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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 GREGORIO LARDIZABAL,)

12)
13 Plaintiff,)

14 vs.)

17 LOANCARE, LLC,)

18 Defendant.)

Case No.: '22CV0382 W DEB

COMPLAINT FOR VIOLATIONS OF:

THE CONSUMER CREDIT
REPORTING AGENCIES ACT, CAL.
CIV. CODE § 1785 ET SEQ.;

INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS

JURY TRIAL DEMANDED

INTRODUCTION

1. The California legislature has determined that accurate credit reporting is vital and enacted the California Consumer Credit Reporting Agencies Act (“CCRAA”), Cal. Civ. Code § 1785.1 et seq.
2. Gregorio Lardizabal (“Plaintiff”) brings this action against LoanCare, LLC (“Defendant”), for reporting erroneous, inaccurate, negative, and derogatory information on Plaintiff’s consumer credit report.
3. Plaintiff makes these allegations based on personal knowledge and investigation conducted by Plaintiff’s attorneys.
4. While many violations are described below with specificity, this Complaint alleges violations of the statute cited in its entirety.
5. Any violations by Defendant were knowing, willful, and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violations.
6. Unless otherwise indicated, the use of a Defendant’s names in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of Defendant named.

JURISDICTION AND VENUE

7. Plaintiff is a citizen of California. Defendant’s principal place of business and formation is in Virginia. The amount in controversy exceeds \$75,000. Therefore, diversity jurisdiction of this court arises pursuant to 28 U.S.C. § 1332.
8. This action arises out of Defendant’s violation of the California Consumer Credit Reporting Agencies Act (“CCRAA”), Cal. Civ. Code § 1785.1 et seq.
9. Because Defendant conducts business in the State of California, personal jurisdiction is established.

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1 10. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
2 Plaintiff resides within this judicial district, (ii) the conduct complained of herein
3 occurred within this judicial district and (iii) Defendant conducted business
4 within this judicial district at all times relevant.

5 **PARTIES & DEFINITIONS**

6 11. Plaintiff is a natural person that resides in San Diego County and is a “consumer”
7 as that term is defined by Cal. Civ. Code § 1785.3 (b).

8 12. Defendant is an LLC formed in Virginia that conducts business in San Diego
9 County. Defendant is a furnisher of information under 12 CFR § 1022.41(c)
10 because it regularly, and in the ordinary course of business, furnishes information
11 relating to consumers to one or more consumer reporting agencies for inclusion
12 in consumer reports. Defendant also furnishes information to consumer reporting
13 agencies about consumer transactions or experiences with consumers like
14 Plaintiff.

15 13. Defendant is a “person” as defined by Cal. Civ. Code § 1785.3(j).

16 14. The causes of action alleged herein pertain to Plaintiff’s “consumer report(s)”
17 under Cal. Civ. Code § 1785.3(c) because representations of Plaintiff’s credit
18 worthiness, credit standing and credit capacity were made via written, oral, or
19 other communication of information by a consumer credit reporting agency,
20 which was used or expected to be used, or collected in whole or in part, for the
21 purposes of serving as a factor in establishing Plaintiff’s eligibility for, among
22 other things, credit to be used primarily for personal, family, household and
23 employment purposes.

24 **FACTUAL ALLEGATIONS**

25 15. Prior to filing this action, Plaintiff had a mortgage account with Defendant for
26 one of his properties.

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1 16. In October 2020, Plaintiff wanted to refinance one or more of his real properties
2 to take advantage of low interest rates and access equity. Plaintiff desired to use
3 some of his equity to purchase additional real property.

4 17. Plaintiff used a credit monitoring service to access Plaintiff's credit reports and
5 was shocked to discover Defendant inaccurately reported Plaintiff's August 2020
6 and September 2020 mortgage payments as delinquent even though Plaintiff
7 made all payments on time.

8 18. Plaintiff called Defendant to correct Plaintiff's credit reports. Defendant
9 instructed Plaintiff to send a follow up email with Plaintiff's full name and the
10 account number.

11 19. On October 25, 2020, Plaintiff complied with Defendant's instructions and sent
12 Defendant an email that included Plaintiff's full name, loan number, and
13 requested removal of the derogatory remarks.

14 20. Plaintiff believed Defendant had corrected its mistakes and continued to submit
15 payments on time to Defendant.

16 21. Around November 11, 2020, Plaintiff applied to refinance one of his properties
17 through Gold Star Mortgage. However, Plaintiff's application was denied. Gold
18 Star Mortgage provided Plaintiff with a copy of the report that prevented the
19 lender from approving Plaintiff's application. The report contained inaccurate
20 negative information furnished by Defendant.

