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

**ERNIE SIMBULAN,
Individually and on Behalf
of Others Similarly
Situated,**

Plaintiff,

v.

**TD BANK US HOLDING
COMPANY,**

Defendant.

Case No: '19CV676 MMAAGS

CLASS ACTION

**COMPLAINT FOR DAMAGES
FOR VIOLATIONS OF THE
CALIFORNIA CONSUMER
CREDIT REPORTING
AGENCIES ACT, CAL. CIV.
CODE § 1785.1, ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. The California legislature found that the banking system is dependent upon fair and accurate credit reporting; and that, inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system. The California Consumer Credit Reporting Agencies Act was enacted to insure fair and accurate reporting, promote efficiency in the banking system and protect consumer privacy; and to ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy because consumer reporting agencies have assumed such a vital role in assembling and evaluating consumer credit and other information on consumers.¹
2. Plaintiff Ernie Simbulan (“Plaintiff”), through his attorneys, brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies resulting from the illegal actions of Defendant, TD Bank Holding Company (“Defendant”), in reporting erroneous negative and derogatory information on Plaintiff’s credit report, as that term is defined by Cal. Civ. Code § 1785.3(c).
3. More specifically, Plaintiff brings this Complaint, by and through his attorneys, for damages arising out of the systematic issuance of erroneous credit reports by Defendant. Defendant has erroneously reported continual monthly payment obligations on accounts that have been closed and paid in full.
4. Plaintiff makes these allegations on information and belief, with the exception of allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which Plaintiff alleges on personal knowledge.
5. While many violations are described below with specificity, this Complaint alleges violations of the statute cited in its entirety.

¹ Cal Civ. Code § 1785.1

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1 6. Unless otherwise stated, all the conduct engaged in by Defendant occurred in
2 California.

3 7. Any violations by Defendant were knowing and intentional, and that Defendant
4 did not maintain procedures reasonably adapted to avoid any such violation.

5 8. Unless otherwise indicated, the use of Defendant's name in this Complaint
6 includes all agents, employees, officers, members, directors, heirs, successors,
7 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
8 Defendant.

9 JURISDICTION & VENUE

10 9. Jurisdiction is proper under the Class Action Fairness Act of 2005 ("CAFA"),
11 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of the State of California,
12 seeks relief on behalf of a California class, which will result in at least one
13 class member belonging to a different state than that of Defendant, a Delaware
14 corporation.

15 10. Plaintiff also seeks the greater of statutory punitive damages of \$5,000 per
16 violation per violation pursuant to Cal. Civ. Code § 1785.31, which, when
17 aggregated among a proposed class number in the tens of thousands, exceeds
18 the \$5,000,000 threshold for federal court jurisdiction.

19 11. Therefore, both diversity jurisdiction and the damages threshold under CAFA
20 are present, and this Court has jurisdiction.

21 12. Because Defendant conducts business within the State of California, personal
22 jurisdiction is established.

23 13. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons:
24 (i) Plaintiff resides in the County of San Diego, State of California which is
25 within this judicial district; (ii) the conduct complained of herein occurred
26 within this judicial district; and (iii) Defendant conducted business within this
27 judicial district at all times relevant.
28

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PARTIES & DEFINITIONS

1
2 14. Plaintiff is a natural person who resides in the City of San Diego, State of
3 California. Plaintiff is also a “consumer,” as that term is defined by Cal. Civ.
4 Code § 1785.3(b).

5 15. Defendant is a Delaware corporation authorized to do business in the State of
6 California. Because Defendant is a partnership, corporation, association, or
7 other entity, it is therefore a “person” as that term is defined by Cal. Civ. Code
8 § 1785.3(j).

