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DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.)*

TITLE 1.81.3. IDENTITY THEFT [1798.92 - 1798.97] (*Title 1.81.3 added by Stats. 2001, Ch. 354, Sec. 21.)*

1798.92. For the purposes of this title:

(a) "Claimant" means a person who has or purports to have a claim for money or an interest in property in connection with a transaction procured through identity theft.

(b) "Identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property.

(c) "Personal identifying information" means a person's name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number.

(d) "Victim of identity theft" means a person who had their personal identifying information used without authorization by another to obtain credit, goods, services, money, or property, and did not use or possess the credit, goods, services, money, or property obtained by the identity theft, and has submitted a Federal Trade Commission identity theft report. In the alternative, the person may have filed a police report in this regard pursuant to Section 530.5 of the Penal Code.

(*Amended by Stats. 2021, Ch. 265, Sec. 3. (AB 430) Effective January 1, 2022.*)

1798.93. (a) A person may bring an action against a claimant to establish that the person is a victim of identity theft in connection with the claimant's claim against that person. If the claimant has brought an action to recover on its claim against the person, the person may file a cross-complaint to establish that the person is a victim of identity theft in connection with the claimant's claim.

(b) A person shall establish that they are a victim of identity theft by a preponderance of the evidence.

(c) A person who proves that they are a victim of identity theft, as defined in Section 530.5 of the Penal Code, as to a particular claim, shall be entitled to a judgment providing all of the following, as appropriate:

(1) A declaration that they are not obligated to the claimant on that claim.

(2) A declaration that any security interest or other interest the claimant had purportedly obtained in the victim's property in connection with that claim is void and unenforceable.

(3) An injunction restraining the claimant from collecting or attempting to collect from the victim on that claim, from enforcing or attempting to enforce any security interest or other interest in the victim's property in connection with that claim, or from enforcing or executing on any judgment against the victim on that claim.

(4) If the victim has filed a cross-complaint against the claimant, the dismissal of any cause of action in the complaint filed by the claimant based on a claim which arose as a result of the identity theft.

(5) Actual damages, attorney's fees, and costs, and any equitable relief that the court deems appropriate. In order to recover actual damages or attorney's fees in an action or cross-complaint filed by a person alleging that they are a victim of identity theft, the person shall show that they provided written notice to the claimant that a situation of identity theft might exist, including, upon written request of the claimant, a valid, signed Federal Trade Commission (FTC) identity theft report completed at least 30 days before filing the action, or within their cross-complaint pursuant to this section. In the alternative, the person may provide a valid copy of a police report or of a Department of Motor Vehicles (DMV) investigative report, filed pursuant to Section 530.5 of the

Penal Code, at least 30 days before filing the action or within their cross-complaint pursuant to this section. For the purposes of this paragraph, if the person submits an FTC identity theft report, the claimant shall not also require a DMV or police report.

(6) A civil penalty, in addition to any other damages, of up to thirty thousand dollars (\$30,000) if the victim establishes by clear and convincing evidence all of the following:

(A) That at least 30 days prior to filing an action or within the cross-complaint pursuant to this section, they provided written notice to the claimant at the address designated by the claimant for complaints related to credit reporting issues that a situation of identity theft might exist and explaining the basis for that belief.

(B) That the claimant failed to diligently investigate the victim's notification of a possible identity theft.

(C) That the claimant continued to pursue its claim against the victim after the claimant was presented with facts that were later held to entitle the victim to a judgment pursuant to this section.

(Amended by Stats. 2021, Ch. 265, Sec. 4. (AB 430) Effective January 1, 2022.)

1798.94. An action or cross-complaint brought under this title that joins other claimants as defendants in the same action or cross-complaint shall be deemed to comply with Section 379 of the Code of Civil Procedure.

(Added by Stats. 2001, Ch. 354, Sec. 21. Effective January 1, 2002.)

1798.95. A court shall have continuing jurisdiction over an action or cross-complaint filed pursuant to this title in order to provide for the joinder of related causes of action based on the theft of the same person's identity and the joinder of further defendants based upon the theft of the same person's identity, regardless of whether a final judgment has been entered as to any defendant. The court's continuing jurisdiction shall terminate 10 years after filing of the original action unless the court, prior to that date, finds good cause to extend jurisdiction over the matter.

(Added by Stats. 2001, Ch. 354, Sec. 21. Effective January 1, 2002.)

1798.96. Any action brought pursuant to this title or any joinder of a defendant pursuant to Section 1798.82 may be brought within four years of the date the person who alleges that he or she is a victim of identity theft knew or, in the exercise of reasonable diligence, should have known of the existence of facts which would give rise to the bringing of the action or joinder of the defendant.

(Added by Stats. 2001, Ch. 354, Sec. 21. Effective January 1, 2002.)

1798.97. (a) This title does not apply to a transaction subject to Section 1747.10.

(b) Nothing in this title shall be construed to affect a claimant's rights and remedies against a person who perpetrates identity theft or against any person who used or possessed the credit, goods, services, or property obtained by identity theft.

(c) This title is cumulative to the rights and remedies provided under other laws.

(Added by Stats. 2001, Ch. 354, Sec. 21. Effective January 1, 2002.)