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6 Attorneys for Defendant
Comenity Bank

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 LORI ANN GONZALEZ,
12 individually and on behalf of others
similarly situated,

13 Plaintiff,

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15 vs.

16 COMENITY BANK,
17 DOES 1-30,

18 Defendants.
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) CASE NO.

) **NOTICE OF REMOVAL**

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendant Comenity Bank (“Defendant”)
3 hereby removes to this Court the state court action described below.

4 1. On January 29, 2019, a complaint (“Complaint”) was filed against
5 Defendant by plaintiff Lori Ann Gonzalez (“Plaintiff”) in the Superior Court of the
6 State of California in and for the County of Fresno, in an action styled as *Lori Ann*
7 *Gonzalez, individually and on behalf of others similarly situated, vs. Comenity Bank,*
8 *Does 1-30*, case number 19CECG00377. The Complaint asserts the following causes
9 of action against Defendant: 1) “Violations of California Civil Code, § 1788.18's
10 Requirement to Notify Oral Identity Theft Claimants that the Claim Must Be in
11 Writing,” 2) “Violations of California Penal Code, § 530.8, subd. (a),” 3) “Violations
12 of California Business & Professions Code, §§ 17200 *et seq.*,” and 4) “Action to
13 Establish Identity Theft under California Civil Code, § 1798.93.” A copy of the
14 Complaint, the summons and all other documents that were served on Defendant are
15 attached hereto as **Exhibit A**.

16 2. Plaintiff alleges that she “is and was at all times mentioned herein a
17 resident of Fresno County, California.” *See* Ex. A, Complaint at ¶ 3. Defendant is
18 therefore informed and believes that Plaintiff is a citizen of California.

19 3. Defendant is a Delaware State Bank and has its principal place of
20 business in Delaware. Accordingly, Defendant is a resident of Delaware.

21 4. As discussed in more detail below, the total amount of individual relief
22 to which Plaintiff claims she is entitled if she prevails in this action exceeds \$75,000.
23 *See* Ex. A, Complaint at Prayer for Relief, ¶¶ 1-6; *see, infra*, ¶¶ 7-16.

24 5. This removal petition is timely under 28 U.S.C. § 1446(b) because
25 Defendant was served with the Complaint on February 24, 2019.¹

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27 ¹ The Proof of Service of Summons reflects that the Complaint was mailed to
28 Defendant on February 14, 2019. As a result, service was deemed complete on February
24, 2019. *See* Cal. Code Civ. Proc. § 415.40 (service by mail on out-of-state defendant

JURISDICTION

1
2 6. This action is a civil action over which this Court has original
3 jurisdiction under 28 U.S.C. §§ 1332(a)(1) and 1332(c), and that may be removed to
4 this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441(b), because
5 the action is between citizens of different states and the amount in controversy
6 exceeds the sum of \$75,000. *See, supra*, ¶¶ 2-4.

7 7. The Ninth Circuit has recognized that the “amount in controversy,” for
8 purposes of removal, is the “amount at stake in the underlying litigation,” and
9 “includes all relief claimed at the time of the removal to which the plaintiff would be
10 entitled if she prevails.” *Chavez v. JP Morgan Chase & Co.*, 888 F.3d 413, 417-18
11 (9th Cir. 2018). That Court recently held that district courts “must include future
12 attorneys’ fees recoverable by statute or contract when assessing whether the
13 amount-in-controversy requirement is met.” *Fritsch v. Swift Transportation Co. of*
14 *Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018).

15 8. Based on the claims alleged in the Complaint, which Defendant denies,
16 the total relief Plaintiff claims she is entitled to in the event she prevails in this action
17 exceeds \$75,000.

18 9. Plaintiff seeks actual and statutory damages for Defendant’s alleged
19 violations of Section 1788.18 of the California Rosenthal Fair Debt Collection
20 Practices Act (“Rosenthal Act”). *See* Ex. A, Complaint at ¶¶ 47-52, Prayer for Relief
21 at ¶ 1. Although Defendant denies any violation of law occurred, the Rosenthal Act
22 authorizes a prevailing plaintiff to recover actual damages, and also allows the party
23 to recover up to \$1,000 in statutory damages in the event a wilful violation is proven.
24 *See* Cal. Civ. Code § 1788.30(a)-(b).

25 10. Plaintiff also alleges that Defendant violated Section 530.8(a) of the
26 California Penal Code (“Penal Code”) by allegedly failing to provide her certain
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deemed complete ten days after mailing).

1 information and documents, in response to her request, in connection a credit card
 2 account issued by Defendant (“Account”) that was allegedly opened in Plaintiff’s
 3 name without her authorization. *See* Ex. A, Complaint at ¶¶ 13-18, 53-55. Section
 4 530.8(a) of Penal Code states, in relevant part:

5 [i]f a person discovers that an application in his or her name for a . . . credit
 6 card . . . has been filed with any person or entity by an unauthorized person, or
 7 that an account in his or her name has been opened with a bank . . . by an
 8 unauthorized person then, upon presenting to the person or entity with which
 9 the application was filed or the account was opened a copy of a police report
 10 prepared pursuant to Section 530.6 and identifying information in the
 11 categories of information that the unauthorized person used to complete the
 12 application or to open the account, the person, shall be entitled to receive
 13 information related to the application or account, including a copy of the
 14 unauthorized person’s application or application information and a record of
 15 transactions or charges associated with the application or account.

16 Penal Code § 530.8(a). If the statute applied as Plaintiff alleges, which Defendant
 17 denies, Defendant was required to provide Plaintiff with certain information and
 18 documents “within 10 business days of receipt” of her “request and submission of the
 19 required copy of the police report and identifying information.” *Id.*

20 11. Plaintiff alleges that in August 2018 she sent a letter to Defendant
 21 alleging she had been the victim of identity theft with respect to the Account and
 22 enclosed “a copy of police report” she filed “pursuant to section 530.6 of the Penal
 23 Code” that explained “the basis” for her claim. *See* Ex. A, Complaint at ¶¶ 23-25.
 24 She claims the letter “requested copies of the account application for the [Account],
 25 any signatures associated with the account, and any bills associated with the
 26 account.” *Id.* at ¶ 26. She alleges Defendant received the letter and enclosures on
 27 September 5, 2018, but never provided her the requested documents. *Id.* at ¶¶ 27-35.

28 12. Based upon these allegations, Plaintiff seeks actual damages and
 penalties under Section 530.8(d)(1) of the Penal Code due to Defendant’s alleged
 failure to comply with Section 530.8(a). *See* Ex. A, Complaint at ¶¶ 53-55, Prayer
 for Relief at ¶ 2. The Penal Code authorizes a prevailing plaintiff to recover
 “damages, injunctive relief or other equitable relief, and a penalty of one hundred
 dollars (\$100) per day of noncompliance” Penal Code § 530.8(d)(2). Although

1 Defendant denies that any noncompliance occurred, Plaintiff contends Defendant
2 was required to provide her certain information and documents relating to the
3 Account on or before September 19, 2018. As a result, the “penalty” Plaintiff claims
4 she is entitled to as of the filing of this notice is \$17,500,² and, pursuant to the
5 statute, is increasing daily at a rate of \$100.