9 16. The cause of action herein pertains to Plaintiff’s “consumer credit report” as
10 that term is defined by Cal. Civ. Code § 1785.3(d), in that inaccurate
11 representations of Plaintiff’s credit worthiness, credit standing, and credit
12 capacity were made via written, oral, or other communication of information
13 by a consumer credit reporting agency, which is used or is expected to be used,
14 or collected in whole or in part, for the purposes of serving as a factor in
15 establishing Plaintiff’s eligibility for, among other things, credit to be used
16 primarily for personal, family, household and employment purposes.

FACTUAL ALLEGATIONS

17 17. At some point prior to the filing of this matter, Plaintiff paid off a number of
18 debts owed to various creditors/furnishers.

19 18. One such debt was owed to Defendant.

20 19. On or around March 28, 2018, when checking his Experian credit report,
21 Plaintiff confirmed that his TD Retail Card Services/Kinsly account beginning
22 in 722001100023, was paid and closed as of December 2013.

23 20. However, Defendant continues to report a \$157 scheduled monthly payment
24 due.

25 21. Because Plaintiff’s account was paid in full and closed, Plaintiff’s scheduled
26 monthly payment should be reported as \$0 or “NA”.

27 22. To potential lenders reading Plaintiff’s credit reports, it appears as though
28 Plaintiff has an ongoing payment obligation to Defendant which is not true.

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1 When making decisions on whether or not to extend credit, lenders consider
2 what monthly obligations potential borrowers already have. If borrowers have
3 too many monthly payment obligations, lenders will not lend to them and
4 borrowers will be unable to obtain financing for necessary things such as
5 vehicles etc.

6 23. Defendant is a sophisticated lender that reported inaccurate scheduled monthly
7 payments regarding Plaintiff thereby damaging Plaintiff's, and the putative
8 class members', credit worthiness.

9 24. To report these continuing monthly payment obligations is patently incorrect,
10 misleading, and fails to comply with the Metro 2 Guidelines.

11 25. In an effort to comply with the CCCRAA in the most efficient manner,
12 consumer reporting agencies (such as Experian, Equifax, and Transunion) have
13 adopted a uniform system to gather and report information about consumers as
14 well as process and correct inaccuracies and disputes.

15 26. "Metro 2" is the credit reporting software that was developed as a standard for
16 the credit reporting industry and provides one standard layout to be used by all
17 furnishers of information to the consumer reporting agencies.

18 27. Metro 2 provides a resource guide to each user, which explains the proper
19 procedures for reporting information, reporting on investigations, and
20 correcting information.

21 28. Individual furnishers must be approved by each bureau to report information to
22 that bureau.

23 29. Once approved, the furnishers are able to provide information to credit bureaus
24 through the Metro 2 system.

25 30. Furnishers' utilization of the Metro 2 reporting standard correctly is crucial
26 because the Metro 2 system creates a uniform standard for the meaning given
27 to each field provided, which fosters consistency in how furnishers formulate
28 data to report to the credit bureaus, which ultimately leads to objective credit
evaluations.

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1 31. By reporting inaccurate information to the credit bureaus, Defendant has
2 misrepresented the status of Plaintiff's financial obligations, specifically
3 Plaintiff's payment obligations for a paid and/or closed account.

4 32. As a result of Defendant's improper and unauthorized conduct, Plaintiff has
5 suffered damages due to Defendant's misrepresentations regarding Plaintiff's
6 current payment obligations.

7 33. This inaccurate reporting will adversely affect credit decisions because credit
8 guarantors are made aware of Plaintiff's current income during the application
9 process.

10 34. By reporting continuing monthly payments as opposed to a \$0 monthly
11 payment, Defendant misrepresents Plaintiff's monthly financial obligations and
12 gives the false impression that Plaintiff has less funds available to satisfy the
13 new credit currently being applied for.

14 35. Defendant's inaccurate and negative reporting damaged Plaintiff's
15 creditworthiness.

16 36. Plaintiff's right to be able to apply for credit based on accurate information has
17 been violated, placing Plaintiff at increased risk of not being able to obtain
18 valuable credit and adversely affecting Plaintiff's credit rating.

