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6 **IN THE UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

7 ERIC SMALL, an Individual; and
8 SARAH SMALL, an Individual,

Plaintiffs,

9 vs.

10 SELENE FINANCE, LP; and DOES
11 1-10,

Defendants.

Case No

**COMPLAINT FOR VIOLATIONS
OF:**

1. **FEDERAL REAL ESTATE SETTLEMENT PROCEDURES ACT,**
2. **CALIFORNIA MILITARY FAMILIES FINANCIAL RELIEF ACT,**
3. **CALIFORNIA ROSENTHAL ACT**

14 **TO THE CLERK OF THE COURT, ALL PARTIES, AND THE HONORABLE
15 JUDGE OF HTE U.S. DISTRICT COURT:**

16 Complainants, ERIC & SARAH SMALL, both Individuals, by and through their
17 attorneys of record, hereby complain and allege in this Complaint as follows:

18 **INTRODUCTION**

19 1. This action arises out of Defendant SELENE FINANCE, LP’s (hereinafter
20 “Defendant”) failure to conduct a reasonable investigation into a Qualified Written
21 Request/Notice of Error, in violation of 12 U.S.C. § 2605(e)(2) and 12 C.F.R. §

1 1024.35(e)(1)(i)(B) of the Real Estate Settlement Procedures Act (“RESPA”); as well
2 as violations of the State of California Military Families Financial Relief Act (Calif.
3 Military and Veteran’s Code §§800-812); and the State of California Rosenthal Act
4 (hereinafter “Rosenthal Act”) (California Civil Code §§1788-1788.32).

5 2. Plaintiffs make the allegations below on information and belief, with the
6 exception of those allegations that pertain to plaintiffs personally, or to plaintiff’s
7 counsel, which Plaintiffs allege on personal knowledge.

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

10 4. Defendant is a business entity incorporated in the State of Delaware, but
11 purposely avails itself of business opportunities, and conducts business within, the State
12 of California and County of Santa Barbara by entering into business contracts to service
13 mortgage loans issued to residents therein. Defendant maintains an agent for service of
14 process at 818 W Seventh St Ste 930, Los Angeles, CA 90017. Therefore, personal
15 jurisdiction is established.

16 5. Because all tortious conduct occurred while Plaintiffs resided in the City of
17 Lompoc, County of Santa Barbara, and witnesses reside therein, venue properly lies in
18 this Court.

19 **JURISDICTION & VENUE**

20 6. This action arises out of Defendants’ violations of the federal RESPA, over
21 which the U.S. District Court has original subject matter jurisdiction pursuant to 28

1 U.S.C. § 1331, 12 U.S.C. § 2614. Jurisdiction arises pursuant to 28 U.S.C. §1367 for
2 supplemental state claims.

3 7. Because Defendant regularly conducts business within the County of Santa
4 Barbara and maintains an agent for service of process within the County of Los
5 Angeles, personal jurisdiction is established.

6 8. Because all tortious conduct pertains to real property located within the
7 County of Santa Barbara, and witnesses are present therein, venue properly lies in this
8 court pursuant to 28 U.S.C. §1391.

9 **PARTIES & DEFINITIONS OF**
10 **CONSUMER RIGHTS LAWS**

11 9. As it pertains to the RESPA, the home mortgage loan subject of the instant
12 matter is a “federally related mortgage loan”, pursuant to 12 U.S.C. § 2602(1), because
13 it is a loan secured by a first or subordinate lien on residential real property designed
14 principally for the occupancy of one family, the proceeds of which are used to prepay or
15 pay off an existing loan secured by the same property; and is made in whole or in part
16 by a “creditor”, as defined in section 1602(f) of title 15, who makes or invests in
17 residential real estate loans aggregating more than \$1,000,000 per year.