21 22. Plaintiff was upset and frustrated to learn Defendant continued to report Plaintiff
22 as delinquent for August and September 2020 and had begun to report Plaintiff
23 late for October 2020 too.

24 23. Plaintiff again called Defendant and attempted to have Defendant correct its
25 entries on Plaintiff's credit report(s). Defendant again instructed Plaintiff to send
26 an email with Plaintiff's full name and account number.

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1 24. On November 19, 2020, Plaintiff complied with Defendant’s instructions and
2 emailed Defendant including Plaintiff’s name and account number and requested
3 correction of the delinquent payment information.

4 25. For over a year, Plaintiff communicated and plead with Defendant to correct its
5 inaccurate derogatory remarks, but Defendant continued to report the false
6 information.

7 26. During that year, Defendant received Plaintiff’s mortgage payments on time,
8 cashed Plaintiff’s checks, yet inaccurately reported to the credit reporting
9 agencies that Plaintiff missed the payments.

10 27. Plaintiff continued to apply for refinancing options and was continuously denied
11 due to Defendant’s incorrect negative tradeline.

12 28. Around May 3, 2021, Plaintiff’s refinancing application was denied by
13 CrossCountry Mortgage, LLC.

14 29. Around May 7, 2021, Plaintiff’s refinancing application was denied by
15 Intercontinental Capital Group, Inc.

16 30. Around May 8, 2021, Plaintiff’s refinancing application was denied by Geneva
17 Financial, LLC.

18 31. Around June 22, 2021, August 30, 2021, and September 15, 2021, Plaintiff’s
19 refinancing applications were denied by Nexa Mortgage, LLC.

20 32. Around September 2021, a representative for Nexa Mortgage wrote Plaintiff an
21 email stating;

22 “Loan Care is killing you – the late payment that are reported are
23 stopping you from obtaining financing in the government loan
24 sector FHA, Conventional etc.”

25 33. Around October 2, 2021, Broker Solutions, Inc., DBA New America Funding,
26 denied Plaintiff’s application to refinance.

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1 34. Around October 4, 2021, West One Capital Group, Inc. denied Plaintiff's
2 refinancing application and provided Plaintiff with a copy of the "Premium
3 Credit Bureau" merged report upon which it relied.

4 35. At the time, Plaintiff's Premium Credit Bureau report showed that Defendant
5 reported Plaintiff 90-days late on 14 consecutive payments.

6 36. Over the course of a year, Plaintiff spoke with about 10 different Mortgage
7 companies and filed about 9 applications to refinance, all of which were denied
8 because of Defendant.

9 37. On or around November 20, 2021, Plaintiff accessed Plaintiff's Equifax report
10 and discovered that Defendant reported that Plaintiff was 90-days late for 15
11 consecutive payments beginning in August 2020 through October 2020.

12 38. On or around November 23, 2021, Plaintiff accessed Plaintiff's Trans Union
13 report and was frustrated to see that Defendant reported that Plaintiff was 90-
14 days late for 15 consecutive payments beginning in August 2020 through October
15 2020.

16 39. On December 13, 2021, Plaintiff mailed formal written dispute letters to Equifax
17 and Trans Union specifically stating that Defendant inaccurately reported
18 Plaintiff as 90-days late for the months of August 2020 through October 2021.
19 Plaintiff attached voided checks posted to Plaintiff's bank account demonstrating
20 Defendant received payments on time.

21 40. Although Defendant eventually acknowledged and agreed to correct its
22 inaccurate reporting, Defendant's conduct caused Plaintiff irreparable financial
23 harm and emotional distress.

24 41. For 15 months, Defendant continuously reported Plaintiff as 90-days late, all the
25 while, Defendant received and cashed Plaintiff's on-time checks which contained
26 Plaintiff's account number in the memo section.

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1 42. Through this conduct, Defendant violated Cal. Civ. Code § 1785.25(a) of the
2 CCRAA by furnishing information to consumer reporting agencies that
3 Defendant knew or should have known was inaccurate.

4 43. Plaintiff's continued efforts to correct Defendant's erroneous and negative credit
5 reporting were fruitless.

6 44. Defendant's continued inaccurate and negative reporting on Plaintiff's consumer
7 reports, in light of Defendant's actual knowledge of the actual errors, was willful
8 or at a minimum, was reckless.

9 45. Accordingly, Defendant willfully failed to comply with Defendant's duty to
10 maintain proper procedures to ensure accurate credit reporting.

11 46. Plaintiff spent countless hours attempting to correct and deal with the inaccurate
12 information.

13 47. Defendant's inaccurate reporting has resulted in significant economic and
14 emotional harm to Plaintiff.

