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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
ORANGE COUNTY**

Happy Rock Merchant Solutions LLC dba
GoCap Financial,

Plaintiff,

vs.

Joel P Chun; et al.,

Defendants.

Gina C. Chun, an individual;

Cross-Complainants,

vs.

Joel P. Chun, an individual; Happy Rock
Merchant Solutions LLC dba GoCap Financial;
and ROES 1-10, Inclusive,

Cross-Defendants.

Case No. 30-2021-01236711-CU-CL-CJC

**CROSS-COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL FOR:**

- 1. CONSTRUCTIVE FRAUD;**
- 2. CONVERSION;**
- 3. UNJUST ENRICHMENT;**
- 4. MISAPPROPRIATION OF**
- LIKENESS/IDENTITY;**
- 5. NEGLIGENCE;**
- 6. INDEMNITY;**
- 7. CALIF. IDENTITY THEFT ACT,**
- CALIF. CIV. CODE §§ 1798.92, et**
- seq.**

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1 NOW COMES Defendant/Cross-Complainant, GINA C. CHUN (“Cross-Complainant
2 GINA”) to complain against Cross-Defendant JOEL P. CHUN (“Cross-Defendant JOEL”) and
3 also Cross-Defendant HAPPY ROCK MERCHANT SOLUTIONS LLC (“Cross-Defendant
4 HAPPY ROCK”), for damages and demand for jury trial, and alleges as follows:

5 1. Cross-Complainant GINA does not know the true names and capacities of the
6 Cross-Defendants sued herein as ROES 1 through 10, Inclusive (“ROE Cross-Defendants”),
7 inclusive, and Cross-Complainant therefore sues said ROE Cross-Defendants by fictitious
8 names. Cross-Complainant is informed and believe, and based on such information and belief,
9 aver that each of the ROE Cross-Defendants is contractually, strictly, negligently, intentionally,
10 vicariously liable and or otherwise legally responsible in some manner for the acts and
11 omissions described herein. Cross-Complainants will amend this Cross-Complaint to set forth
12 the true names and capacities of each ROE Cross-Defendant when the same is ascertained.

13 2. Each of the Cross-Defendants named herein are believed to be, and are alleged to
14 have been, acting in concert with, as employees, agents, co-conspirators or members of a joint
15 venture of each of the other Cross-Defendants, and are therefore alleged to be jointly and
16 severally liable for the claims set forth herein, except as otherwise alleged

17 3. Cross-Complainant GINA is legally married to Cross-Defendant JOEL, but the
18 two have been separated for years as defined by Calif. Family Code § 70.

19 4. Cross-Complainant GINA initiated the separation due to discovering Cross-
20 Defendant JOEL having an affair for several years with his business associate Annie Park, as
21 well as Cross-Defendant JOEL lying to Cross-Complainant GINA multiple times about
22 financial affairs, and Cross-Defendant JOEL failing to pay the family’s mortgage payments that
23 resulted in the family’s home going into foreclosure.

24 5. Cross-Complainant GINA had filed for divorce against Cross-Defendant JOEL,

1 but eventually had to allow the divorce proceedings to be dismissed for lack of prosecution due
2 to her not having sufficient funds to finance the divorce proceedings once Cross-Defendant
3 JOEL refused to voluntarily sign annulment papers.

4 6. Cross-Complainant GINA still has every intention of finalizing the divorce
5 proceedings against Cross-Defendant JOEL.

6 7. January 2022 was the first time that GINA had ever learned that Cross-Defendant
7 JOEL had forged her name as a guaranty/surety to the paperwork that is relied upon by Cross-
8 Defendant HAPPY ROCK to claim that GINA is personally obligated upon the alleged debt.

9 8. Cross-Complainant GINA never gave permission or authorization for Cross-
10 Defendant JOEL to sign her name as a guaranty/surety to the paperwork that is relied upon by
11 Cross-Defendant HAPPY ROCK to claim that GINA is personally obligated upon the alleged
12 debt, and this forging of her name to that paperwork was done without her knowledge.

13 9. As indicated, Cross-Complainant GINA first discovered this unauthorized
14 forging of her name in January 2022.

15 10. Upon discovering this unauthorized forging of her name, Cross-Complainant
16 GINA confronted Cross-Defendant JOEL and asked if it was either him or his extramarital
17 paramour Annie Park who had forged her name without authorization, and Cross-Defendant
18 JOEL admitted that it was him and not Annie Park.

19 11. Upon information and belief, Cross-Defendant JOEL actively took steps to
20 prevent Cross-Complainant GINA from discovering the fact that he had forged her name
21 without her knowledge, authorization, or permission and knowingly/willfully failed to inform
22 her of this fact so that she could not protest and refuse.