6 13. Plaintiff also alleges that Defendant violated Section 17200 of
7 California’s Unfair Competition Law (“UCL”). *See* Ex. A, Complaint at ¶¶ 56-65.
8 She seeks restitution, injunctive relief, and other unidentified equitable relief for the
9 alleged violation. *Id.* at Prayer for Relief at ¶ 4.

10 14. Plaintiff also alleges that Defendant violated Section 1798.93 of the
11 California Civil Code, the Identity Theft Act (“ID Theft Act”). *See* Ex. A, Complaint
12 at ¶¶ 66-70. She seeks among other things, actual damages, injunctive relief and a
13 “civil penalty” for the alleged violation. *Id.* at Prayer for Relief at ¶ 4. Although
14 Defendant denies any violation occurred, the statute authorizes Plaintiff to seek
15 recovery of actual damages and “[a] civil penalty” of up to \$30,000. *See* Cal. Civ.
16 Code § 1798.93(c)(5)-(6).

17 15. Plaintiff also seek attorneys’ fees and costs in connection with each of
18 the four claims asserted in the Complaint. *See* Ex. A, Complaint, Prayer for Relief at
19 ¶¶ 1-4. Again, although Defendant denies any violation of law has occurred,
20 Defendant is informed and believes that the amount of future attorneys’ fees and
21 costs Plaintiff would be entitled to recover if she prevails at trial places the amount in
22 controversy above the \$75,000 jurisdictional threshold. *See Seungtae Kim v. BMW*
23 *Financial Services NA, LLC*, 2015 WL 12734013, at *1, *11 (C.D. Cal. Nov. 12,
24 2015) (awarding plaintiff \$280,934.90 in attorneys’ fees where plaintiff prevailed at
25 trial on claims brought under the ID Theft Act and Fair Credit Reporting Act). Here,
26 Defendant is informed and believes that Plaintiff’s counsel, Tavy A. Dumont and
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² 175 days have occurred since Defendant’s alleged noncompliance.

1 Jonathan Weiss, would seek court approval of an hourly rate of at least \$300 per
2 hour.³ Defendant is further informed and believes that Plaintiff’s counsel would
3 have to spend time on numerous tasks in order for Plaintiff to prevail at trial on the
4 claims alleged in the Complaint, including attending scheduling and status
5 conference, opposing any motions challenging the pleading filed by Defendant,
6 preparing and filing any amended pleadings, conducting class and individual
7 discovery, briefing a motion for class certification, opposing any motion for
8 summary judgment filed by Defendant, preparing pre-trial filings and attending pre-
9 trial hearings, and preparing for and conducting the trial.

10 16. As a result, although Defendant denies Plaintiff is entitled to any relief
11 requested in the Complaint, if she prevailed on all of the claims asserted in their
12 entirety, she would be entitled to an amount greater than \$75,000. As a result, the
13 amount in controversy requirement is satisfied in this case. *See, e.g., Chavez*, 888
14 F.3d at 417-18; *Fritsch*, 899 F.3d at 794.

15 17. The Complaint was filed in the Superior Court of the State of California,
16 County of Fresno. Venue in the Fresno or Bakersfield divisions of this District Court
17 is proper. *See* 28 U.S.C. § 1441(a) (providing for removal “to the district court of the
18 United States for the district and division embracing the place” where the state court
19 action is pending); 28 U.S.C. § 84(b) (The Eastern District comprises the counties of,
20 inter alia, Fresno); Local Rule 120(d) (“ . . . all civil . . . actions . . . arising in . . .
21 Fresno . . . shall be commenced in the United States District Court sitting Fresno,
22 California, and in Bakersfield, California, Yosemite National Park”).

23
24 ³ In 2016, Ms. Dumont requested fees at a rate of \$300 per hour in a putative class
25 action she handled in case styled *Newton v. American Debt Services, Inc.*, Case No.
26 3:11-cv-03228 EMC, U.S. District for the Northern District of California. A copy of the
27 relevant portions of the motion identifying Ms. Dumont’s rate are attached hereto as
28 **Exhibit B**. The motion for fees was granted. *See Newton v. American Debt Services, Inc.*, 2016 WL 7757521, at *3 (N.D. Cal. Jul. 1, 2016). Mr. Weiss has been practicing for a significantly longer period of time than Ms. Dumont and, therefore, Defendant is informed and believes he would seek fees at the same rate or higher.

1 18. Defendant is represented by the undersigned.
2

3 DATED: March 14, 2019

SIMMONDS & NARITA LLP
TOMIO B. NARITA
R. TRAVIS CAMPBELL

6 By: /s/R. Travis Campbell
7 R. Travis Campbell
8 Attorneys for Defendant
9 Comenity Bank
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Exhibit A

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1/29/2019 4:09 PM
FRESNO COUNTY SUPERIOR COURT
By: M. Sanchez, Deputy

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11 Telephone: (310) 558-0404
12 E-mail: jw@lojw.com

13 Attorneys for Plaintiff and the proposed Classes

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF FRESNO**

16 LORI ANN GONZALEZ, individually
17 and on behalf of others similarly situated,

NO.: [19CECG00377](#)

CLASS ACTION

18 Plaintiff,

COMPLAINT

19 vs.

Class Claims

20 COMENITY BANK,
21 DOES 1-30,

1. Violations of Civ. Code, § 1788.18, subd. (c);
2. Violations of Pen. Code, § 530.8, subd. (a); and
3. Violations of Bus. & Prof. Code, §§ 17200, et seq.

22 Defendants.

Individual Claim

4. Action to Establish Identity Theft under Civ. Code, § 1798.93

1 successors, assigns, administrators, associates, alter egos, joint venturers, related or
2 affiliated entities, partners, owners, managers, contractors, agents, servants, employees,
3 assistants and/or consultants.

4 9. Unless otherwise alleged, whenever reference is made in this Complaint to
5 any act of Comenity Bank, such allegations shall mean that the Defendant did the act
6 through its agents, servants, employees, assistants, representatives, and/or consultants,
7 while they were acting within the actual or ostensible scope of their authority.

8 10. Each Defendant, when acting as the agent of another Defendant, carried
9 out a joint scheme, business plan or policy in all respects pertinent hereto, making the
10 acts of each Defendant, when acting as the agent of another Defendant, legally
11 attributable to the other Defendant.

12 11. Each Defendant, when acting as a principal, caused, knew of, and/or
13 should have known of the wrongful actions of each and every one of its agents,
14 servants, employees, assistants, representatives, and/or consultants.

15 12. Each Defendant, when acting as a principal, ratified the wrongful actions
16 of each and every one of its agents, servants, employees, assistants, representatives,
17 and/or consultants.

18
19 GENERAL ALLEGATIONS

20 13. In 2017 and 2018, Plaintiff Lori Ann Gonzalez learned of the existence of
21 multiple financial accounts in her name that had been opened without her knowledge by
22 an unauthorized person using her personal identifying information.

23 14. Among the accounts Plaintiff learned of was a “The Limited” branded
24 credit card, issued by Defendant Comenity Bank.

25 15. “The Limited” is a retailer selling women’s clothing and shoes primarily
26 for personal, family or household use.

