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16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 DIANE E. THOMPSON , individually, on
19 behalf of herself and all other similarly situated,

20 Plaintiffs,

21 vs.

22 NATIONSTAR MORTGAGE, LLC d/b/a Mr.
23 Cooper,

24 Defendants.

CASE NO.:

CLASS ACTION COMPLAINT FOR:

- 1) Violations of Nevada Deceptive Trade Act
- 2) Violations of Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.)
- 3) Negligence
- 4) Breach of Contract
- 5) Breach Implied Contract
- 6) Unjust Enrichment

JURY TRIAL DEMANDED

1 Plaintiff, an individual, on behalf of herself and all other similarly situated employees, by and
2 through her counsel, alleges and brings claims against Defendant as follows:

3 **JURISDICTION AND VENUE**

4 1. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 (federal question
5 jurisdiction) and 28 U.S.C. § 1367 (supplemental jurisdiction).

6 2. Venue is proper in this Court because Plaintiff and the class members are Nevada
7 residents and the underlying properties at issue is located in Nevada.

8 **PARTIES**

9 3. Plaintiff Diane E. Thompson (hereinafter “Plaintiff”) is a natural person who is and
10 was a resident of the State of Nevada.

11 4. Each plaintiff is a “consumer” as defined in the EFTA, 15 U.S.C. § 1693a(6), in that
12 each plaintiff is a natural person.

13 5. Each plaintiff is also a “sender” as defined in Regulation E, 12 C.F.R. § 1005.30(g),
14 in that each plaintiff is a consumer who requested a remittance transfer provider to send a remittance
15 transfer to a designated recipient.

16 6. Defendant Nationstar Mortgage LLC d/b/a Mr. Cooper (“Nationstar”) is a is a
17 Delaware limited liability company with its principal place of business in Coppell, Texas. Mr. Cooper
18 is the current name under which Nationstar does business. Nationstar engages in mortgage servicing
19 by, among other things, processing borrower payments, administering loss mitigation processes, and
20 managing foreclosures. At all times relevant to this complaint, Nationstar has done business in this
21 District and throughout the United States. Nationstar is one of the largest mortgage servicers in the
22 United States.

23 7. Nationstar is a designated payee as used in the EFTA, 15 U.S.C. § 1693e(b), in that
24 Nationstar initiated and received electronic fund transfers from Plaintiff’s account that were
25 preauthorized or purportedly preauthorized.

26 8. Nationstar is also a “servicer” as that term is used in RESPA, 12 U.S.C. § 2605, in
27 that Nationstar was responsible for servicing a federally related mortgage loan.

28 9. Plaintiff is informed and believe, and thereon allege, that Defendant is in some
manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and
transactions alleged herein.

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FACTUAL ALLEGATIONS

1
2 10. On or about April 24, 2021, Mr. Cooper withdrew, without authorization, two
3 additional mortgage payments out of Plaintiff's Wells Fargo account totaling approximately \$3,000.
4 Plaintiff had already made her April 2021 mortgage payment to Mr. Cooper on April 15, 2021.

5 11. Plaintiff was not signed up for Mr. Cooper's AutoPay.

6 12. Plaintiff disputed the withdrawals with Wells Fargo.

Violations of EFTA

7 13. The purpose of the Electronic Fund Transfer Act ("EFTA"), 15 USC § 1693, *et. seq.*,
8 is "to provide a basic framework establishing the rights, liabilities, and responsibilities of participants
9 in electronic fund and remittance transfer systems. The primary objective of this subchapter,
10 however, is the provision of individual consumer rights." 15 USC § 1693(b).

11 14. "Electronic funds transfer" is defined as "any transfer of funds, other than a
12 transaction originated by check, draft, or similar paper instrument, which is initiated through an
13 electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or
14 authorize a financial institution to debit or credit an account." 15 USC § 1693a(7).

15 15. A "preauthorized electronic fund transfer" is defined as "an electronic fund transfer
16 authorized in advance to recur at substantially regular intervals." *Id.*

17 16. 15 U.S.C. § 1693e(b) provides that "in the case of preauthorized transfers from a
18 consumer's account to the same person which may vary in amount, the financial institution or
19 designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in
20 accordance with regulations of the Bureau, of the amount to be transferred and the scheduled date
21 of the transfer."

CLASS ALLEGATIONS

22 17. Plaintiff re-allege and incorporate by reference all the paragraphs above in the
23 Complaint as though fully set forth herein.

24 18. Plaintiff brings this action on behalf of all natural persons in the State of Nevada,
25 whose mortgage loan servicing rights were transferred to Defendant Nationstar and who had
26 executed an electronic funds transfer authorization with their prior servicer and from whom
27 Defendant Nationstar initiated electronic funds transfers that were inconsistent with the prior
28 existing electronic funds transfer authorization executed with the prior servicer.

19. The Class is so numerous that joinder is impracticable. Upon information and belief,
there are more than 50 members of the Class.

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1 members that their accounts were and remain at risk of being vulnerable to fraudulent and
2 unauthorized transactions; (f) failing to process claims regarding fraudulent or unauthorized
3 transactions in a reasonably timely and adequate manner; and (g) failing to extend provisional credit
4 to Plaintiff and Class members when Defendant Nationstar fails to resolve their claims regarding
5 fraudulent or unauthorized transactions in a reasonably timely and adequate manner.

6 40. Defendant Nationstar's misconduct concerning its failure to safeguard customer
7 accounts is inconsistent with industry standards.

8 41. Defendant Nationstar's misconduct concerning its failure to timely and adequately
9 respond to Plaintiff and Class members' claims of fraudulent and unauthorized transactions on their
10 accounts is inconsistent with industry regulations.

11 42. Defendant Nationstar's misconduct is inconsistent with its own policies and
12 procedures for accounts.

13 43. The harm inflicted upon Plaintiff and other Class members was reasonably
14 foreseeable to Defendant Nationstar, and it knew or should have known its customer service
15 resources and/or procedures were insufficient to accommodate issues stemming from unauthorized
16 transfers, and that such an issue would foreseeably lead to an increased demand for customer service
17 by Plaintiff and Class members for all purposes, including for the purpose of reporting and
18 attempting to resolve claims of fraudulent or unauthorized transactions.

19 44. As a direct and proximate result of Defendant Nationstar's misconduct, Plaintiff and
20 Class members have been deprived of their money.

21 **SIXTH CLAIM FOR RELIEF**

22 **Breach of Contract**

23 45. Plaintiff incorporate by reference as if fully set forth herein the allegations contained
24 in the preceding paragraphs of this Complaint.

25 46. Plaintiff and Defendant Nationstar executed an electronic funds transfer
26 authorization agreement or Nationstar acquired the rights to such an authorization from a prior
27 servicer.

28 47. Defendant Nationstar initiated electronic funds transfers that were not consistent
with the electronic funds authorization that Plaintiff entered with Wells Fargo, and other banks.

48. Defendant Nationstar initiated electronic funds transfers without providing
reasonable advance notice to Plaintiff or the class members of the amount to be transferred and the
scheduled date of the transfer.

- 1 (d) punitive damages;
- 2 (e) injunctive relief;
- 3 (f) attorneys' fees, litigation expenses and costs of suit;
- 4 (g) for pre-judgment and post-judgment interest, as provided by law; and
- 5 (h) such other or further relief as the Court deems proper.

6 DATED this 2nd day of May 2021.

7 **MADDOX & CISNEROS LLP**

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