23 12. Cross-Defendant JOEL gained advantage by forging Cross-Complainant GINA's
24 name to the surety/guaranty paperwork without her knowledge, authorization, or permission in

1 that he was given financial credit from the creditor to which Cross-Complainant GINA never
2 received any benefit.

3 13. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
4 the surety/guaranty paperwork without her knowledge, authorization, or permission has caused
5 GINA to suffer significant harm in that she has been forced to incur significant financial debt
6 and financial harm, and has also suffered harm to her creditworthiness, credit standing, and has
7 also suffered reputational harm.

8 14. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
9 the guaranty/surety paperwork amounts to a material breach of the fiduciary duties that he owed
10 to her as her marital partner and has also operated as a fraud against her and also Cross-
11 Defendant HAPPY ROCK.

12 15. Cross-Defendant JOEL's actions of hiding the fact of his unauthorized use/theft
13 of her name also amounts to a material breach of the fiduciary duties that he owed to her as her
14 marital partner, and has also operated as a fraud against her and also Cross-Defendant HAPPY
15 ROCK.

16 16. As a direct, foreseeable, and proximate result of Cross-Defendant JOEL's
17 conduct, Cross-Complainant GINA has suffered, and continues to suffer, emotional distress,
18 harm to her creditworthiness and credit standing, reputational harm, and financial harm, all to
19 her damage in a sum within the jurisdiction of this Court, to be ascertained according to proof.

20 17. At all relevant times, Cross-Defendant JOEL's actions were fraudulent, willful,
21 malicious, oppressive, and were committed with the wrongful intent to injure Cross-
22 Complainant GINA and in conscious disregard of Cross-Complainant GINA's rights, which
23 entitles Cross-Complainant GINA to exemplary and/or punitive damages in an amount to be
24 proven at trial.

1 18. On February 10, 2022, Cross-Complainant GINA provided written notice to
2 Cross-Defendant HAPPY ROCK that a claim of identity theft exists and explained the basis for
3 that belief, and also provided to Cross-Defendant HAPPY ROCK a police report confirming
4 that she reported to law enforcement that she has been the victim of fraud, identity theft, and
5 forgery by Cross-Defendant JOEL.

6 19. Cross-Complainant GINA requested that Cross-Defendant HAPPY ROCK
7 conduct a reasonable investigation into her dispute of fraud, identity theft, and forgery of her
8 name by Cross-Defendant JOEL, and also requested that Cross-Defendant HAPPY ROCK
9 confirm that she is not obligated upon the alleged debt and cease any efforts to collect from her.

10 20. However, Cross-Defendant HAPPY ROCK has refused to take any such actions
11 and has persisted in claiming that Cross-Complainant GINA is obligated upon the alleged debt.

12 21. Through this conduct, Cross-Defendant HAPPY ROCK has violated Cal Civ.
13 Code § 1798.93.

14 22. As a direct, foreseeable, and proximate result of Cross-Defendant HAPPY
15 ROCK'S conduct, Cross-Complainant GINA has suffered, and continues to suffer, emotional
16 distress, harm to her creditworthiness and credit standing, reputational harm, and financial
17 harm, all to her damage in a sum within the jurisdiction of this Court, to be ascertained
18 according to proof.

19 **FIRST CAUSE OF ACTION**
20 **CONSTRUCTIVE FRAUD**

21 **(As against Cross-Defendant JOEL and ROES 1-10, jointly and severally)**

22 23. Cross-Complainant GINA re-alleges and incorporates by reference each of the
23 above paragraphs as though fully set herein.

24 24. Constructive fraud is a breach of duty, without an actual fraudulent intent, which
gains an advantage to the person in fault, by misleading another to his prejudice. CAL. CIV.

1 CODE §1573.

2 25. The breach of duty must be in the context of a confidential or fiduciary
3 relationship. *Gold v. Los Angeles Democratic League*, 49 Cal. App. 3d 365, 373 (1975).

4 26. Any act, omission, or concealment involving a breach of legal or equitable duty,
5 trust, or confidence that results in damage to another, even though the conduct is not otherwise
6 fraudulent. *Salahutdin v. Valley of Cal., Inc.*, 24 Cal. App. 4th 555, 562 (1994).

7 27. No intent to deceive is necessary for constructive fraud. *Tyler v. Children's Home*
8 *Soc'y of Cal.*, 29 Cal. App. 4th 511, 547 (1994).

9 28. In a fiduciary relationship, such as that which exists between husband and wife,
10 one spouse has the unquestioned right to rely upon the direct representations of the other, and
11 there is no duty to inquire. *Boeseke v. Boeseke*, 255 Cal. App. 2d 848, 853-854 (1967).