19 CLASS ALLEGATIONS

20 37. Plaintiff brings this action on Plaintiff's own behalf, and on behalf of all others
21 similarly situated.

22 38. Plaintiff is among many thousands of persons in California who has had his or
23 her credit information compiled and reported by Defendant regarding financial
24 obligations incurred that have been subsequently paid in full, and currently
25 have a \$0 balance owed to the original creditor.

26 39. Defendant has knowledge of when debts are paid in full, and when accounts
27 are closed.

28 40. Despite the fact that Defendant has knowledge and notice of when accounts are
paid in full and/or closed, Defendant has a deliberate policy of not accurately

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1 reporting that said debts are no longer currently still due and owing because
2 they have been paid in full.

3 41. As a result of Defendant's refusal to make such updates to consumers' credit
4 reports, debts that have been paid in full and/or closed with a \$0 balance are
5 instead listed on Class Members' credit reports as a current scheduled monthly
6 payment that is due.

7 42. These notations clearly indicate to potential creditors, employers, or other third
8 parties that a Class Member still has a monthly obligation. These notations
9 therefore adversely affect a Class Member's ability to obtain credit or
10 employment.

11 43. Defendant knew that the existence of such inaccurate information in the Class
12 Members' credit reports would damage the Class Members' credit ratings and
13 their ability to obtain new credit, a lease, a mortgage or employment, all of
14 which may be essential to a consumer's regular day-to-day life.

15 44. Defendant has chosen not to accurately report the fact that the Class Members'
16 debts have been paid in full and/or closed with a \$0 balance.

17 45. Defendant has chosen not to accurately report the fact that the Class Members'
18 debts have been paid in full and/or closed with a \$0 balance.

19 46. Plaintiff defines the Class as:

20 All persons with addresses within California; (ii) who
21 have or had account(s) with Defendant; (iii) where said
22 account(s) has a \$0 balance; (iv) where Defendant
23 reported a monthly payment obligation; (v) within two
24 years prior to the filing of the Complaint in this action.

25 47. Defendant and its employees or agents are excluded from the Class.

26 48. Plaintiff does not know the exact number of persons in the Class, but believes
27 them to be in the several hundreds, if not thousands, making joinder of all these
28 actions impracticable.

49. The identity of the individual members is ascertainable through Defendant
and/or Defendant's agents' records or by public notice.

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1 50. There is a well-defined community of interest in the questions of law and fact
2 involved affecting the members of The Class. The questions of law and fact
3 common to the Class predominate over questions affecting only individual
4 class members, and include, but are not limited to, the following:

- 5 a. Whether Defendant has a standard procedure of continuing to report a
6 monthly payment obligation after an account had a \$0 balance;
- 7 b. Whether such practices violate the CCCRAA;
- 8 c. Whether members of the Class are entitled to the remedies under the
9 CCCRAA;
- 10 d. Whether members of the Class are entitled to declaratory relief;
- 11 e. Whether Defendant should be enjoined from reporting such inaccurate
12 information; and
- 13 f. Whether members of the Class are entitled to injunctive relief.

14 51. Plaintiff will fairly and adequately protect the interest of the Class.

15 52. Plaintiff has retained counsel experienced in consumer class action litigation
16 and in handling claims involving credit reporting practices.

17 53. Plaintiff's claims are typical of the claims of the Class, which all arise from the
18 same operative facts involving reporting a monthly payment obligation after an
19 account is paid and/or closed with a \$0 balance.

20 54. A class action is a superior method for the fair and efficient adjudication of this
21 controversy. Class-wide damages are essential to induce Defendant to comply
22 with California law. The interest of Class members in individually controlling
23 the prosecution of separate claims against Defendant is small because the
24 maximum statutory damages in an individual action for CCCRAA violations
25 are minimal.