18 10. As it pertains to the RESPA, Defendant is a “servicer” of the home
19 mortgage loan subject of this matter, pursuant to 12 U.S.C. § 2605(i)(2), and engages in
20 the act of “servicing” pursuant to 12 U.S.C. § 2605(i)(3), because Defendant is the
21 entity retained by the owner of the subject home mortgage loan to receive scheduled

1 periodic payments from the borrower pursuant to the terms of the loan, including
2 amounts for escrow accounts, and making the payments of principal and interest and
3 such other payments with respect to the amounts received from the borrower.

4 11. Plaintiffs are natural persons whose permanent residence is in the City of
5 Lompoc, County of Santa Barbara, State of California.

6 12. Plaintiffs, as natural persons allegedly obligated to pay a consumer debt to
7 Defendant for a mortgage loan covering their permanent residence, which is alleged to
8 have been due and owing, are therefore both “debtors” as that term is defined by
9 California Civil Code § 1788.2(h) of the Rosenthal Act.

10 13. Defendant alleged that Plaintiffs owed them money and/or repossession of
11 collateral security that they were allegedly collecting for a mortgage loan for a
12 residence in the City of Lompoc, and Plaintiffs are therefore informed and believe that
13 the money alleged to have been owed originated from monetary credit that was
14 extended to Plaintiffs primarily for personal, family, or household purposes, and is
15 therefore a “debt” as that term is defined by Calif. Civil Code § 1788.2(d) of the
16 Rosenthal Act.

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

21 15. Because Plaintiffs, natural persons allegedly obligated to pay money

1 and/or collateral security to Defendant arising from a consumer credit transaction, the
2 money allegedly owed was a “consumer debt” within the meaning of California Civil
3 Code § 1788.2(f) of the Rosenthal Act.

4 16. Plaintiffs are informed and believe that Defendant regularly collects or
5 attempts to collect on behalf of themselves debts owed or due or asserted to be owed or
6 due, and is therefore a “debt collector” within the meaning of Calif. Civil Code §
7 1788.2(c) of the Rosenthal Act, and thereby engages in “debt collection” within the
8 meaning of California Civil Code § 1788.2(b) of the Rosenthal Act, is also therefore a
9 “person” within the meaning of California Civil Code § 1788.2(g) of the Rosenthal Act,
10 and is also a “creditor” under California Civil Code § 1788.2(i).

11 **STATUTORY PROTECTIONS**
12 **OF CALIFORNIA MILITARY SERVICE-MEMBERS**

13 17. Section 800(a)(1)(A) of the Calif. Military and Veterans’ Code reads: “a
14 reservist who is called to active duty may defer payments on any of the following
15 obligations while serving on active duty: (A) An obligation secured by a mortgage or
16 deed of trust.”

17 18. Section 804 of the Calif. Military and Veterans’ Code reads:

18 During the period specified in Section 800, the reservist may defer
19 the payment of principal and interest on the specified obligations.
20 No penalties shall be imposed on the nonpayment of principal or
21 interest during this period. No interest shall be charged or
accumulated on the principal or interest on which the payment
was delayed. No foreclosure or repossession of property on which
payment has been deferred shall take place during the period

1 specified in Section 800.

2 19. Section 811(a) of the Calif. Military and Veterans' Code reads:

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

7 20. Violations of these protections as codified by the Calif. Military and
8 Veterans' Code are enforceable by Section 812 as follows:

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

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

16 FACTUAL ALLEGATIONS

17 21. Plaintiffs ERIC and SARAH SMALL are a married couple.

18 22. Plaintiffs own a residence located within the City of Lompoc, which is the
19 collateral for a home mortgage loan agreement that is now serviced by Defendant.

20 23. The home mortgage loan requires Plaintiffs to owe a debt for the purchase
21 amount in addition to interest.

22 24. The home mortgage loan obligation was incurred by Plaintiffs at some
23 point prior to June 13, 2018.

24 25. Effective July 3, 2018, Defendant took over obligations of servicing of the

1 home mortgage loan, which obligations include collecting of payments from Plaintiffs
2 and contacting Plaintiffs for any and all issues related to payments and status of the
3 loan.