12 29. Failure of husband to disclose information, from which he gained an advantage,
13 constituted concealment of material facts and breach of fiduciary duty with respect to his wife.
14 Advantage gained constituted constructive fraud, whether or not such failure to disclose was
15 accompanied by an actual intent to defraud. *Vai v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 56 Cal.
16 2d 329, 15 Cal. Rptr. 71 (1961).

17 30. Cross-Defendant JOEL gained advantage by forging Cross-Complainant GINA's
18 name to the surety/guaranty without her knowledge, authorization, or permission in that he was
19 given financial credit from the creditor to which Cross-Complainant GINA never received any
20 benefit.

21 31. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
22 the surety/guaranty paperwork without her knowledge, authorization, or permission has caused
23 GINA to suffer significant harm in that she has been forced to incur significant financial debt
24 and financial harm, and has also suffered harm to her creditworthiness and credit standing, and

1 has also suffered reputational harm.

2 32. Upon information and belief, Cross-Defendant JOEL actively took steps to
3 prevent Cross-Complainant GINA from discovering the fact that he had forged her name
4 without her knowledge, authorization, or permission and knowingly/willfully failed to inform
5 her of this fact so that she could not protest and refuse.

6 33. Cross-Defendant JOEL's actions of forged Cross-Complainant GINA's name to
7 the guaranty/surety paperwork amounts to a material breach of the fiduciary duties that he owed
8 to her as her marital partner, and has also operated as a fraud against her and also fraud against
9 Cross-Defendant HAPPY ROCK.

10 34. Cross-Defendant JOEL's actions of hiding the fact of his unauthorized use/theft
11 of her name also amounts to a material breach of the fiduciary duties that he owed to her as her
12 marital partner, and has also operated as a fraud against her and also Cross-Defendant HAPPY
13 ROCK .

14 35. As a direct, foreseeable, and proximate result of Cross-Defendant JOEL's
15 conduct, Cross-Complainant GINA has suffered, and continues to suffer, emotional distress,
16 reputational harm, harm to her creditworthiness and credit standing, and financial harm, all to
17 her damage in a sum within the jurisdiction of this Court, to be ascertained according to proof at
18 trial.

19 36. Under California law, even where a claim formally sounds in negligence, if the
20 plaintiff can make a showing that defendant's conduct goes beyond gross negligence and
21 demonstrates a knowing and reckless disregard, punitive damages may be available. *In re*
22 *Yahoo! Inc. Customer Data Security Breach Litigation* (N.D.Cal. 2018) 313 F.Supp.3d 1113.

23 37. At all relevant times, Cross-Defendant JOEL's actions were fraudulent, willful,
24 malicious, oppressive, and were committed with the wrongful intent to injure Cross-

1 Complainant GINA and in conscious disregard of Cross-Complainant GINA's rights, which
2 entitles Cross-Complainant GINA to exemplary and/or punitive damages in an amount to be
3 proven at trial.

4 **SECOND CAUSE OF ACTION**

5 **CONVERSION**

6 **(As against Cross-Defendant JOEL and ROES 1-10, jointly and severally)**

7 38. Cross-Complainant GINA re-alleges and incorporates by reference each of the
8 above paragraphs as though fully set herein.

9 39. Conversion is a strict liability tort. The foundation of the action rests neither in
10 the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an
11 absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's
12 good faith, lack of knowledge, and motive are ordinarily immaterial. *Burlesci v. Petersen* (1998)
13 68 Cal.App.4th 1062, 1066.

14 40. "Conversion is the wrongful exercise of dominion over the property of another.
15 The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of
16 the property; (2) the defendant's conversion by a wrongful act or disposition of property rights;
17 and (3) damages." *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240 [191 Cal.Rptr.3d 536, 354 P.3d
18 334].

19 41. "It is not necessary that there be a manual taking of the property; it is only
20 necessary to show an assumption of control or ownership over the property, or that the alleged
21 converter has applied the property to his own use." *Shopoff & Cavallo LLP v. Hyon* (2008) 167
22 Cal.App.4th 1489, 1507 [85 Cal.Rptr.3d 268].

23 42. "[A]ny act of dominion wrongfully exerted over the personal property of another
24 inconsistent with the owner's rights thereto constitutes conversion." *Plummer v. Day/Eisenberg*,

1 *LLP* (2010) 184 Cal.App.4th 38, 50.

2 43. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
3 a surety/guaranty paperwork without her knowledge, authorization, or permission has resulted
4 in Cross-Defendant JOEL exercising control and ownership over Cross-Complainant GINA's
5 name, likeness, creditworthiness, credit standing, and financial properties.

