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13 **SUPERIOR COURT FOR THE**
14 **COUNTY OF SAN DIEGO, UNLIMITED CIVIL**

15 CASEY BRADEN, an individual,

16 PLAINTIFF,

17 vs.

18 PACIFIC UNION FINANCIAL, LLC,

19 DEFENDANTs.

Case No.: 37-2018-00056745-CU-MC-CTL

**COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL FOR
VIOALTIONS OF:**

1. CALIFORNIA MILITARY
FAMILIES FINANCIAL RELIEF
ACT,
2. CALIFORNIA ROSENTHAL ACT

**UNLIMITED CIVIL JURISDICTION,
DAMAGES IN EXCESS OF \$25,000.00**

20 **TO THE CLERK OF THE COURT, ALL PARTIES, AND THE HONORABLE**
21 **DISTRICT COURT JUDGE:**

22 Complainant, CASEY BRADEN (hereinafter, "PLAINTIFF"), an Individual, by and
23 through his attorneys of record, hereby complains and alleges in this Complaint as follows:

24 **INTRODUCTION**

1. This action arises out of DEFENDANT PACIFIC UNION FINANCIAL, LLC's
(hereinafter "DEFENDANT") violations of the State of California Military Families Financial

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/08/2018 at 10:30:34 AM
Clerk of the Superior Court
By Bryant Schmelzel, Deputy Clerk

1 Relief Act (Calif. Military and Veteran’s Code §§800-812); the State of California Rosenthal Act
2 (hereinafter “Rosenthal Act”) (California Civil Code §§1788-1788.32).

3 2. PLAINTIFF makes the allegations below on information and belief, with the
4 exception of those allegations that pertain to PLAINTIFF personally, or to PLAINTIFF's counsel,
5 which PLAINTIFF allege on personal knowledge.

6 3. While many violations are described below with specificity, this Complaint alleges
7 violations of the statutes cited in their entirety.

8 4. DEFENDANT is a business entity incorporated in the State of California and
9 maintains an agent for service of process within the State of California, but with its principal place
10 of business being located in the State of Texas. DEFENDANT maintains an agent for service of
11 process at 818 W Seventh St Ste 930, Los Angeles, CA 90017. Therefore, personal jurisdiction is
12 established.

13 5. Because all tortious conduct occurred while PLAINTIFF resided in the City of
14 Chula Vista, County of San Diego, the actions taken by DEFENDANT that give rise to this lawsuit
15 concern a mortgage loan for a residence located within the City of Chula Vista, County of San
16 Diego, and witnesses reside herein, venue properly lies in this Court.

17 **PARTIES & DEFINITIONS OF**
18 **CONSUMER RIGHTS LAWS**

19 6. PLAINTIFF is a natural person whose permanent residence is in the City of Chula
20 Vista, County of San Diego, State of California.

21 7. PLAINTIFF, as a natural person allegedly obligated to pay a consumer debt to
22 DEFENDANT for a mortgage loan, alleged to have been due and owing, is therefore a “debtor”
23 as that term is defined by California Civil Code § 1788.2(h) of the Rosenthal Act.

24 8. DEFENDANT alleged that PLAINTIFF owed them money and/or repossession of

1 collateral security that they were allegedly collecting for a mortgage loan for a residence in the
2 City of Chula Vista, and PLAINTIFF is therefore informed and believe that the money alleged to
3 have been owed originated from monetary credit that was extended to PLAINTIFF primarily for
4 personal, family, or household purposes, and is therefore a “debt” as that term is defined by Calif.
5 Civil Code § 1788.2(d) of the Rosenthal Act.

6 9. Upon information and belief, DEFENDANT was attempting to collect on a debt
7 that originated from monetary credit that was extended primarily for personal, family, or household
8 purposes, and was therefore a “consumer credit transaction” within the meaning of Calif. Civil
9 Code § 1788.2(e) of the Rosenthal Act.