4 26. Plaintiff ERIC is a Technical Sergeant in the California Air Force National
5 Guard.

6 27. Plaintiffs' home mortgage loan is gauranteed by the VA.

7 28. In June of 2018, Plaintiff ERIC received orders dated June 13, 2018 to be
8 called to active duty under Title IX (10 U.S.C. § 12302 and AFI 10-402) and to be
9 deployed from July 20, 2018 to March 19, 2019.

10 29. By phone call on or about September 7, 2018, Defendant falsely informed
11 Plaintiff SARAHA that the Veterans' Administration ("VA") is the owner of the account
12 and that any request for deferment during ERIC's deployment must go through the VA.

13 30. However, Plaintiff SARAHA then spoke to the VA, who informed her that
14 such a claim is false, that the VA is only a guarantor of the account, that the VA is not
15 the owner of the account, and that no deferment request should be sent to the VA
16 because it would have no effect and not trigger any rights of the Plaintiffs to such
17 deferment during ERIC's deployment.

18 31. Thereafter, by letter dated September 13, 2018, Plaintiff ERIC signed
19 under penalty of perjury, and delivered to Defendant, a letter that informed Defendant
20 of his recent order to active duty and deployment and requested to defer payments
21 under the laws applicable to active duty service-members.

1 32. ERIC included with the letter a copy of his deployment orders.

2 33. Plaintiff ERIC's September 13th letter specifically informed Defendant that
3 he and Plaintiff SARAH are entitled to such protections pursuant to Calif. Military &
4 Veteran's Code § 800.

5 34. Defendant received this deferment request with a copy of the orders on
6 October 1, 2018.

7 35. Therefore, pursuant to the Calif. Military and Veterans' Code, Plaintiffs
8 are both entitled to a 180 deferment of the principal and interest.

9 36. Plaintiff SARAH is entitled to the same deferment protections to which
10 Plaintiff ERIC is entitled, as she is ERIC'S spouse, pursuant to Calif. Military &
11 Veteran's Code § 811.

12 37. Also on September 13, 2018, Plaintiff SARAH made a payment upon the
13 account in full to bring the entire account current.

14 38. Plaintiff SARAH made the September 13th payment over the phone, during
15 which conversation Defendant specifically told Plaintiff SARAH what the exact amount
16 was required in order for Defendant to consider the account current and specifically
17 confirmed with SARAH that the payment of September 13th would bring the account
18 current.

19 39. Despite the September 13th payment, and despite the deferment rights to
20 which Plaintiffs are entitled by statute, Defendant has persisted to continue claiming
21 Plaintiffs are in default of their loan.

1 40. By way of example, Defendant has prohibited Plaintiffs from logging in to
2 their account online, with Plaintiffs being blocked from accessing their account to make
3 the escrow payments.

4 41. On October 1st, Plaintiffs were deprived from accessing the account and
5 received a pop-up warning falsely claiming that the account is past due by over 61 days.

6 42. On October 12th, Plaintiffs were deprived from accessing the account and
7 received a pop-up warning falsely claiming that the account is past due by over 72 days.

8 43. On October 31st, Plaintiffs were deprived from accessing the account and
9 received a pop-up warning falsely claiming that the account is past due by over 91 days.

10 44. The fact that Defendant is counting every consecutive day in its claim that
11 Plaintiffs are past due confirms that Defendant is failing to actually honor the claimed
12 deferment and failing to accept Plaintiffs' September 13th payment.

13 45. Furthermore, Defendant delivered to Plaintiffs written correspondence
14 dated September 19, 2018 and October 19, 2018 that specifically claims that Plaintiffs
15 had not made the required payments for the months of August 2018 and September
16 2018, which is undeniably false because Plaintiff SARAH did make the required
17 payments for those months, as instructed by Defendant, via telephone call September
18 13, 2018.