6 44. Cross-Defendant JOEL gained advantage by forging Cross-Complainant GINA's
7 name to the surety/guaranty paperwork without her knowledge, authorization, or permission in
8 that he was given financial credit from the creditor to which Cross-Complainant GINA never
9 received any benefit.

10 45. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
11 a surety/guaranty paperwork without her knowledge, authorization, or permission was done
12 intentionally so that he could gain a benefit by being given financial credit from the creditor to
13 which Cross-Complainant GINA never received any benefit.

14 46. As a direct, foreseeable, and proximate result of Cross-Defendant JOEL's
15 conduct, Cross-Complainant GINA has suffered, and continues to suffer, emotional distress,
16 reputational harm, harm to her creditworthiness and credit standing, and financial harm, all to
17 her damage in a sum within the jurisdiction of this Court, to be ascertained according to proof at
18 trial.

19 47. Under California law, even where a claim formally sounds in negligence, if the
20 plaintiff can make a showing that defendant's conduct goes beyond gross negligence and
21 demonstrates a knowing and reckless disregard, punitive damages may be available. *In re*
22 *Yahoo! Inc. Customer Data Security Breach Litigation* (N.D.Cal. 2018) 313 F.Supp.3d 1113.

23 48. At all relevant times, Cross-Defendant JOEL's actions were fraudulent, willful,
24 malicious, oppressive, and were committed with the wrongful intent to injure Cross-

1 Complainant GINA and in conscious disregard of Cross-Complainant GINA's rights, which
2 entitles Cross-Complainant GINA to exemplary and/or punitive damages in an amount to be
3 proven at trial.

4 **THIRD CAUSE OF ACTION**

5 **UNJUST ENRICHMENT**

6 **(As against Cross-Defendant JOEL and ROES 1-10, jointly and severally)**

7 49. Cross-Complainant GINA re-alleges and incorporates by reference each of the
8 above paragraphs as though fully set herein.

9 50. A person who has been unjustly enriched at the expense of another is required to
10 make restitution to the other. *California Federal Bank v. Matreyek*, 8 Cal. App. 4th 125 (1992);
11 *Nibbi Brothers, Inc. v. Brannan Street Investors*, 205 Cal. App. 3d 1415 (1988).

12 51. The phrase "unjust enrichment" is used in law to characterize the result or effect
13 of a failure to make restitution of or for property or benefits received under such circumstances
14 as to give rise to a legal or equitable obligation to account therefor. As expressed by some
15 authorities, the obligation to do justice rests upon all persons, natural and artificial; if one
16 obtains the money or property of others without authority, the law, independently of express
17 contract, will compel restitution or compensation. *Lucky Auto Supply v. Turner*, 244 Cal. App.
18 2d 872 (1966) citing 46 Am.Jur., Restitution and Unjust Enrichment, p. 99.

19 52. A person is enriched if the person receives a benefit at another's expense. Benefit
20 means any type of advantage. *See California Federal Bank v. Matreyek*, 8 Cal. App. 4th 125.

21 53. For purposes of unjust enrichment, "benefit" is conferred not only when one
22 adds to property of another, but also when one saves the other from expense or loss. *Ghirardo v.*
23 *Antonioli*, 14 Cal. 4th 39, 57 Cal. Rptr. 2d 687, 924 P.2d 996 (1996).

24 54. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
a surety/guaranty paperwork without her knowledge, authorization, or permission has resulted

1 in Cross-Defendant JOEL exercising control and ownership over Cross-Complainant GINA's
2 name, likeness, creditworthiness, credit standing, and financial properties.

3 55. Cross-Defendant JOEL gained advantage by forging Cross-Complainant GINA's
4 name to the surety/guaranty paperwork without her knowledge, authorization, or permission in
5 that he was given financial credit from the creditor to which Cross-Complainant GINA never
6 received any benefit.

7 56. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
8 a surety/guaranty paperwork without her knowledge, authorization, or permission was done
9 intentionally so that he could gain a benefit by being given financial credit from the creditor to
10 which Cross-Complainant GINA never received any benefit.

11 57. As a direct, foreseeable, and proximate result of Cross-Defendant JOEL's
12 conduct, Cross-Complainant GINA has suffered, and continues to suffer, emotional distress,
13 reputational harm, harm to her creditworthiness and credit standing, and financial harm, all to
14 her damage in a sum within the jurisdiction of this Court, to be ascertained according to proof at
15 trial.

