

ENDORSED
FILED
Superior Court of California
County of San Francisco

AUG 13 2014

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

1 STROOCK & STROOCK & LAVAN LLP
2 JULIA B. STRICKLAND (State Bar No. 83013)
3 ARJUN RAO (State Bar No. 265347)
4 2029 Century Park East
5 Los Angeles, CA 90067-3086
6 Telephone: 310-556-5800
7 Facsimile: 310-556-5959
8 Email: *lcalendar@stroock.com*

6 Attorneys for Defendant
7 CITIBANK, N.A.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

10 RAMONA EDERY, individually and on behalf) Case No. CGC-14-538436
11 of a class of similarly situated individuals,)
12 Plaintiff,) ANSWER AND AFFIRMATIVE
13 vs.) DEFENSES OF DEFENDANT CITIBANK,
14 CITIBANK, N.A and DOES 1 through 10,) N.A. TO COMPLAINT
15 inclusive,)
16 Defendants.)
17) Action Filed: April 4, 2014

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT CITIBANK, N.A. TO COMPLAINT

1 Defendant Citibank, N.A. (“Citibank”) hereby answers the Complaint (the “Complaint”)
2 filed on April 4, 2014 by plaintiff Ramona Edery (“Plaintiff”) as follows:

3 **GENERAL DENIAL**

4 Pursuant to California Code of Civil Procedure Section 431.30(d), Citibank denies,
5 generally and specifically, in the conjunctive and disjunctive, each and every cause of action and
6 allegation contained within the Complaint, and the Complaint as a whole, and further denies that
7 the relief requested by Plaintiffs is appropriate and/or that damages were sustained, or that
8 Citibank’s conduct was objectionable or unreasonable, or that Citibank was negligent in any way.
9 Citibank further denies that by reason of any act, fault, carelessness or omission on its part,
10 Plaintiffs have been injured, damaged or harmed in any way or in any amount whatsoever, or at all,
11 by reason of any acts or omissions of Citibank.

12 **FIRST AFFIRMATIVE DEFENSE**

13 **Failure to State a Claim**

14 1. The Complaint, and each purported cause of action alleged therein, fails to state a
15 claim against Citibank.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **Agreement to Arbitrate**

18 2. This Court lacks jurisdiction over the Plaintiff’s claims and/or the claims of the class
19 she purports to represent due to the presence of a binding arbitration clause in the account
20 agreement(s) with Plaintiff and/or the individuals in the class she purports to represent.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **Consent**

23 3. Citibank is informed and believes, and on that basis alleges, that Plaintiff and/or any
24 person she purports to represent, are barred, in whole or in part, from maintaining their alleged
25 causes of action because they provided consent within the meaning of California’s Invasion of
26 Privacy Act, Cal. Penal Code § 630, et seq., for all communications allegedly recorded by Citibank.

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH AFFIRMATIVE DEFENSE

Statute of Limitations

4. Plaintiff's claims and/or the claims of the class she purports to represent are barred in whole or in part by the applicable statute of limitations, including Cal. Civil Procedure Code § 340(a).

FIFTH AFFIRMATIVE DEFENSE

Failure to Mitigate

5. To the extent that Plaintiff, and/or any person she purports to represent, has suffered any damages as a result of the matters alleged in the Complaint, which Citibank denies, Plaintiff has failed to mitigate those damages and her causes of action therefore are barred, in whole or in part.

SIXTH AFFIRMATIVE DEFENSE

Estoppel

6. The Complaint is barred, in whole or in part, by Plaintiff's conduct, actions and inactions which amount to and constitute an estoppel of the claims and any relief sought thereby.

SEVENTH AFFIRMATIVE DEFENSE

Waiver

7. The Complaint, and each purported cause of action alleged therein, is barred by the conduct, actions and inactions of Plaintiff, and/or any person she purports to represent, which amount to and constitute a waiver of any right or rights Plaintiff, and/or any person she purports to represent, may or might have in relation to the matters alleged in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE

Unclean Hands

8. Plaintiff's cause of action in the Complaint are barred, in whole or in part, by virtue of Plaintiff's conduct, actions or inactions, under the doctrine of unclean hands.

1 **NINTH AFFIRMATIVE DEFENSE**

2 **Laches**

3 9. Plaintiff, and/or any person she purports to represent, has unreasonably delayed
4 taking action in connection with the alleged claims, causing substantial prejudice to Citibank, and
5 such causes of action therefore are barred pursuant to the doctrine of laches.

6 **TENTH AFFIRMATIVE DEFENSE**

7 **Preemption**

8 10. Plaintiff, and any person she purports to represent, are precluded from any recovery
9 from Citibank because their claims under California’s Invasion of Privacy Act, Cal. Penal Code §
10 630, et seq., are preempted by federal law.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 **Due Process**

13 11. The imposition of liability and/or statutory damages under California’s Invasion of
14 Privacy Act, Cal. Penal Code § 630, et seq., as sought in the Complaint, would violate provisions
15 of the United States and California Constitutions, including the Due Process Clause.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 **(Reservation of Rights)**

18 12. Citibank expressly reserves the right to assert such other and further affirmative
19 defenses as may be appropriate.

20 ///

21 ///

22 ///

23

24

25

26

27

28

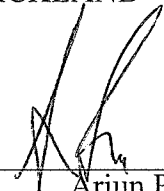
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Citibank prays as follows:

1. That Plaintiff and the putative class she purports to represent take nothing by this action;
2. That judgment be entered in favor of Citibank;
3. That Citibank be awarded its costs incurred in this action, including, as applicable, its reasonable attorneys' fees; and
4. For such further and other relief as the Court deems just and proper.

Dated: August 13, 2014

STROOCK & STROOCK & LAVAN LLP
JULIA B. STRICKLAND
ARJUN RAO

By: 
Arjun P. Rao

Attorneys for Defendant
CITIBANK, N.A.

PROOF OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF CALIFORNIA)
) Ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California, over the age of eighteen years, and not a party to the within action. My business address is: 2029 Century Park East, Los Angeles, CA 90067-3086.

On August 13, 2014, I served the foregoing document(s) described as: **ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT CITIBANK, N.A. TO COMPLAINT** on the interested parties in this action as follows:

Anthony J. Orshansky
Justin Kachadoorian
ORSHANSKY & YEREMIAN LLP
16133 Ventura Boulevard, Suite 1245
Encino, California 91436

(VIA PERSONAL SERVICE) By causing the document(s), in a sealed envelope, to be delivered to the person(s) at the address(es) set forth above.

(VIA U.S. MAIL) In accordance with the regular mailing collection and processing practices of this office, with which I am readily familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California that same day in the ordinary course of business, I deposited such sealed envelope, with postage thereon fully prepaid, for collection and mailing on this same date following ordinary business practices, addressed as set forth above.

(VIA E-MAIL) I caused the document to be sent to the person at the e-mail address listed above.

(VIA FACSIMILE) By causing such document to be delivered to the office of the addressee via facsimile.

(VIA OVERNIGHT DELIVERY) By causing the document(s), in a sealed envelope, to be delivered to the office of the addressee(s) at the address(es) set forth above by overnight delivery via Federal Express, or by a similar overnight delivery service.

I declare that I am employed in the office of a member of the bar of this court, at whose direction the service was made.

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

Executed on August 13, 2014, at Los Angeles, California.

Mai Bui _____  _____
[Type or Print Name] [Signature]

STROOCK & STROOCK & LAVAN LLP
2029 Century Park East
Los Angeles, California 90067-3086