declaration that Plaintiff is not obligated to Defendant upon the loans,
8 pursuant to Calif. Civ. Code §1798.93(c)(1); plus


9 4. A declaration that any security interest in connection with the claim is void
10 and unenforceable, pursuant to Calif. Civ. Code §1798.93(c)(2); plus

11 5. An injunction restraining Defendant from collecting or attempting to
12 collect upon the loans from Plaintiff, and restraining Defendant from enforcing any
13 security interest or from enforcing any judgment against Plaintiff, pursuant to Calif.
14 Civ. Code §1798.93(c)(3); plus

15 6. Any reasonable attorney's fees and costs to maintain the instant action,
16 pursuant to Calif. Civ. Code § 1798.93(c)(5).

17 DATED: 1/12/16

Respectfully submitted,

18 
19 SEMNAR & HARTMAN, LLP
JARED M. HARTMAN, ESQ.
Attorney for Plaintiff,
20
21

1 **TRIAL BY JURY**

2 Pursuant to the Seventh Amendment to the Constitution of the United States of
3 America, Plaintiff is entitled to, and demands, a trial by jury.

4 DATED: 1/12/16

5 Respectfully submitted,

6 
7 SEMNAR & HARTMAN, LLP
8 JARED M. HARTMAN, ESQ.
9 Attorney for Plaintiff,
10
11
12
13
14
15
16
17
18
19
20
21