16 58. Under California law, even where a claim formally sounds in negligence, if the
17 plaintiff can make a showing that defendant's conduct goes beyond gross negligence and
18 demonstrates a knowing and reckless disregard, punitive damages may be available. *In re*
19 *Yahoo! Inc. Customer Data Security Breach Litigation* (N.D.Cal. 2018) 313 F.Supp.3d 1113.

20 59. At all relevant times, Cross-Defendant JOEL's actions were fraudulent, willful,
21 malicious, oppressive, and were committed with the wrongful intent to injure Cross-
22 Complainant GINA and in conscious disregard of Cross-Complainant GINA's rights, which
23 entitles Cross-Complainant GINA to exemplary and/or punitive damages in an amount to be
24 proven at trial.

1 **FOURTH CAUSE OF ACTION**
2 **MISAPPROPRIATION OF LIKENESS/IDENTITY**
3 **(As against Cross-Defendant JOEL and ROES 1-10, jointly and severally)**

4 60. Cross-Complainant GINA re-alleges and incorporates by reference each of the
5 above paragraphs as though fully set herein.

6 61. A cause of action for common law misappropriation of a plaintiff's name or
7 likeness (also known as the "right of publicity") may be pled by alleging: (1) the defendant's
8 use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's
9 advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury. *Montana v.*
10 *San Jose Mercury News, Inc.*, 34 Cal. App. 4th 790, 792, 40 Cal. Rptr. 2d 639, 640 (1995).

11 62. In the common law cause of action, the plaintiff must show that the defendant
12 received some benefit from the use of the plaintiff's identity, commercially or otherwise.
13 *Eastwood v. Superior Court*, 149 Cal. App. 3d 409, 417, 198 Cal. Rptr. 342 (1983); *Slavinsky v.*
14 *Watkins-Johnson Co.*, 221 Cal. App. 3d 799, 807, 270 Cal. Rptr. 585, 589 (1990) (unlike Civil
15 Code §3344, common law does not require plaintiff to show that defendant used plaintiff's
16 likeness or identity for advertising or solicitation purposes).

17 63. The plaintiff must allege lack of consent in his or her complaint. *See Eastwood v.*
18 *Superior Court*, 149 Cal. App. 3d 409, 417, 198 Cal. Rptr. 342 (1983).

19 64. The plaintiff must prove that he or she suffered damages as a result of the
20 defendant's use. *Slivinsky v. Watkins-Johnson Co.*, 221 Cal. App. 3d 799, 807 (1990) (resulting
21 injury is *sine qua non* of cause of action for misappropriation).

22 65. The common law right of publicity protects the items listed in Civil Code §3344
23 and more: it protects a person's identity. *White v. Samsung Electronics America, Inc.*, 971 F.2d
24 1395, 1399 (9th Cir. 1992).

1 66. Also, non-celebrities have a right to sue for misappropriation of their identity.
2 *Dora v. Frontline Video, Inc.*, 15 Cal. App. 4th 536, 542 (1993).

3 67. Unlike Civil Code §3344, common law does not require the plaintiff to show that
4 the defendant used plaintiff's likeness or identity for advertising or solicitation purposes.
5 *Slivinsky v. Watkins-Johnson Co.*, 221 Cal. App. 3d 799, 807 (1990); *Johnson v. Harcourt,*
6 *Brace, Jovanich, Inc.*, 43 Cal. App. 3d 880, 895 (1974).

7 68. California law has imposed no requirement that the unauthorized use of a
8 person's name or identity be suggestive of an endorsement or association with the injured
9 person. *Eastwood v. Superior Court*, 149 Cal. App. 3d 409, 418 (1983).

10 69. Damage can be to the plaintiff's reputation or to personal feelings, or it can be
11 the loss of publicity value. *Dora v. Frontline Video, Inc.*, 15 Cal. App. 4th 536, 542-44 (1993);
12 *Waits v. Frito-Lay*, 978 F.2d 1093, 1103 (9th Cir. 1992); *Motschenbacher v. R.J. Reynolds*
13 *Tobacco Co.*, 498 F.2d 821, 825 (9th Cir. 1974).

14 70. California law protects an individual's proprietary interest in his or her own
15 identity. *Motschenbacher v. R.J. Reynolds Tobacco Co.*, 498 F.2d 821, 825-26 (9th Cir. 1974)
16 (whether the protection of the commercial aspect of an individual's identity falls under the
17 rubric of privacy, property, or publicity, is not important).

18 71. The common law publicity rights protected by the common law cause of action
19 are property rights, and California law protects individuals from the loss of their property.
20 *Midler v. Ford Motor Co.*, 849 F.2d 460, 463 (9th Cir. 1988).