19 46. Also by letters dated August 31, 2018 and October 19, 2018, Defendant
20 falsely claimed to the insurance carrier for the residence—USAA—that Plaintiffs had
21 vacated the property as of August 31, 2018.

1 47. However, such claims that the property was vacant as of August 31, 2018
2 is, and was, undeniably false.

3 48. USAA contacted Plaintiffs to inform them of such claims of vacancy,
4 which required Plaintiffs to submit proof to USAA that they had not, in fact, vacated
5 the property in order to prevent USAA from cancelling the insurance policy.

6 49. Moreover, Plaintiff SARAH has had multiple telephone conversations with
7 Defendant's agents, where each call results in Defendant's agents always falsely
8 claiming that Plaintiffs are in default for multiple months of full payment of principal
9 and interest.

10 50. Moreover, Plaintiff SARAH made the escrow payments for the months of
11 October and November via check.

12 51. However, Defendant has failed to honor these payments and has persisted
13 in claiming that Plaintiffs have not made any payments at all for the months of October
14 and November.

15 52. Plaintiffs also delivered a qualified written request/notice of errors
16 ("QWR") to Defendant dated September 20, 2018.

17 53. Plaintiffs delivered this QWR/notice of errors to the address provided by
18 Defendant as being the appropriate address for delivery of such communications.

19 54. Plaintiffs' QWR/notice of errors specifically requested a written
20 explanation as to the following:
21

1 1) Why did Selene Financial send a letter to USAA dated
2 September 4, 2018 that claims our property had been vacated as of
3 August 31, 2018? Such a claim is undeniably false. Please explain this
4 mistake and please send a letter to USAA that corrects this mistake by
5 informing them this letter was false and should not have been sent.
6 Please also send us a “CC” of all letters you send to USAA.

7 2) Why did Selene Financial reject our request for deferment
8 under the California Military Family Financial Relief Act? Eric Small
9 is now deployed under Title IX. We are entitled to deferment pursuant
10 to California Military and Veteran’s Code Section 800. Please explain
11 in writing why we have been told that we do not qualify for deferment.

12 3) Why did Selene Financial tell Sarah during a phone call that
13 the VA owns the loan and that any deferment request has to go to the
14 VA? Sarah spoke to the VA on September 7, 2018 and during that
15 phone call Sarah was specifically told by the VA that the VA does not
16 own the loan and that it was wrong for Selene Financial to instruct us to
17 send the deferment request to the VA. Please explain in writing why we
18 were falsely told that the deferment request must be sent to the VA and
19 please explain in writing why Selene Financial claimed the VA owns
20 our loan.

21 55. Defendant received Plaintiffs’ QWR/Notice of errors on September 24,
2018.

56. Defendant’s 30th business day to conduct a reasonable investigation into
Plaintiffs’ QWR/notice of errors and to provide a written response to Plaintiffs’ queries
expired on November 6, 2018.

57. Defendant did not provide any response to Plaintiffs’ request or notice of
errors at all on or before November 6, 2018.

58. Defendant did not inform Plaintiffs on or before November 6, 2018 that it
would require any extension of time to conduct its required investigation and to provide

1 its required response.

2 59. Defendant failed to conduct a reasonable investigation into Plaintiffs'
3 QWR/notice of errors.

4 60. Defendant's mistreatment and improper handling of the account, as
5 explained above, has caused Plaintiffs to suffer emotional distress and mental anguish
6 over the thought that the home might be unlawfully and illegally foreclosed upon
7 during Plaintiff ERIC's deployment, such as loss of sleep, anxiety, worry, fear, shame,
8 embarrassment, headaches, sweatiness, clamminess, increased heart rate, and shaking.

9 61. Defendants have also caused Plaintiffs to fear that the VA might withdraw
10 its guarantee of the home mortgage loan and refuse to provide them any mortgage loan
11 guarantee in the future as a result of Defendant falsely claiming they are in default and
12 falsely claiming that they have vacated the property.