27 16. Plaintiff has never applied for or received a “The Limited” branded credit
28 card, or any credit card issued by Defendant Comenity Bank.

1 17. Plaintiff did not use or possess the credit, goods, services, money, or
2 property obtained by the identity theft.

3 18. Plaintiff learned of the existence of the “The Limited” branded credit card
4 account in her name when she began receiving telephone calls in Fresno, California,
5 from Defendants seeking to collect on the purported debt.

6 19. Defendants record telephone calls to debtors (as defined in Civil Code
7 section 1788.18, subdivision (i)).

8 20. In these telephone calls, Plaintiff informed Defendants orally that she did
9 not open the account and is a victim of identity theft.

10 21. Defendants never informed Plaintiff, orally or in writing, that the claim of
11 identity theft must be in writing.

12 22. Defendants maintain a pattern and practice of failing to inform debtors
13 who make oral claims of identity theft that the claims must be in writing.

14 23. In August of 2018, Plaintiff mailed, to a “Contact Us” address found on
15 Comenity Bank’s website, written notification that she did not open or apply for or
16 make any transactions on the “The Limited” credit card account, and that she is a victim
17 of identity theft with respect to that account.

18 24. Enclosed with Plaintiff’s August 2018 letter was a copy of a police report
19 filed by Plaintiff pursuant to section 530.6 of the Penal Code, alleging that she is the
20 victim of an identity theft crime with respect to the specific “The Limited” credit card
21 debt and explaining the basis for the allegation.

22 25. Plaintiff’s August 2018 letter included a certification satisfying the
23 requirements of Civil Code section 1788.18, subdivision (b)(3)(K).

24 26. In her August 2018 letter, Plaintiff requested copies of the account
25 application for the “The Limited” credit card, any signatures associated with the
26 account, and any bills associated with the account.

27 27. On September 5, 2018, Comenity Bank received Plaintiff’s August 2018
28 letter.

1 28. On September 17, 2018, Plaintiff mailed a copy of the August 2018 letter,
2 police report enclosed, to an address found on the Internet that had been designated by
3 Comenity Bank for complaints related to credit reporting issues.

4 29. On September 20, 2018, Comenity Bank received the letter that Plaintiff
5 mailed on September 17, 2018.

6 30. In response to Plaintiff's letter, Comenity Bank sent Plaintiff a letter dated
7 October 7, 2018, rejecting her claim of identity theft without providing copies of any of
8 the documents she had requested.

9 31. In December 2018, Plaintiff again sent a letter to Comenity Bank
10 regarding the "The Limited" account; Comenity Bank received the letter on December
11 29, 2018.

12 32. In her December 2018 letter to Comenity Bank, Plaintiff included her
13 identifying information and a copy of the police report filed pursuant to section 530.6 of
14 the Penal Code.

15 33. In her December 2018 letter to Comenity Bank, Plaintiff asked what
16 categories of identifying information were used to open the account, and she requested
17 copies of the account application and other documents associated with the account.

18 34. Defendants did not inform Plaintiff what categories of identifying
19 information were used to open the account, nor did they provide Plaintiff with copies of
20 the account application and other documents associated with the "The Limited"
21 account, as required by California Penal Code section 530.8.

22 35. Defendants maintain a pattern and practice of not providing requested
23 information and documents as required under California Penal Code section 530.8,
24 within ten business days of receiving a person's submission of a copy of their police
25 report and identifying information or of receiving a person's request to be informed of
26 what categories of identifying information were used to apply for or open an account.

27 36. As a result of the Defendants' conduct, Plaintiff suffered actual damage.
28

1 37. Defendants' practices alleged herein present a continuing threat to
2 Plaintiff, the Classes, and members of the public unless enjoined or restrained.

3
4 CLASS ACTION ALLEGATIONS

5 38. This action is brought, and may properly be maintained, as a class action
6 pursuant to the provisions of Code of Civil Procedure section 382.

7 39. *Definition.* Plaintiff brings this class action on behalf of herself and two
8 Classes of persons residing within California at the time(s) of the alleged violations as
9 further defined as follows:

10 a. The Oral Identity Theft Claim Class: Each and every California
11 "debtor" (as defined in Civ. Code, § 1788.18, subd. (i)), who notified Defendants
12 orally that the debtor is a victim of identity theft; and who Defendants did not
13 inform that the claim of identity theft must be in writing.

14 b. The Information Request Class: Each and every California person
15 (as defined in Pen. Code, § 530.8, subd. (e)(4)), who (1) informed Comenity
16 Bank that an application (as defined in Pen. Code, § 530.8, subd. (e)(1)) in the
17 person's name was filed or an account in the person's name was opened with
18 Comenity Bank without the person's authorization; and who (2) either: (a)
19 presented to Comenity Bank a copy of a police report prepared pursuant to
20 section 530.6 of the California Penal Code and identifying information in the
21 categories of information used to complete the application or to open the account,
22 and requested information and/or documents related to the application or
23 account, or (b) requested to be informed of the categories of identifying
24 information used to complete the application or to open the account; and (3) to
25 whom Comenity Bank did not provide the requested information within ten
26 business days of receipt of the person's police report and identifying information,
27 or within ten business days of receipt of the person's request to be informed of
28 the categories of identifying information used.

1 40. Excluded from the Classes are: (a) Judges participating in this action and
2 members of their immediate families; (b) Defendants and any entity in which
3 Defendants have a controlling interest or which has a controlling interest in Defendants;
4 (c) Defendants' legal representatives, assigns and successors; and (d) all persons who
5 properly execute and file a timely request for exclusion from the Class.

6 41. *Numerosity.* Each Class consists of numerous persons, geographically
7 dispersed throughout California, the joinder of whom in one action is impractical.

8 42. *Ascertainability.* The Classes are ascertainable and identifiable.

9 43. *Commonality.* Questions of law and fact common to the Classes exist as to
10 all members of the Classes and predominate over any questions affecting only
11 individual members of the Classes. These common legal and factual issues include:

12 a. Whether Defendants maintain a pattern and practice of not telling
13 debtors who orally claim identity theft that such claims must be in writing;

14 b. Whether Defendants maintain a pattern and practice of not
15 providing upon request the information and documents that California persons
16 are entitled to under California Penal Code section 530.8; and

17 c. Whether Defendants' conduct is unlawful and/or unfair.

18 44. *Typicality.* Plaintiff's claims are typical of the claims of the Class
19 members, as all such claims arise out of Defendants' conduct alleged herein of
20 maintaining standardized patterns and practices with regard to claims of identity theft,
21 and failing to provide the Class members with information they are entitled to by law.

22 45. *Adequacy of Representation.* Plaintiff has retained counsel experienced in
23 class action litigation. Plaintiff and her counsel will fairly and adequately protect the
24 interests of the members of the Classes and have no interests antagonistic to those of the
25 Classes.

26 46. *Predominance and Superiority.* This Class action is appropriate for
27 certification because questions of law and fact common to the members of the Classes
28 predominate over questions affecting only individual members, and a Class action is

1 superior to other available methods for the fair and efficient adjudication of this
2 controversy, since individual joinder of all members of the Classes is impracticable.
3 Were individual Class members required to bring separate actions, this Court and
4 Courts throughout California would be confronted with multiple lawsuits burdening the
5 court system while also creating the risk of inconsistent rulings and contradictory
6 judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent
7 results could magnify the delay and expense to all parties and the court system, this
8 Class action presents far fewer management difficulties while providing unitary
9 adjudication, economies of scale and comprehensive supervision by a single Court.