10 10. Because PLAINTIFF, a natural person allegedly obligated to pay money and/or
11 collateral security to DEFENDANT arising from a consumer credit transaction, the money
12 allegedly owed was a “consumer debt” within the meaning of California Civil Code § 1788.2(f)
13 of the Rosenthal Act.

14 11. PLAINTIFF is informed and believes that DEFENDANT regularly collects or
15 attempts to collect on behalf of themselves debts owed or due or asserted to be owed or due, and
16 is therefore a “debt collector” within the meaning of Calif. Civil Code § 1788.2(c) of the Rosenthal
17 Act, and thereby engages in “debt collection” within the meaning of California Civil Code §
18 1788.2(b) of the Rosenthal Act, is also therefore a “person” within the meaning of California Civil
19 Code § 1788.2(g) of the Rosenthal Act, and is also a “creditor” under California Civil Code §
20 1788.2(i).

21 **STATUTORY PROTECTIONS**
22 **OF CALIFORNIA MILITARY RESERVIST SERVICE-MEMBERS**

23 12. Section 800(a)(1)(A) of the Calif. Military and Veterans’ Code reads: “a reservist
24 who is called to active duty may defer payments on any of the following obligations while serving

1 on active duty: (A) An obligation secured by a mortgage or deed of trust.”

2 13. Section 804 of the Calif. Military and Veterans’ Code reads:

3 During the period specified in Section 800, the reservist may defer the
4 payment of principal and interest on the specified obligations. No
5 penalties shall be imposed on the nonpayment of principal or interest
6 during this period. No interest shall be charged or accumulated on the
7 principal or interest on which the payment was delayed. No foreclosure
8 or repossession of property on which payment has been deferred shall
9 take place during the period specified in Section 800.

7 14. Section 811(a) of the Calif. Military and Veterans’ Code reads:

8 (a) The spouse or legal dependent, or both, of a reservist who is called
9 to active duty, shall be entitled to the benefits accorded to a reservist
10 under this chapter, provided that the reservist is eligible for the
11 benefits.

11 15. Violations of these protections as codified by the Calif. Military and Veterans’
12 Code are enforceable by Section 812 as follows:

13 (a) A person violating any provision of this chapter shall be liable for actual
14 damages, reasonable attorney's fees, and costs incurred by the service
15 member or other person entitled to the benefits and protections of this
16 chapter.

16 (b) A service member or other person seeking to enforce rights pursuant to
17 this chapter shall not be required to pay a filing fee or court costs.

17 **FACTUAL ALLEGATIONS**

18 16. PLAINTIFF got married to an individual named Theresa Marie Reinicke
19 (hereinafter, “REINICKE”) in September of 2006.

20 17. REINICKE is a military reservist member of the California Army National Guard.

21 18. By orders dated March 26, 2018, REINICKE received orders pursuant to 10 U.S.C.
22 § 12302 to report to active duty effective May 17, 2018, for a period of 400 days.

23 19. At some point in or about October 2015, PLAINTIFF incurred a home mortgage
24 loan obligation with DEFENDANT as the lender.

1 20. Upon receiving the March 2018 deployment orders, PLAINTIFF and REINICKE
2 delivered to DEFENDANT a letter, signed under penalty of perjury, that specifically requested a
3 deferment of the home mortgage loan obligation pursuant to the Calif. Military & Veterans' Code.

4 21. PLAINTIFF and REINICKE enclosed a copy of the deployment orders with the
5 deferment request letter.

6 22. Pursuant to Section 811(a) of the Calif. Military and Veterans' Code, PLAINTIFF
7 is entitled to a 180 deferment of the principal and interest in the same manner as REINICKE, even
8 though REINICKE is the reservist who was deployed, since she would also be entitled to the
9 deferment rights.

10 23. The deferment began with the principal and interest payments owed as of June 1,
11 2018.