26 55. Management of these claims is likely to present significantly fewer difficulties
27 than those presented in many class claims, e.g., securities fraud.
28

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1 56. Plaintiff and the Class seek injunctive relief against Defendant to refrain from
2 reporting such inaccurate information when Defendant knows or should know
3 the information is inaccurate.

4 57. Defendant has acted on grounds generally applicable to the Class thereby
5 making appropriate final declaratory relief with respect to the Class as a whole.

6 58. Members of the Class are likely to be unaware of their rights.

7 59. Plaintiff contemplates providing notice to the putative class members by direct
8 mail in the form of a postcard and/or via publication.

9 **CAUSE OF ACTION**

10 **VIOLATION OF THE CALIFORNIA CREDIT REPORTING AGENCIES ACT**
11 **(CCCRAA)**

12 **Cal. Civ. Code § 1785.1, et seq.**

13 60. Plaintiff incorporates by reference all of the above paragraphs of this
14 Complaint as though fully stated herein.

15 61. The foregoing acts and omissions constitute numerous and multiple violations
16 of the California Consumer Credit Reporting Agencies Act.

17 62. In the regular course of its business operations, Defendant routinely furnishes
18 information to credit reporting agencies pertaining to transactions between
19 Defendant and Defendant’s consumers, so as to provide information to a
20 consumer’s credit worthiness, credit standing and credit capacity.

21 63. Because Defendant is a partnership, corporation, association, or other entity,
22 and is therefore a “person” as that term is defined by Cal. Civ. Code §
23 1785.3(j), Defendant is and always was obligated to not furnish information on
24 a specific transaction or experience to any consumer credit reporting agency if
25 the person knows or should have known that the information is incomplete or
26 inaccurate, as required by Cal. Civ. Code § 1785.25(a). Defendant knew or
27 should have known that Defendant was not able to report monthly payment
28 obligations on accounts that have been paid and/or closed and/or discharged.
Thus, Defendant violated Cal. Civ. Code § 1785.25(a).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members pray for judgment as follows:

- Certifying the Class as requested herein;
- Appointing Plaintiff’s Counsel as Class Counsel;
- An award of actual damages, in an amount to be determined at trial pursuant to Cal. Civ. Code §1785.31(a)(2)(A), against Defendant;
- An Award of attorneys’ fees and costs pursuant to Cal. Civ. Code § 1785.31(a)(1); and, Cal. Civ. Code § 1785.31(d) against Defendant;
- An award of punitive damages of \$100-\$5,000 per willful violation of Cal. Civ. Code § 1785.25(a), pursuant to Cal. Civ. Code § 1785.31(a)(2)(B) for Plaintiff and the Class;
- For equitable and injunctive relief pursuant to Cal. Civ. Code § 1785.31(b); and
- Any and all other relief that this Court deems just and proper.

TRIAL BY JURY

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

Dated: April 12, 2019

HYDE & SWIGART, APC

By: *s/ Joshua B. Swigart*
Joshua B. Swigart, Esq.
josh@westcoastlitigation.com
Attorneys for Plaintiff

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

Ernie Simbulan

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Joshua B. Swigart, Hyde & Swigart, APC, 2221 Camino Del Rio S, Suite 101, San Diego, CA 92108, (619) 233-7770 Daniel G. Shay, Law Office of Daniel G. Shay, 409 Camino Dek Rio S, Suite 1001B, San Diego, CA 92108, (619) 222-7429

DEFENDANTS

TD Bank U.S. Holding Company

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)

'19CV676 MMAAGS

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
1 1
2 2
3 3
4 4
5 5
6 6

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

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes 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 (specify)
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): Cal. Civ. Code § 1785.1, et seq. Brief description of cause: Violations of the California Consumer Credit Reporting Agencies Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/12/2019 SIGNATURE OF ATTORNEY OF RECORD s/ Joshua B. Swigart

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [TD Bank Inaccurately Reported Monthly Payments on Closed Account, Class Action Alleges](#)