10
11 CLASS CAUSES OF ACTION

12 FIRST CAUSE OF ACTION

13 (Violations of California Civil Code, § 1788.18's Requirement to Notify Oral Identity

14 Theft Claimants that the Claim Must Be in Writing)

15 (By Plaintiff Individually and on Behalf of the Oral Identity Theft Claim Class,
16 against all Defendants)

17 47. Plaintiff realleges and incorporates by reference each of the preceding
18 allegations as though fully set forth hereafter.

19 48. Plaintiff is a "debtor" as that term is defined in Civil Code section
20 1788.18, subdivision (i), in that she is a natural person from whom a debt collector
21 seeks to collect a consumer debt that is alleged to be due and owing from Plaintiff.

22 49. Does 1-10 are alter egos of other Defendants.

23 50. Defendants Comenity Bank and Does 11-20 are "debt collectors" as that
24 term is defined in Civil Code section 1788.2, subdivision (c), in that they engage in acts
25 and maintain practices in connection with the collection of consumer debts, in the
26 ordinary course of business, regularly, on behalf of themselves or others.

27 51. Defendants' conduct in response to oral claims of identity theft was and is
28 persistent, frequent, willful and knowing.

1 58. Defendants' conduct alleged herein constitutes unlawful and unfair acts or
2 practices within the meaning of the UCL.

3 59. As a direct result of Defendants' unlawful and unfair acts and practices,
4 Plaintiff and the members of the Classes sustained injuries in fact.

5 60. Defendants' unlawful and unfair business practices alleged herein present
6 a continuing threat to Plaintiff, the Class and members of the public in that Defendants
7 persist and continue to engage in these practices, and will not cease doing so unless and
8 until forced to do so by this Court. Defendants' conduct is causing and will continue to
9 cause irreparable injury to Plaintiff, the Classes and members of the public unless
10 enjoined or restrained.

11 61. Defendants violated the UCL as alleged above and in the following
12 regards.

13 Failure to Inform Oral Claimants that Identity Theft Claims Must Be in Writing

14 62. *Unlawful.* Defendants' conduct was and is unlawful insofar as it violates
15 Civil Code section 1788.18, subdivision (c).

16 63. *Unfair.* Defendants' conduct was and is unfair in that the harm to
17 consumers outweighs the utility of the conduct.

18 Failure to Provide Debtors with Requested Information Regarding Alleged Debts

19 64. *Unlawful.* Defendants' conduct was and is unlawful insofar as it violates
20 Penal Code section 530.8, subdivision (a), Civil Code section 1748.95, subdivision (a),
21 and Financial Code section 4002, subdivision (a).

22 65. *Unfair.* Defendants' conduct was and is unfair in that the harm to
23 consumers outweighs the utility of the conduct.

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1 INDIVIDUAL CAUSE OF ACTION

2 FOURTH CAUSE OF ACTION

3 (Action to Establish Identity Theft under California Civil Code, § 1798.93)

4 (By Plaintiff Individually,

5 against Defendants Comenity Bank and Does 1-10 and 21-30)

6 66. Plaintiff realleges and incorporates by reference each of the preceding
7 allegations as though fully set forth hereafter.

8 67. Plaintiff provided written notice to Comenity Bank at the address
9 designated by Comenity Bank for complaints related to credit reporting issues that a
10 situation of identity theft might exist and explaining the basis for that belief, at least 30
11 days prior to her filing of this action.

12 68. Plaintiff's written notice to Comenity Bank included a valid copy of a
13 police report promptly filed pursuant to section 530.6 of the Penal Code.

14 69. Defendants failed to diligently investigate Plaintiff's notification of
15 identity theft.

16 70. Defendants continued to pursue the claim against Plaintiff after being
17 presented with the facts underlying Plaintiff's claim of identity theft.

18 PRAYER FOR RELIEF

19
20 WHEREFORE, Plaintiff prays for relief as follows:

21 1. On the First Class Cause of Action (Violations of Civ. Code, § 1788.18,
22 subd. (c), regarding oral claims of identity theft), actual damages according to proof and
23 statutory damages to be paid to Plaintiff and each Oral Identity Theft Claim Class
24 member, and attorneys' fees and costs;

25 2. On the Second Class Cause of Action (Violations of Pen. Code, § 530.8,
26 subd. (a)), actual damages according to proof and a penalty as authorized by Penal Code
27 section 530.8, subdivision (d)(2), to be paid to Plaintiff and each Information Request
28

1 Class member; injunctive relief and such other equitable relief as the Court may deem
2 appropriate; and reasonable attorneys' fees and costs;

3 3. On the Third Class Cause of Action (Violations of Bus. & Profs. Code, §§
4 17200, et seq.), restitution for Plaintiff and all Class members, injunctive relief and
5 such other equitable relief as the Court may deem appropriate; and an award of
6 attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5;

7 4. On the individual Fourth Cause of Action (Action to Establish Identity
8 Theft under Civ. Code, § 1798.93), declaratory relief, injunctive relief, and such other
9 equitable relief as the Court may deem appropriate; actual damages according to proof;
10 a civil penalty; and attorneys' fees and costs;

11 5. Interest on all sums awarded at the maximum legal rate as provided by
12 law; and

13 6. Such other relief as the Court may deem appropriate.

14
15 Tavy A. Dumont, SBN 244946
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19 Jonathan Weiss, SBN 143895
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Attorneys for Plaintiff and the proposed
Classes

23 Dated: January 25, 2018

24 By: /s/ Tavy A. Dumont
TAVY A. DUMONT

ATTORNEY OR PARTY (Name, State Bar number and address) Tavy A. Dumont 244946 Law Office of Tavy Alice Dumont 101 Cooper St., Suite 223 Santa Cruz, CA 95060-4526 TELEPHONE NO.: (831) 288-0714 FAX NO.: (831) 515-5013 ATTORNEY FOR (Name): Plaintiff Lori Ann Gonzalez	E-FILED 1/29/2019 4:09 PM FRESNO COUNTY SUPERIOR COURT By: M. Sanchez, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno STREET ADDRESS: 1130 O Street MAILING ADDRESS: 1130 O Street CITY AND ZIP CODE: Fresno, CA 93721-2220 BRANCH NAME: B. F. Sisk Courthouse	
CASE NAME: LORI ANN GONZALEZ v. COMENITY BANK, DOES 1-30	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: 19CECG00377 JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	---

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 4
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 1/25/2019

Tavy A. Dumont, Atty for Plaintiff

(TYPE OR PRINT NAME)

/s/ Tavy A. Dumont

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach-Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition



U.S. POSTAGE PAID
FORM 16 ENV
WATSONVILLE, CA
95076-4119
FEB 14 19
AMOUNT
\$8.05
R2304N117848-11



19803



1000

President
Comenity Bank
One Righter Parkway, Ste. 100
Wilmington, DE 19803

**RETURN RECEIPT
REQUESTED**



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Tavy A. Dumont 244946 Law Office of Tavy Alice Dumont 101 Cooper St., Suite 223 Santa Cruz, CA 95060-4526 TELEPHONE NO.: (831) 288-0714 FAX NO. (Optional): E-MAIL ADDRESS (Optional): tavy.dumont@dumontlaw.com ATTORNEY FOR (Name): Plaintiff Lori Ann Gonzalez	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno STREET ADDRESS: 1130 O Street MAILING ADDRESS: 1130 O Street CITY AND ZIP CODE: Fresno, CA 93721-2220 BRANCH NAME: B. F. Sisk Courthouse	
PLAINTIFF/PETITIONER: LORI ANN GONZALEZ DEFENDANT/RESPONDENT: COMENITY BANK, DOES 1-30	CASE NUMBER: 19CECG00377
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents): Local Form CV-48 (Notice of Case Management Conference); Form CM-015 (Notice of Related Case)
3.
 - a. Party served (specify name of party as shown on documents served):
Comenity Bank
 - b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made)(specify name and relationship to the party named in item 3a):
"President" (President of Comenity Bank)
4. Address where the party was served:
One Righter Parkway, Ste. 100
Wilmington, DE 19803
5. I served the party (check proper box)
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date) : _____ (2) at (time) : _____
 - b. **by substituted service.** On (date) : _____ at (time) : _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date) : _____ from (city): _____ or a declaration of mailing is attached.
 - (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

5. c. **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. **by other means** (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (specify):
- c. as occupant.
- d. On behalf of (specify): Comenity Bank
under the following Code of Civil Procedure section:
- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. **Person who served papers**

- a. Name: Tavy A. Dumont
- b. Address: 101 Cooper Street # 223, Santa Cruz, CA 95060
- c. Telephone number: 831-288-0714
- d. The fee for service was: \$ 0.00
- e. I am:
- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) registered California process server:
- (i) owner employee independent contractor.
- (ii) Registration No.:
- (iii) County:

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: February 14, 2019

Tavy A. Dumont, Atty for Plaintiff
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Tavy A. Dumont 244946 Law Office of Tavy Alice Dumont 101 Cooper St., Suite 223 Santa Cruz, CA 95060-4526 TELEPHONE NO.: (831) 288-0714 FAX NO. (Optional): E-MAIL ADDRESS (Optional): tavy.dumont@dumontlaw.com ATTORNEY FOR (Name): Plaintiff Lori Ann Gonzalez	FOR COURT USE ONLY E-FILED 2/1/2019 8:55 AM FRESNO COUNTY SUPERIOR COURT By: A. Ramos, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno STREET ADDRESS: 1130 O Street MAILING ADDRESS: 1130 O Street CITY AND ZIP CODE: Fresno, CA 93721-2220 BRANCH NAME: B. F. Sisk Courthouse	
PLAINTIFF/PETITIONER: LORI ANN GONZALEZ DEFENDANT/RESPONDENT: COMENITY BANK, DOES 1-30	CASE NUMBER: 19CECG00377 JUDICIAL OFFICER: unassigned
NOTICE OF RELATED CASE	DEPT.: unassigned

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Lori Ann Gonzalez v. Comenity Capital Bank, Does 1-30
 - b. Case number: 19CECG00339
 - c. Court: same as above
 other state or federal court (name and address):
 - d. Department: 403
 - e. Case type: limited civil unlimited civil probate family law other (specify):
 - f. Filing date: January 25, 2019
 - g. Has this case been designated or determined as "complex?" Yes No
 - h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 1h
 - i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment

2. a. Title:
- b. Case number:
- c. Court: same as above
 other state or federal court (name and address):
- d. Department:

PLAINTIFF/PETITIONER:LORI ANN GONZALEZ	CASE NUMBER: 19CECG00377
DEFENDANT/RESPONDENT:COMENITY BANK, DOES 1-30	

2. (continued)

- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 2h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment

3. a. Title:

- b. Case number:
- c. Court: same as above other state or federal court (name and address):
- d. Department:
- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 3h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment

4. Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: February 1, 2019

Tavy A. Dumont, Atty for Plaintiff (TYPE OR PRINT NAME OF PARTY OR ATTORNEY) /s/ Tavy A. Dumont (SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER:LORI ANN GONZALEZ DEFENDANT/RESPONDENT:COMENITY BANK, DOES 1-30	CASE NUMBER: 19CECG00377
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**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and *(check one)*:

a. deposited the sealed envelope with the United States Postal Service.

b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

a. on *(date)*:

b. from *(city and state)*:

4. The envelope was addressed and mailed as follows:

a. Name of person served: Street address: City: State and zip code:	c. Name of person served: Street address: City: State and zip code:
b. Name of person served: Street address: City: State and zip code:	d. Name of person served: Street address: City: State and zip code:

Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

<p>SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO Civil Unlimited Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-1900</p>	<p>FOR COURT USE ONLY 2/1/2019 Filed by Court</p>
<p>TITLE OF CASE: Lori Gonzalez vs. Comenity Bank</p>	
<p>NOTICE OF CASE MANAGEMENT CONFERENCE AND ASSIGNMENT OF JUDGE FOR ALL PURPOSES</p>	<p>CASE NUMBER: 19CECG00377</p>

To All Parties and their Attorneys of Record: Tavy A. Dumont

This case has been assigned to **Donald Black**, Judge for **all purposes**.
 All future hearings will be scheduled before this assigned judge.

You are required to appear at a Case Management Conference on **06/05/2019** at **3:30 PM** in **Department 402** of the court located at 1130 "O" Street, **Fresno, California**.

You must comply with the requirements set forth in Fresno Superior Court Local Rule Chapter 2.

Failure to appear at the conference may result in imposition of sanctions, waiver of jury trial, or other adverse consequences.

Defendants: Appearance at the Case Management Conference does not excuse you from having to file your response in proper legal form within 30 days after the Summons is served on you. You could lose the case if you do not file your response on time. If you do not know an attorney, and do not have one, you may call an attorney referral service or a legal aid office (*listed in the phone book*).

DECLARATION

I declare under penalty of perjury under the laws of the State of California that I gave a copy of the **Notice of Case Management and Assignment of Judge for All Purposes** to the person who presented this case for filing.

Date: 2/1/2019 Clerk, by Marta Sanchez, Deputy

Alternative Dispute Resolution Information Packet

Overview & History

Alternative Dispute Resolution (ADR) is an increasingly popular option that allows people to resolve disputes outside of court in a cooperative manner. ADR can be faster, cheaper, and less stressful than going to court. Most importantly, the use of ADR can provide greater satisfaction with the way disputes are resolved.

ADR has been gradually evolving within the Fresno Superior Court for the past several years. In 1999 the Court recognized a need for greater public access to dispute resolution for cases and established an ADR Department. This department assists parties by providing information regarding ADR processes and services.

Civil Standing Order Regarding ADR:

In 2006, a Case Management Conference (CMC) Standing Order 07-0628, was implemented requiring parties in general civil cases filed in Fresno County Superior Court to participate in ADR prior to trial. This order and supporting ADR forms can be found on the court's website, www.fresno.courts.ca.gov under the "Forms," section. Please note, participation in ADR does not eliminate the need for proper and timely filing of case documents, such as an Answer to Complaint.