15 48. Defendant's inaccurate reporting caused Plaintiff's credit score to decrease
16 substantially and mischaracterized Plaintiff as a person that avoids financial
17 obligations. Lenders refused to approve Plaintiff for refinancing options citing
18 Plaintiff's credit score and creditworthiness.

19 49. Defendant's conduct caused Plaintiff to forego the purchase of an investment
20 property, Plaintiff was unable to lower interest rates on Plaintiff's mortgages, and
21 when Plaintiff did purchase a property Plaintiff was forced to take out two high
22 interest loans to purchase a single property.

23 50. As a result of Defendant's willful action and inaction, Plaintiff suffered from
24 anxiety, frustration, stress, lack of sleep, nervousness, and embarrassment
25 because of the lost financial opportunities the inaccurate information caused.

26 51. As a direct and proximate result of Defendant's willful action and inaction,
27 Plaintiff suffered damages, including but not limited to, loss of opportunities to
28 refinance, access equity, purchase additional properties, and lower interest rates.

1 Defendant’s conduct caused Plaintiff to be subject to high interest loans in order
2 to purchase additional property, decreased Plaintiff’s credit score and worthiness,
3 caused wasted time spent reviewing credit reports, preparing and emailing
4 dispute letters, attorney fees, loss of credit and potential credit, mental and
5 emotional distress, anguish, humiliation, and embarrassment associated with the
6 loss of financial opportunities as a result of the inaccurate reporting.

7 52. Since Defendant’s conduct caused significant harm to Plaintiff and Plaintiff has
8 not been “made whole” by Defendant, Plaintiff was forced to bring this action to
9 seek relief.

10 53. Based upon the facts above, Plaintiff contends that punitive damages are
11 appropriate here.

12 **CAUSES OF ACTION**

13 **COUNT I**

14 **THE CONSUMER CREDIT REPORTING AGENCIES ACT**

15 **CAL. CIV. CODE § 1785.1, ET SEQ.**

16 54. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
17 as though fully stated herein.

18 55. The foregoing acts and omissions constitute numerous and multiple violations of
19 the California Consumer Credit Reporting Agencies Act.

20 56. In the regular course of its business operations, Defendant routinely furnishes
21 information to credit reporting agencies pertaining to transactions between
22 Defendant and consumers related to their credit worthiness, credit standing and
23 credit capacity.

24 57. Defendant is, and always was, obligated to not furnish information on specific
25 transactions or experiences to any consumer credit reporting agency if it knew or
26 should have known that the information was incomplete or inaccurate, as required
27 by Cal. Civ. Code § 1785.25(a).

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1 58. Since Defendant received all information and documents related to Plaintiff’s
2 bankruptcy, Defendant should have known to update the information it furnished.

3 **COUNT III**

4 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

5 59. Plaintiff incorporates by reference all the above paragraphs of this Complaint as
6 though fully stated herein.

7 60. The conduct and policies on the part of Defendant described herein above was
8 outrageous in that despite Defendant’s receipt of exculpatory information,
9 establishing Defendant knew or should have known the information Defendant
10 reported was inaccurate, Defendant continued to report inaccurate information
11 15 months for no other purpose other than to cause Plaintiff emotional distress.

12 61. As a direct result, Plaintiff did in fact suffer severe emotional distress and mental
13 anguish including but not limited to frustration, anxiety, embarrassment,
14 nervousness, and loss of sleep.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for an award against Defendant for:

- 17 • CCRAA - Any actual damages, in an amount to be determined, pursuant to
- 18 Cal. Civ. Code § 1785.31(a)(1)&(2) against Defendant for each incident of
- 19 noncompliance of the CCRAA;
- 20 • CCRAA - Statutory damages of \$5,000 per willful violation of Cal. Civ. Code
- 21 § 1785.25(a) pursuant to Cal. Civ. Code § 1785.31(a)(2)(B) against Defendant
- 22 for each incident of noncompliance of the CCRAA;
- 23 • CCRAA - Attorney fees and costs pursuant to Cal. Civ. Code § 1785.31(a)(1)
- 24 and Cal. Civ. Code § 1785.31(d) against Defendant for each incident of
- 25 noncompliance of the CCRAA;
- 26 • IIED - Actual damages according to proof and in an amount to be determined
- 27 at trial against Defendant;

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- IIED - Special and economic damages according to proof and in an amount to be determined at trial against Defendant;
- IIED – General damages according to proof and in an amount to be determined at trial against Defendant;
- IIED – Punitive damages according to proof against Defendant;
- For equitable and injunctive relief;
- Any other relief the Court deems just and proper.

Date: March 22, 2022

SWIGART LAW GROUP, APC

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