12 24. At some point in May 2018, DEFENDANT acknowledged it is bound by the
13 deferment rights pursuant to the Calif. Military and Veterans' Code.

14 25. DEFENDANT drafted an agreement dated May 24, 2018 for PLAINTIFF to sign
15 and notarize that shows PLAINTIFF and DEFENDANT specifically agreed to 180 days of
16 deferment of the obligations to pay principal and interest.

17 26. However, DEFENDANT required PLAINTIFF to submit to unlawful and illegal
18 terms in this agreement, including but not limited to an agreement that PLAINTIFF agree that
19 DEFENDANT could proceed with a foreclosure of the property if PLAINTIFF were to default
20 upon paying the taxes and insurance escrow payments each month, in complete disregard of the
21 prohibition upon any upon the property pursuant to Calif. Military and Veterans' Code § 804.

22 27. Since the deferment of principal and interest began, effective June 1, 2018,
23 PLAINTIFF has dutifully made every monthly payment into escrow for taxes and insurance.

24 28. Despite PLAINTIFF's statutory right to a deferment of the payments of principal

1 and interest, and despite PLAINTIFF's dutiful payment into escrow each month for taxes and
2 insurance, DEFENDANT has persisted in placing multiple debt collection calls to PLAINTIFF
3 wherein an agent of DEFENDANT's falsely claimed that PLAINTIFF was in default for multiple
4 months of full payment of principal and interest.

5 29. Furthermore, every time PLAINTIFF calls DEFENDANT to authorize an
6 electronic payment of the monthly escrow payment taxes and insurance, the agent with whom
7 PLAINTIFF speaks insists always falsely claims that PLAINTIFF is in default for multiple months
8 of full payment of principal and interest.

9 30. Furthermore, DEFENDANT has falsely claimed to the Veteran's Administration,
10 which guarantees a portion of the mortgage loan, that PLAINTIFF is in default for multiple months
11 of full payment of principal and interest.

12 31. PLAINTIFF has received multiple letters from the VA where the VA informs
13 PLAINTIFF that he is at risk of losing his VA benefits and at risk of never receiving a future VA
14 guarantee because DEFENDANT has informed them that PLAINTIFF is in default for multiple
15 months of full payment of principal and interest.

16 32. DEFENDANT'S mistreatment and improper handling of the account has caused
17 PLAINTIFF to suffer emotional distress and mental anguish over the thought that the home might
18 be unlawfully and illegally foreclosed upon during REINICKE's deployment, such as loss of sleep,
19 anxiety, worry, fear, shame, embarrassment, headaches, sweatiness, clamminess, increased heart
20 rate, and shaking.

21 33. PLAINTIFF has also suffered fear, concern, anxiety, and worry that the VA might
22 withdraw its guarantee of the home mortgage loan and refuse to provide PLAINTIFF with any
23 mortgage loan guarantee in the future as a result of DEFENDANT falsely claiming that
24 PLAINTIFF is in default.

FIRST CAUSE OF ACTION
CALIF. MILITARY FAMILIES FINANCIAL RELIEF ACT
CALIF. MILITARY & VETS.' CODE §§ 800-812

34. PLAINTIFF repeats, re-alleges, and incorporates by reference all other paragraphs, as if fully set forth herein.

35. PLAINTIFF had invoked protection under this Act by sending the required written notice, under penalty of perjury, that included a copy of deployment orders.

36. Pursuant to Calif. Military & Vets.' Code § 811, these rights also protect PLAINTIFF as the spouse of the deployed servicemember.

37. By falsely claiming on multiple occasions that PLAINTIFF is in default upon the account and that PLAINTIFF owes the full monthly payments of principal and interest, and by informing the VA of the same false information, DEFENDANT has violated Calif. Military & Vets.' Code §§ 800 & 804 in several ways.

38. As a result of these violations, PLAINTIFF suffered actual damages by way of mental anguish and distress as described in the factual allegations above.