Disputes

ADR techniques have been used successfully in a variety of disputes involving individuals, small and large businesses, government, and the general public. Various types of ADR processes are available depending on the nature of the dispute. Many types of conflict often lend themselves to an alternative and informal method of dispute resolution. Some examples of disputes often settled by ADR include **but are not limited to:**

- Business disputes- contracts, partnerships
- Property / Land use disputes- property transfers, boundaries, easements
- Family disputes – divorce, property, custody, visitation, support issues
- Consumer / Collection disputes- repairs, services, warranties, debts
- Employment disputes- employment contracts, terminations
- Landlord/tenant disputes- evictions, rent, repairs, security deposits
- Neighborhood disputes / Relational disputes or other civil or personal conflicts
- Personal Injury / Insurance disputes- accidents, coverage, liability

Processes:

The most common forms of ADR are Mediation, Arbitration, and Case Evaluation. In most ADR processes, a trained, impartial person decides or helps the parties reach resolution of their dispute together. The persons are neutrals who are normally chosen by the disputing parties or by the court. Neutrals can often

help parties resolve disputes without having to go to court or trial. Below is a description of commonly used processes:

Mediation

In mediation, the mediator (a neutral) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator **does not** decide how the dispute will be resolved, the parties do. It is a cooperative process guided by the mediator to create an agreement that addresses each person's interests. Mediation often leads to better communication between the parties and lasting resolutions. It is particularly effective when parties have a continuing relationship, such as neighbors or businesses. It also is very effective where personal feelings are getting in the way of a resolution. Mediation normally gives the parties a chance to express their concerns in a voluntary and confidential process while working towards a resolution. **The mediation process is commonly used for most civil case types and can provide the greatest level of flexibility for parties.**

Arbitration

In arbitration, the arbitrator (a neutral) reviews evidence, hears arguments, and **makes a decision (award) to resolve the dispute**. This is very different from mediation whereby the mediator helps the parties reach their own resolution. Arbitration is generally quicker, less expensive and less formal than a lawsuit. An arbitrator can often hear a case in a matter of hours rather than days in a trial. This is because the evidence can be submitted by documents rather than by testimony.

1. **Binding Arbitration:** Usually conducted by a private arbitrator, this process takes place outside of the court. "Binding" means that the arbitrator's decision (award) is final and there will not be a trial or an opportunity to appeal the decision.
2. **Non-Binding Arbitration:** May be ordered through the court (Judicial Arbitration) or conducted privately. In this process, the arbitrator's decision is "not binding." This means that if a party is not satisfied with the decision of the arbitrator, they can file a request for trial with the court within a specified time. However, depending on the process if that party does not receive a more favorable result at trial, they may have to pay a penalty.

Case Evaluation

In case evaluation, the evaluator (a neutral) gives an opinion on the strengths and weaknesses of each party's evidence and arguments. Each party gets a chance to present their case and hear the other side. This may lead to a settlement, or at the least, help the parties prepare to resolve the dispute later. Case evaluation, like mediation, can come early in the dispute and save time and money. The case evaluation process is most effective when parties have an unrealistic view of the dispute, need outside assistance in determining case value, and have technical or procedural questions to be worked out. This process is sometimes used in combination with mediation or arbitration.

ADR Agreements:

Agreements reached through ADR are normally put into writing and can become binding contracts that are enforceable in court. Parties may choose to seek the advice of an attorney as to your legal rights and other matters relating to the dispute before finalizing any agreement.

ADR Process Selection & Information:

There are several other types of ADR. Some of these include Conciliation, Settlement Conference, Fact Finding, Mini-Trial, Victim Offender Conferencing, and Summary Jury Trial. Sometimes parties will try a combination of ADR types. The important thing is to find the type of ADR that is most likely to resolve the dispute. Contact the ADR department staff for assistance for additional information and referral to services appropriate for each specific case.

Advantages & Disadvantages of ADR:

Advantages

- **Often quicker than going to trial**, a dispute may be resolved in a matter of days or weeks instead of months or years.
- **Often less expensive**, saving the litigants court costs, attorney's fees and expert fees.
- **Permits more participation and empowerment**, allowing the parties the opportunity to tell their side of the story and have more control over the outcome.
- **Allows for flexibility** in choice of ADR processes and resolution of the dispute.
- **Fosters cooperation** by allowing the parties to work together with the neutral to resolve the dispute and mutually agree to a remedy.
- **Often less stressful** than litigation. Most people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve disputes instead of filing a lawsuit. Even after a lawsuit has been filed, the court can refer the dispute to a neutral before the lawsuit becomes costly. ADR is even used to resolve disputes after trial, when the result is appealed.

Disadvantages

- ADR may not be suitable for every dispute.
- If the ADR process is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services. If the dispute is not resolved through ADR, the parties may then have to face the usual and traditional costs, such as attorney's fees and expert fees.
 - Lawsuits must be brought within specified periods of time, known as Statutes of Limitations. Parties must be careful not to let a Statute of Limitation run while a dispute is in an ADR process

Neutral Selection:

The selection of a neutral is an important decision. Please note that currently there is no legal requirement that the neutral be licensed or hold any particular certificate. However, many programs and the Court have established qualification requirements and standards of conduct for their neutral panels.

Mediation Services Offered by Fresno County Superior Court

Mediation Practitioner Panel:

Fresno County Superior Court, Alternative Dispute Resolution (ADR) Department maintains a fee-for-service Mediation Panel as a public service for court litigants and the community. Those listed have met the Court's eligibility requirements and have agreed to abide by the Court's professional standards of conduct in order to participate as a panel member. The panel list can be found on the Court's website under the Alternative Dispute Resolution link,

www.fresno.courts.ca.gov/alternative_dispute_resolution/Mediator

Free / Low Cost ADR Service Options

For cases involving self-represented litigants or those unable to afford a private mediator, the court contracts with the following organization to provide **free or low cost** mediation services through Dispute Resolution Program Act (DRPA) funding.

- **Better Business Bureau Mediation Center-** *This organization provides mediation for family law property disputes, small claims, landlord / tenant, business, consumer/ merchant, harassment, and neighborhood disputes. For more information about their services go to www.mediationservicesbybbb.org*

2600 W. Shaw Lane
Fresno, CA 93711
559.256.6300 (phone)
800.675.8118, ext. 300 (toll free)

For more information, go to www.fresno.courts.ca.gov/alternative_dispute_resolution or contact:

Mari Henson, Administrator
1130 "O" Street, Fresno, CA. 93724
TEL (559) 457-1908, FAX (559) 457-1691
mhenson@fresno.courts.ca.gov

Camille Valentine, Asst. Administrator
1130 "O" Street, Fresno. CA. 93724
TEL (559) 457-1909, FAX (559) 457-1691
cvalentine@fresno.courts.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO: _____ FAX NO: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO 1130 "O" Street Fresno, California 93724-0002 (559) 457-1909	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
ALTERNATIVE DISPUTE RESOLUTION STATUS REPORT (ADR)	CASE NUMBER: _____