21 72. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
22 a surety/guaranty paperwork without her knowledge, authorization, or permission has resulted
23 in Cross-Defendant JOEL exercising control and ownership over Cross-Complainant GINA's
24 name, likeness, creditworthiness, credit standing, and financial properties.

1 73. Cross-Defendant JOEL gained advantage by forging Cross-Complainant GINA's
2 name to the surety/guaranty paperwork without her knowledge, authorization, or permission in
3 that he was given financial credit from the creditor to which Cross-Complainant GINA never
4 received any benefit.

5 74. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
6 a surety/guaranty paperwork without her knowledge, authorization, or permission was done
7 intentionally so that he could gain a benefit by being given financial credit from the creditor to
8 which Cross-Complainant GINA never received any benefit.

9 75. As a direct, foreseeable, and proximate result of Cross-Defendant JOEL's
10 conduct, Cross-Complainant GINA has suffered, and continues to suffer, emotional distress,
11 reputational harm, harm to her creditworthiness and credit standing, and financial harm, all to
12 her damage in a sum within the jurisdiction of this Court, to be ascertained according to proof at
13 trial.

14 76. Under California law, even where a claim formally sounds in negligence, if the
15 plaintiff can make a showing that defendant's conduct goes beyond gross negligence and
16 demonstrates a knowing and reckless disregard, punitive damages may be available. *In re*
17 *Yahoo! Inc. Customer Data Security Breach Litigation* (N.D.Cal. 2018) 313 F.Supp.3d 1113.

18 77. At all relevant times, Cross-Defendant JOEL's actions were fraudulent, willful,
19 malicious, oppressive, and were committed with the wrongful intent to injure Cross-
20 Complainant GINA and in conscious disregard of Cross-Complainant GINA's rights, which
21 entitles Cross-Complainant GINA to exemplary and/or punitive damages in an amount to be
22 proven at trial.

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FIFTH CAUSE OF ACTION
NEGLIGENCE

(As against Cross-Defendant JOEL and ROES 1-10, jointly and severally)

78. Cross-Complainant GINA re-alleges and incorporates by reference each of the above paragraphs as though fully set herein.

79. At all relevant times, Cross-Defendant JOEL owed a duty to Cross-Complainant GINA as his marital partner to not engage in any unauthorized secret actions that would harm her personally or financially.

80. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to a surety/guaranty paperwork without her knowledge, authorization, or permission breached his duties to her because it resulted in Cross-Defendant JOEL exercising control and ownership over Cross-Complainant GINA's name, likeness, creditworthiness, credit standing, and financial properties.

81. Cross-Defendant JOEL gained advantage by forging Cross-Complainant GINA's name to the surety/guaranty paperwork without her knowledge, authorization, or permission in that he was given financial credit from the creditor to which Cross-Complainant GINA never received any benefit.

82. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to a surety/guaranty without her knowledge, authorization, or permission was done intentionally so that he could gain a benefit by being given financial credit from the creditor to which Cross-Complainant GINA never received any benefit

83. As a direct, foreseeable, and proximate result of Cross-Defendant JOEL's conduct, Cross-Complainant GINA has suffered, and continues to suffer, emotional distress, reputational harm, harm to her creditworthiness and credit standing, and financial harm, all to her damage in a sum within the jurisdiction of this Court, to be ascertained according to proof at

1 trial.

2 84. Under California law, even where a claim formally sounds in negligence, if the
3 plaintiff can make a showing that defendant's conduct goes beyond gross negligence and
4 demonstrates a knowing and reckless disregard, punitive damages may be available. *In re*
5 *Yahoo! Inc. Customer Data Security Breach Litigation* (N.D.Cal. 2018) 313 F.Supp.3d 1113.

6 85. At all relevant times, Cross-Defendant JOEL's actions were fraudulent, willful,
7 malicious, oppressive, and were committed with the wrongful intent to injure Cross-
8 Complainant GINA and in conscious disregard of Cross-Complainant GINA's rights, which
9 entitles Cross-Complainant GINA to exemplary and/or punitive damages in an amount to be
10 proven at trial.

11 **SIXTH CAUSE OF ACTION**
12 **INDEMNITY**

13 **(As against Cross-Defendant JOEL and ROES 1-10, jointly and severally)**

14 86. Cross-Complainant GINA re-alleges and incorporates by reference each of the
15 above paragraphs as though fully set herein.

16 87. Equitable indemnity principles govern the allocation of loss or damages among
17 multiple tortfeasors whose liability for the underlying injury is joint and several. Equitable
18 indemnity is designed to apportion liability among joint tortfeasors in direct proportion to their
19 respective fault. Under comparative indemnity principles, a full range of allocations is possible,
20 from no indemnity to complete indemnity for the amounts paid by the indemnitee. *Expressions*
21 *at Rancho Niguel Assn. v. Ahmanson Developments, Inc.* (2001) 86 Cal.App.4th 1135, 1139-
1140.