13 62. The emotional distress suffered by Plaintiffs has resulted in physical
14 manifestations such as headaches, increased heart rate, tears welling within the eyes,
15 loss of focus on tasks at hand, loss of sleep, fatigue, and drowsiness, among others.

16 **FIRST CAUSE OF ACTION**
17 **(ON BEHALF OF BOTH PLAINTIFFS)**
18 **FEDERAL REAL ESTATEMENT SETTLEMENT PROCEDURES ACT**
19 **12 U.S.C. § 2605(e)(2) and 12 C.F.R. § 1024.35(e)(1)(i)(B)**

20 63. Plaintiffs repeat, re-allege, and incorporate by reference all other
21 paragraphs, as if fully set forth herein.

22 64. Pursuant to 12 U.S.C. § 2605(e)(2) and 12 C.F.R. § 1024.35(e)(1)(i)(B),

1 Defendant was obligated to conduct a reasonable investigation in response to Plaintiff's
2 QWR/notice of error communication and provide a written response within 30 business
3 days.

4 65. Defendant failed to conduct a reasonable investigation as required by the
5 RESPA and failed to provide a written response to Plaintiffs' queries as required by the
6 RESPA.

7 66. Plaintiffs have been damaged by way of mental anguish and emotional
8 distress such as anger, nervousness, anxiety, embarrassment, loss of sleep, and feelings
9 of distraught and hopelessness over the fact that not even statutory protections that
10 Defendant is required to follow can protect them from Defendant's oppressiveness and
11 abuse.

12 67. The emotional distress suffered by Plaintiff has resulted in physical
13 manifestations such as headaches, increased heart rate, tears welling in her eyes, loss of
14 focus on tasks at hand, loss of sleep, fatigue, and drowsiness, among others.

15 **SECOND CAUSE OF ACTION**
16 **(ON BEHALF OF BOTH PLAINTIFFS)**
17 **CALIF. MILITARY FAMILIES FINANCIAL RELIEF ACT**
18 **CALIF. MILITARY & VETS.' CODE §§ 800-812**

19 68. Plaintiffs repeat, re-allege, and incorporate by reference all other
20 paragraphs, as if fully set forth herein.

21 69. Plaintiffs had invoked protection under this Act by sending the required
written notice, under penalty of perjury, that included a copy of Plaintiff ERIC's

1 deployment orders, as required by Calif. Military & Vets.’ Code §800(b).

2 70. Pursuant to Calif. Military & Vets.’ Code §811, these rights also protect
3 Plaintiff SARAH as the spouse of Plaintiff ERIC.

4 71. As a result of its conduct described above, Defendant has violated Calif.
5 Military & Vets.’ Code §§ 800 & 804 in several ways.

6 72. Plaintiffs have been damaged by way of mental anguish and emotional
7 distress such as anger, nervousness, anxiety, embarrassment, loss of sleep, and feelings
8 of distraught and hopelessness over the fact that not even statutory protections that
9 Defendant is required to follow can protect them from Defendant’s oppressiveness and
10 abuse.

11 73. The emotional distress suffered by Plaintiff has resulted in physical
12 manifestations such as headaches, increased heart rate, tears welling in her eyes, loss of
13 focus on tasks at hand, loss of sleep, fatigue, and drowsiness, among others.

14 74. Plaintiffs are further informed and believe that the aforesaid conduct was
15 malicious and oppressive, as those terms are defined by California Civil Code sections
16 3294(c)(1) and 3294(c)(2), entitling Plaintiffs to punitive damages.

17 **THIRD CAUSE OF ACTION**
18 **(ON BEHALF OF BOTH PLAINTIFFS)**
19 **CALIF. ROSENTHAL ACT**
20 **CALIF. CIV. CODE §§ 1788-1788.32**

21 75. Plaintiffs repeat, re-allege, and incorporate by reference all other
paragraphs, as if fully set forth herein.