Type of Civil Case:

Personal Injury – Property Damage/Auto Personal Injury – Property Damage Contract Other _____

Date Complaint Filed: _____

Amount in controversy:

\$0 to \$25,000 \$25,000 to \$50,000 \$50,000 to \$100,000 Over \$100,000.00 (specify) _____

Date of Alternative Dispute Resolution (ADR) Conference: _____

Name, address, and telephone number of person who conducted the Alternative Dispute Resolution (ADR) Conference:

Case resolved by Alternative Dispute Resolution:

Yes (proper filing of a **Notice of Settlement** or **Dismissal** form is required by clerk's office)

No Reason: _____

Alternative Dispute Resolution process concluded:

Yes

No Reason for delay: _____

Next scheduled hearing date: _____

Type of resolution process used:

Mediation Arbitration Neutral Case Evaluation Other (specify): _____

Case was resolved by:

Direct Result of ADR Process Indirect Result of ADR Process Resolution was unrelated to ADR Process

If case went through ADR and resolved, estimate the closest dollar amount that was saved in attorney fees and/or expert witness fees by participating in the process.

\$0 \$250 \$500 \$750 \$1,000 More than \$1,000 (specify) _____

If case went through ADR and did not resolve, estimate the closest dollar amount of additional costs incurred due to participation in the ADR process.

\$0 \$250 \$500 \$750 \$1,000 More than \$1,000 (specify) _____

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO: _____ FAX NO: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO 1130 "O" Street Fresno, California 93724-0002 (559) 457-1909	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
STIPULATION REGARDING ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: _____

The parties stipulate that they will engage in the following Alternative Dispute Resolution (ADR) process:

Mediation
 Arbitration
 Neutral Case Evaluation
 Other _____

The parties further stipulate that _____ has been selected as the mediator/arbitrator/neutral.

Address: _____
 City, State, Zip _____
 Phone Number: () _____

The parties acknowledge that they shall engage in some form of Alternative Dispute Resolution (ADR). The Alternative Dispute Resolution (ADR) must be completed within **180 days** after the Case Management Conference or prior to the Mandatory Settlement Conference, whichever is earlier, unless given prior approval by the court to continue the date.

Parties will be required to file an **Alternative Dispute Resolution (ADR) Status Report at least 10 court days prior** to the Mandatory Settlement Conference. Failure to do so may result in sanctions at an Order to Show Cause (OSC) hearing set by the court.

Date	Type or Print Name	Signature of Party or Attorney for Party
Date	Type or Print Name	Signature of Party or Attorney for Party
Date	Type or Print Name	Signature of Party or Attorney for Party
Date	Type or Print Name	Signature of Party or Attorney for Party

Additional signatures on Stipulation Regarding Alternative Dispute Resolution (ADR) Attachment

<p align="center">SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO 1130 "O" Street Fresno, California 93724-0002 (559) 457-1909</p>	<p align="center">FOR COURT USE ONLY</p>
<p>CASE TITLE:</p>	
<p align="center">STIPULATION REGARDING ALTERNATIVE DISPUTE RESOLUTION (ADR) ATTACHMENT</p>	<p>CASE NUMBER:</p>

_____	_____	_____
Date	Type or Print Name	Signature of Party or Attorney for Party
_____	_____	_____
Date	Type or Print Name	Signature of Party or Attorney for Party
_____	_____	_____
Date	Type or Print Name	Signature of Party or Attorney for Party
_____	_____	_____
Date	Type or Print Name	Signature of Party or Attorney for Party
_____	_____	_____
Date	Type or Print Name	Signature of Party or Attorney for Party
_____	_____	_____
Date	Type or Print Name	Signature of Party or Attorney for Party
_____	_____	_____
Date	Type or Print Name	Signature of Party or Attorney for Party

Exhibit B

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5

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9 Facsimile: (408) 241-1500
wkennedy@kennedyconsumerlaw.com
10

11 Attorneys for Plaintiff
HEATHER L. NEWTON and the Class
12

13 *Other counsel listed on signature page*
14

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 HEATHER L. NEWTON, individually and on
19 behalf of others similarly situated,

20 Plaintiff,

21 v.

22 AMERICAN DEBT SERVICES, INC., et al,
23

24 Defendants.
25
26
27
28

Case No.: 3:11-cv-03228 EMC

**PLAINTIFF HEATHER L. NEWTON'S
NOTICE OF MOTION AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND SERVICE
AWARD**

Hearing Date: June 30, 2016

Hearing Time: 1:30 p.m.

Room: Courtroom 5, 17th Floor

Action filed: June 29, 2011

Trial date: Vacated

1 NOTICE OF MOTION AND MOTION

2
3 PLEASE TAKE NOTICE that on June 30, 2016 at 1:30 p.m. or as soon thereafter as
4 the matter may be heard in Courtroom 5 of the above-entitled court, located at the Philip
5 Burton Federal Building, 450 Golden Gate Ave., San Francisco, CA 94102, plaintiff Heather
6 Newton will, and hereby does, respectfully apply to this Court for an award of attorneys' fees
7 of \$348,091, litigation expenses of \$19,409, and a service award of \$7,500. Plaintiff makes
8 this motion pursuant to California's private attorney general statute, Cal. Code Civ. Proc. §
9 1021.5, or in the alternative the common fund doctrine, and the Court's equitable powers.

10 This Motion is based on this Notice; the accompanying Points and Authorities; the
11 Declarations of William E. Kennedy, Tavy A. Dumont, and Heather L. Newton; the complete
12 files and records in this action; such evidence as may be presented at the hearing; and such
13 other matters as the Court may take notice.

14
15 Dated: April 25, 2016

By: /s/ Tavy A. Dumont

Tavy A. Dumont
LAW OFFICE OF TAVY A. DUMONT
101 Cooper Street, Suite 223
Santa Cruz, CA 95060

CONSUMER LAW OFFICE OF WILLIAM E.
KENNEDY
2797 Park Avenue, Suite 201
Santa Clara, California 95050

F. Paul Bland, Jr.
PUBLIC JUSTICE, P.C.
1825 K Street, NW, Suite 200
Washington, D.C. 20006
(202) 797-8600

Attorneys for Plaintiff and the Class

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 **I. INTRODUCTION**

4 After almost five years of hard-fought litigation, the proposed settlement before the
5 Court would give the Class a payment amounting to more than nineteen times the money the
6 settling Defendants, Global Client Solutions (“Global”) and Rocky Mountain Bank & Trust
7 (“RMBT”), gained from the Class members. The proposed settlement would give each Class
8 member approximately two-thirds of the fees he or she paid to *all* defendants combined,
9 including the defaulted defendants.

10 Settlement was reached after Plaintiff prevailed on a contested class certification
11 motion, after Plaintiff’s core claims withstood two motions to dismiss and three motions for
12 summary judgment, after Plaintiff withstood a motion to compel arbitration, defeated an
13 appeal in the Ninth Circuit, and fought through multiple discovery disputes, including two that
14 led to discovery motions. Now, Plaintiff asks that the Court grant her application for a service
15 award of \$7,500, attorneys’ fees of \$348,091, and out-of-pocket litigation expenses of
16 \$19,409.