39. PLAINTIFF is further informed and believes that the aforesaid conduct was malicious and oppressive, as those terms are defined by California Civil Code sections 3294(c)(1) and 3294(c)(2), entitling PLAINTIFF to punitive damages.

SECOND CAUSE OF ACTION
CALIF. ROSENTHAL ACT
CALIF. CIV. CODE §§ 1788-1788.32

40. PLAINTIFF repeats, re-alleges, and incorporates by reference all other paragraphs, as if fully set forth herein.

41. By falsely claiming on multiple occasions that PLAINTIFF is in default upon the account and that PLAINTIFF owes the full monthly payments of principal and interest, and by informing the VA of the same false information, DEFENDANT has engaged in harassing,

1 oppressive, and abusive conduct in violation of 15 U.S.C. § 1692d of the Federal FDCPA, and
2 engaged in unfair and unconscionable means in an attempt to collect a debt in violation of 15
3 U.S.C. § 1692f of the Federal FDCPA. Both of these violations of the FDCPA are incorporated
4 into the Rosenthal Act via Calif. Civil Code § 1788.17. This conduct also violates Calif. Civil
5 Code §§1788.11(d)-(e) of the Rosenthal Act.

6 42. By falsely claiming on multiple occasions that PLAINTIFF is in default upon the
7 account and that PLAINTIFF owes the full monthly payments of principal and interest, and by
8 informing the VA of the same false information, DEFENDANT has uttered false, deceptive, and
9 misleading representations in connection with their attempt to collect a debt in violation of 15
10 U.S.C. § 1692e of the Federal FDCPA; and engaged in unfair and unconscionable means in an
11 attempt to collect a debt in violation of 15 U.S.C. § 1692f of the Federal FDCPA. Each of these
12 violations of the FDCPA are incorporated into the Rosenthal Act via Calif. Civil Code § 1788.17.

13 43. As a result of these violations, PLAINTIFF suffered mental anguish and distress as
14 described in the factual allegations above.

15 PRAYER FOR RELIEF

16 WHEREFORE, PLAINTIFF prays that judgment be entered against DEFENDANT, and
17 PLAINTIFF be awarded damages as follows:

18 As to the First Cause of Action (Calif. Military Families Financial Relief Act):

19 1. An award of actual damages pursuant to Calif. Military and Vets.' Code § 812, as
20 will be proven at trial;

21 2. An award of costs of litigation and reasonable attorney's fees pursuant to Calif.
22 Military and Vets.' Code § 812;

23 3. Punitive damages to be determined at trial, for the sake of example and punishing
24 Defendant for their malicious conduct with the intent to harm Plaintiff personally, pursuant to Calif.

1 Civ. Code § 3294(a), (c)(1);

2 4. Such further relief as this Court may deem just and proper.

3 **As to the Second Cause of Action (Calif. Rosenthal Act):**

4 1. An award of actual damages pursuant to California Civil Code section 1788.30(a),
5 as will be proven at trial;

6 2. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §
7 1788.30(b) for all willful and knowing violations, which is cumulative and in addition to all other
8 remedies pursuant to California Civil Code § 1788.32;

9 3. An additional award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
10 1692k(a)(2)(A), as incorporated into the Rosenthal Act via Calif. Civ. Code §1788.17, which is
11 cumulative and in addition to all other remedies pursuant to California Civil Code § 1788.32;

12 4. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ.
13 Code section 1788.30(c);

14 5. Such further relief as this Court may deem just and proper.

15 **TRIAL BY JURY**

16 Pursuant to the Seventh Amendment to the Constitution of the United States of America,
17 Plaintiffs are entitled to, and so demand, a trial by jury.

18 DATED: 11-8-18

SEMNR & HARTMAN, LLP

19 *Jared M. Hartman*
20 _____
JARED M. HARTMAN, Esq.
21 Attorney for Plaintiff
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