1 76. At all times during the aforementioned actions, there was in full force and
2 effect the following obligation for a debt collector in connection with the collection of
3 any debt, pertaining to pursuant to California Civil Code § 1788.17 of the Rosenthal
4 Act, requiring all debt collectors to be responsible for and liable for all requirements
5 contained with the Federal FDCPA, exceptions of which are not applicable:

6 Notwithstanding any other provision of this title, every debt
7 collector collecting or attempting to collect a consumer debt
8 shall comply with the provisions of Sections 1692b to 1692j,
9 inclusive, of, and shall be subject to the remedies in Section
10 1692k of, Title 15 of the United States Code. However,
11 subsection (11) of Section 1692e and Section 1692g shall not
12 apply to any person specified in paragraphs (A) and (B) of
13 subsection (6) of Section 1692a of Title 15 of the United States
14 Code or that person's principal. The references to federal codes
15 in this section refer to those codes as they read January 1, 2001.

16 77. As explained in the definitions section, above, Defendant is bound to
17 comply with the Rosenthal Act, because it is a debt collector attempting to collect a
18 consumer debt arising from a consumer credit transaction.

19 78. By refusing to honor Plaintiffs' rights under the California Military
20 Families Financial Relief Act, by falsely claiming on multiple occasions that the
21 account is delinquent and in past due status, and by falsely claiming that Plaintiffs had
vacated the home, Defendant has engaged in harassing, oppressive, and abusive conduct
in violation of 15 U.S.C. § 1692d of the Federal FDCPA, and engaged in unfair and
unconscionable means in an attempt to collect a debt in violation of 15 U.S.C. § 1692f
of the Federal FDCPA. Both of these violations of the FDCPA are incorporated into
the Rosenthal Act via Calif. Civil Code § 1788.17. This conduct also violates Calif.

1 Civil Code §§1788.11(d)-(e) of the Rosenthal Act.

2 79. By refusing to honor Plaintiffs' rights under the California Military
3 Families Financial Relief Act, by falsely claiming on multiple occasions that the
4 account is delinquent and in past due status, and by falsely claiming that Plaintiffs had
5 vacated the home, Defendant has uttered false, deceptive, and misleading
6 representations in connection with their attempt to collect a debt in violation of 15
7 U.S.C. § 1692e of the Federal FDCPA; and engaged in unfair and unconscionable
8 means in an attempt to collect a debt in violation of 15 U.S.C. § 1692f of the Federal
9 FDCPA. Each of these violations of the FDCPA are incorporated into the Rosenthal
10 Act via Calif. Civil Code § 1788.17.

11 80. As a result of these violations, Plaintiffs suffered mental anguish and
12 distress as described in the factual allegations above.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray that judgment be entered against Defendant, and
15 Plaintiffs individually be awarded damages as follows:

16 1. An award of actual damages in the amount of \$75,000.00, as will be
17 proven at trial;

18 2. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §
19 1788.30(b) for all willful and knowing violations, which is cumulative and in addition
20 to all other remedies pursuant to California Civil Code § 1788.32;

21 3. An additional award of statutory damages of \$1,000.00 pursuant to 15

1 U.S.C. § 1692k(a)(2)(A), as incorporated into the Rosenthal Act via Calif. Civ. Code
2 §1788.17, which is cumulative and in addition to all other remedies pursuant to
3 California Civil Code § 1788.32;

4 4. An award of costs of litigation and reasonable attorney’s fees;

5 5. Punitive damages to be determined at trial, for the sake of example and
6 punishing Defendant for their malicious conduct with the intent to harm Plaintiff
7 personally, pursuant to Calif. Civ. Code § 3294(a), (c)(1);

8 6. Such further relief as this Court may deem just and proper.

9
10 **TRIAL BY JURY**

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

13 DATED: 11-10-18

SEMNR & HARTMAN, LLP

14 *Jared M. Hartman*
15 _____
16 JARED M. HARTMAN, Esq.
17 Attorney for Plaintiffs
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