22 88. "The elements of a cause of action for indemnity are (1) a showing of fault on
23 the part of the indemnitor and (2) resulting damages to the indemnitee for which the indemnitor
24 is contractually or equitably responsible." *Expressions, supra*, 86 Cal. App. 4th at p. 1139,

1 citing *Gouvis Engineering v. Superior Court* (1995) 37 Cal.App.4th 642, 646.

2 89. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
3 a surety/guaranty paperwork without her knowledge, authorization, or permission has resulted
4 in Cross-Defendant JOEL exercising control and ownership over Cross-Complainant GINA's
5 name, likeness, creditworthiness, credit standing, and financial properties.

6 90. Cross-Defendant JOEL gained advantage by forging Cross-Complainant GINA's
7 name to the surety/guaranty paperwork without her knowledge, authorization, or permission in
8 that he was given financial credit from the creditor to which Cross-Complainant GINA never
9 received any benefit.

10 91. Cross-Defendant JOEL's actions of forging Cross-Complainant GINA's name to
11 a surety/guaranty paperwork without her knowledge, authorization, or permission was done
12 intentionally so that he could gain a benefit by being given financial credit from the creditor to
13 which Cross-Complainant GINA never received any benefit.

14 92. Consequently, Cross-Defendant JOEL's actions were wrongful such that if there
15 is any liability on the part of Cross-Complainant GINA to Cross-Defendant HAPPY ROCK,
16 then Cross-Defendant JOEL must indemnify her for any and all of Cross-Complainant GINA's
17 liability to Cross-Defendant HAPPY ROCK.

18 93. As a direct, foreseeable, and proximate result of Cross-Defendant JOEL's
19 conduct, Cross-Complainant GINA has suffered, and continues to suffer, emotional distress,
20 reputational harm, harm to her creditworthiness and credit standing, and financial harm, all to
21 her damage in a sum within the jurisdiction of this Court, to be ascertained according to proof at
22 trial.

23 94. At all relevant times, Cross-Defendant JOEL's actions were fraudulent, willful,
24 malicious, oppressive, and were committed with the wrongful intent to injure Cross-

1 Complainant GINA and in conscious disregard of Cross-Complainant GINA's rights, which
2 entitles Cross-Complainant GINA to exemplary and/or punitive damages in an amount to be
3 proven at trial.

4 **SEVENTH CAUSE OF ACTION**
5 **CALIF. IDENTITY THEFT ACT**
6 **CALIF. CIV. CODE § 1798.82, et seq.**
7 **(As against Cross-Defendant HAPPY ROCK and ROES 1-10, jointly and severally)**

8 95. Cross-Complainant GINA re-alleges and incorporates by reference each of the
9 above paragraphs as though fully set herein.

10 96. In enacting the California's Identity Theft Act, Cal. Civ. Code §§1798.92 et seq.
11 ("CITA"), the California Legislature found that the right to privacy was being threatened by the
12 indiscriminate collection, maintenance, and dissemination of personal information. Accordingly,
13 CITA was enacted to combat the lack of effective laws and legal remedies in place. To protect
14 the privacy of individuals, it is necessary that the maintenance and dissemination of personal
15 information be subject to strict limits. Cal. Civ. Code §1798.1(a), (c).

16 97. Cross-Complainant GINA is a "Victim of Identity Theft" as that term is defined
17 by Cal. Civ. Code § 1798.82(d).

18 98. Cross-Defendant HAPPY ROCK is a "claimant" as that term is defined by
19 California Civil Code § 1798.92(a).

20 99. The claims herein pertain to Cross-Complainant GINA's "identity theft" as that
21 term is defined by Cal. Civ. Code § 1798.82(d), in that Cross-Defendant HAPPY ROCK has
22 failed to conduct a reasonable investigation to her claims of fraudulent activity and has persisted
23 in claiming that she is obligated upon the alleged debt.

24 100. On February 10, 2022, Cross-Complainant GINA provided written notice to
Cross-Defendant HAPPY ROCK that a claim of identity theft exists and explained the basis for

1 that belief, and also provided to Cross-Defendant HAPPY ROCK a police report confirming
2 that she reported to law enforcement that she has been the victim of fraud, identity theft, and
3 forgery by Cross-Defendant JOEL.