17 California law governs the right to attorneys’ fees in this case as well as the method of
18 calculating those fees, because the Court is exercising supplemental jurisdiction of Plaintiff’s
19 state law claims.

20
21 **II. STATEMENT OF ISSUES TO BE DECIDED**

22 Whether the Court should grant Plaintiff’s application for a service award of
23 \$7,500, attorneys’ fees of \$348,091, and out-of-pocket litigation expenses of
24 \$19,409.

1 law.” *Lilly v. Jamba Juice Co.*, No. 13-cv-02998–JST, 2015 U.S. Dist. LEXIS 57637, at *12,
2 2015 WL 2062858, at *5 (N.D. Cal. May 1, 2015). “[*Serrano III*] arguably renders it
3 questionable whether a pure percentage fee can be awarded even in a conventional common
4 fund case (see *Dunk v. Ford Motor Co.*, [48 Cal.App.4th 1794] at p. 1809)... .” *Lealao v.*
5 *Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 39 (2000).

6
7 **D. The Lodestar Supports an Award of \$348,091**

8 "The lodestar . . . is produced by multiplying the number of hours reasonably expended
9 by counsel by a reasonable hourly rate." *Lealao, supra*, 82 Cal.App.4th at p. 26. The court
10 may then increase or decrease that amount by applying a positive or negative multiplier to take
11 into account a variety of other factors, including the quality of the representation, the novelty
12 and complexity of the issues, the results obtained, and the contingent risk presented. *Id.*

13 Class Counsel’s time records, and a spreadsheet with hours subtotaled by category
14 along with the lodestar calculations, are attached to the Declaration of Tavy A. Dumont,
15 lodged herewith subject to a sealing motion. Attorneys Kennedy, Dumont, Paul Bland, Leslie
16 Bailey and Amy Radon expended 640.2, 1510.2, 8.3, 255.73, and 11.6 hours, respectively, for
17 a total of 2,426 hours. Using hourly rates of \$450 for Mr. Kennedy, \$300 for Ms. Dumont,
18 \$505 for Mr. Bland, \$355 for Ms. Bailey, and \$290 for Ms. Radon (the hourly rates are
19 discussed in section IV.2 below), the lodestar to date is \$823,621. Class Counsel project that
20 they will spend an additional 65 hours on obtaining final approval and implementing the
21 settlement, bringing the lodestar to \$846,121. Nevertheless, Class Counsel request a fee
22 award of only \$348,091, which is less than 42% of Class Counsel’s projected lodestar.

23
24 **1. Class Counsel Reasonably Expended 2,426 Hours on this Litigation**

25 The procedural history of this litigation (see section III above) reflects that it has been
26 labor-intensive and time consuming. For example:

1 Dumont Decl.).⁶ In addition, \$7,791.13 is owed to Class Administrator CPT. (CPT agreed to
2 charge a flat fee of \$9,000 for settlement administration expenses. Of that, Class Counsel have
3 paid \$1,208.87 and the balance has not yet been invoiced. Dumont Decl., ¶ 11.) Therefore,
4 Plaintiff requests an award of costs in the amount of \$19,409 (\$5,073.53 + 6,544.43 +
5 \$7,791.13=19,409.09, rounded to whole dollars). These expenses are of the type ordinarily
6 billed to a client and were necessarily incurred.

7
8 **VI. AN AWARD OF \$7,500 FOR PLAINTIFF'S SERVICE TO THE CLASS IS**
9 **APPROPRIATE**

10 Plaintiff has contributed substantially to the litigation for nearly five years, by providing
11 information and documents before suit was filed; having her deposition taken; responding to
12 written discovery requests; meeting with her attorneys several times, reviewing and signing
13 several documents, participating in two Settlement Conferences with Judge Westmore and the
14 successful mediation with Judge Westerfield, including travel from her home in San Jose to
15 Oakland and San Francisco, where the settlement discussions took place. Dumont Decl., ¶ 12;
16 Newton Decl., ¶ 3. A list of the time Ms. Newton devoted to this case is contained in her
17 declaration, filed herewith.

18
19 **VII. CONCLUSION**

20 For the reasons stated, Plaintiff Heather Newton's application for a service award of
21 \$7,500, attorneys' fees of \$348,091, and costs of \$19,409 should be granted.

22 Respectfully submitted,

23 Dated: April 25, 2016

By: /s/ Tavy A. Dumont
Tavy A. Dumont

LAW OFFICE OF TAVY A. DUMONT

26 _____
27 ⁶ Attorney Dumont has expended a total of \$7,064.33 to date, which includes charges of \$209.65 for
28 court transcripts and \$310.25 for postage, which are not allowable as costs under Code of Civil
Procedure section 1033.5, so those costs are not requested for purposes of an award under state law.

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Telephone: (415) 283-1000
5 Facsimile: (415) 352-2625

6 Attorneys for Defendant
Comenity Bank

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 LORI ANN GONZALEZ,
12 individually and on behalf of others
similarly situated,

13 Plaintiff,

14 vs.

15 COMENITY BANK, DOES 1-30,
16

17 Defendants.
18 _____)

CASE NO.

**DEFENDANT'S NOTICE OF
INTERESTED PARTIES**

1 Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned counsel of
2 record for defendant COMENITY BANK certifies that the following persons,
3 association of persons, firms, partnerships, corporations (including parent
4 corporation) or other entities have pecuniary interest in the outcome of this case and
5 hereby identifies its parent corporations and lists any publicly held company that
6 owns 10% or more of its stock. These representations are made to enable the Court
7 to evaluate possible disqualification or recusal.

8 1. Comenity LLC, a Delaware limited liability company.

9 2. ADS Alliance Data Systems, Inc., a Delaware corporation.

10 3. Alliance Data Systems Corporation, a publicly-traded Delaware corporation,
11 which trades on the New York Stock Exchange as “ADS.”

12
13 DATED: March 14, 2019

SIMMONDS & NARITA LLP
TOMIO B. NARITA
R. TRAVIS CAMPBELL

14
15
16 By: /s/R. Travis Campbell
R. Travis Campbell
Attorneys for Defendant
Comenity Bank
17
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LORI ANN GONZALEZ, individually and on behalf of others similarly situated

(b) County of Residence of First Listed Plaintiff Fresno (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Tavy A. Dumont (244946) LAW OFFICE OF TAVY A. DUMONT 101 Cooper St., #223, Santa Cruz, CA 95060 (831) 288-0714 Jonathan Weiss (143895) LAW OFFICE OF JONATHAN WEISS

DEFENDANTS COMENITY BANK

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Tomio B. Narita (156576); R. Travis Campbell (271580) - SIMMONDS & NARITA LLP (415) 283-1000 44 Montgomery St., Ste. 3010, San Francisco, CA 94104

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332

Brief description of cause: Plaintiff alleges violations of Cal. Civ. Code §1788.18, Bus. & Prof. Code 17200 & Cal. Civ. Code § 1798.93

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/14/2019 SIGNATURE OF ATTORNEY OF RECORD /s/R. Travis Campbell

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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Case 1:19-cv-00348-LJO-BAM Document 1-2 Filed 03/14/19 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Comenity Bank Refused to Cooperate with Identity Theft Investigation](#)