4 101. Cross-Complainant GINA requested that Cross-Defendant HAPPY ROCK
5 conduct a reasonable investigation into her dispute of fraud, identity theft, and forgery of her
6 name by Cross-Defendant JOEL, and also requested that Cross-Defendant HAPPY ROCK
7 confirm that she is not obligated upon the alleged debt and cease any efforts to collect from her.

8 102. However, Cross-Defendant HAPPY ROCK has refused to take any such actions
9 and has persisted in claiming that Cross-Complainant GINA is obligated upon the alleged debt.

10 103. Through this conduct, Cross-Defendant HAPPY ROCK violated Cal Civ. Code §
11 1798.93.

12 104. As a direct, foreseeable, and proximate result of Cross-Defendant HAPPY
13 ROCK'S conduct, Cross-Complainant GINA has suffered, and continues to suffer, emotional
14 distress, harm to her creditworthiness and credit standing, reputational harm, and financial
15 harm, all to her damage in a sum within the jurisdiction of this Court, to be ascertained
16 according to proof.

17 105. Cross-Complainant GINA is entitled to bring this action as a Cross-Complaint to
18 seek a Declaration that she is a victim of identity theft, that she is not obligated to Cross-
19 Defendant HAPPY ROCK on its claims against her, that any security interest or other interest
20 purportedly obtained on her property is void and unenforceable, and her burden of proof is
21 preponderance of the evidence, pursuant to Cal. Civ. Code § 1798.93(a)-(c)(2).

22 106. Cross-Complainant GINA is also entitled to an injunction restraining Cross-
23 Defendant HAPPY ROCK from collecting or attempting to collect from her on its claims, from
24 enforcing or attempting to enforce any security interest or other interest in her property in

1 connection with its claims, or from enforcing or executing on any judgment against her on its
2 claims, pursuant to Cal. Civ. Code § 1798.93(c)(3).

3 107. Further, as a result of each and every violation of CITA, Cross-Complainant
4 GINA is entitled to any actual damages pursuant to Cal. Civ. Code § 1798.93(c)(5); a civil
5 penalty in an amount up to \$30,000.00 pursuant to Cal. Civ. Code § 1798.93(c)(6); costs
6 pursuant to Cal. Civ. Code § 1798.93(c)(5); attorney's fees and costs pursuant to Cal. Civ. Code
7 § 1798.93(c)(5); and any equitable relief the Court deems appropriate pursuant to Cal. Civ.
8 Code § 1798.93(c)(5).

9
10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Cross-Complainant prays that judgment be entered in her favor and against
12 Cross-Defendants, and each of them, as follows:

- 13 1. For general and special damages according to proof at trial;
- 14 2. For compensatory damages according to proof at trial;
- 15 3. For consequential damages according to proof at trial;
- 16 4. Punitive/exemplary damages according to proof at trial;
- 17 5. Pre-judgment interest at the legal rate;
- 18 6. Declaratory relief that Cross-Complainant GINA is a victim of identity theft and
19 she is not obligated to Cross-Defendant HAPPY ROCK on its claims against her,
20 and that any security interest or other interest purportedly obtained on her property
21 is void and unenforceable, pursuant to Cal. Civ. Code § 1798.93(a)-(c)(2);
- 22 7. An injunction restraining Cross-Defendant HAPPY ROCK from collecting or
23 attempting to collect from her on its claims, from enforcing or attempting to
24 enforce any security interest or other interest in her property in connection with its
claims, or from enforcing or executing on any judgment against her on its claims,

pursuant to Cal. Civ. Code § 1798.93(c)(3);

8. An award of actual damages pursuant to Cal. Civ. Code § 1798.93(c)(5);

9. A civil penalty in an amount up to \$30,000.00 pursuant to Cal. Civ. Code § 1798.93(c)(6);

10. Attorneys' fees and costs pursuant to Cal. Civ. Code § 1798.93(c)(5);

11. Any equitable relief the Court deems appropriate pursuant to Cal. Civ. Code § 1798.93(c)(5);

12. An injunction preliminarily and permanently enjoining Cross-Defendant HAPPY ROCK from engaging in the unlawful debt collection practices stated herein;

13. An injunction preliminarily and permanently enjoining Cross-Defendant JOEL from engaging in fraud, identity theft, and forgery;

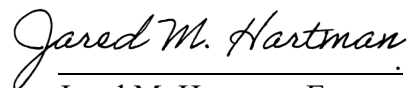
14. For such other relief as the court may deem proper.

TRIAL BY JURY

Pursuant to the Seventh Amendment to the Constitution of the United States of America, Cross-Complainant GINA is entitled to, and hereby demands, a trial by jury.

Respectfully submitted,

DATED: 4-13-22



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Complainant, GINA C. CHUN