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7 **SUPERIOR COURT FOR THE**
8 **COUNTY OF SAN BERNARDINO, SANTA MARIA COOK DIVISION**

9 DANIEL FREEDMAN, an individual,
10 AMY FREEDMAN, an individual

11 PLAINTIFFS,

12 vs.

13 FREEDOM MORTGAGE CORPORATION;
14 DOES 1 through 25, inclusive,

15 DEFENDANTS.

Case No.: 19CV04487

CIVIL UNLIMITED JURISDICTION

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

1. CALIFORNIA MILITARY
FAMILIES FINANCIAL RELIEF
ACT;
2. CALIFORNIA ROSENTHAL ACT;
3. CALIFORNIA CONSUMER
CREDIT REPORTING AGENCIES
ACT;
4. BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING;
5. NEGLIGENCE;
6. INTENTIONAL
MISREPRESENTATIONS;
7. PROMISSORY ESTOPPEL

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

23 Plaintiffs, DANIEL FREEDMAN and AMY FREEDMAN (hereinafter, "PLAINTIFFS"),
24 both individuals, by and through their attorneys of record, hereby complains and alleges in this
Complaint as follows:

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1
2 **INTRODUCTION**

3 1. This action arises out of DEFENDANT FREEDOM MORTGAGE
4 CORPORATION'S (hereinafter "DEFENDANT") violations of the State of California Military
5 Families Financial Relief Act (Calif. Military and Veteran's Code §§ 800-812); the State of
6 California Rosenthal Act (hereinafter "Rosenthal Act") (Calif. Civil Code §§1788-1788.32); and
7 the State of California Consumer Credit Reporting Agencies Act (hereinafter "CCCRAA") (Calif.
8 Civ. Code §§ 1785.25-1785.36); and common law causes of action.

9 2. PLAINTIFFS make the allegations below on information and belief, with the
10 exception of those allegations that pertain to PLAINTIFFS personally, or to PLAINTIFFS'
11 counsel, which PLAINTIFFS allege on personal knowledge.

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

14 4. DEFENDANT is a business entity incorporated in the State of New Jersey, but
15 regularly does business within the State of California, County of Santa Barbara, and maintains an
16 agent for service of process within the State of California at CT Corporation System, 818 W
17 Seventh St Ste 930, Los Angeles, CA 90017. Therefore, personal jurisdiction is established.

18 5. Because all tortious conduct occurred while PLAINTIFFS resided in the City of
19 Buellton, County of Santa Barbara, and the actions taken by DEFENDANT that give rise to this
20 lawsuit pertain to a home mortgage loan for real property located within the City of Buellton,
21 County of Santa Barbara, and witnesses are located within the City of Buellton, County of Santa
22 Barbara, venue properly lies in this Court.

23 ///

24 ///

1 **PARTIES & DEFINITIONS OF**
2 **CONSUMER RIGHTS LAWS**

3 6. PLAINTIFFS are both natural persons whose permanent residence is in the City
4 of Buellton, County of Santa Barbara.

5 7. PLAINTIFFS, as natural persons allegedly obligated to pay a consumer debt to
6 DEFENDANT for a mortgage loan, alleged to have been due and owing, are therefore each a
7 “debtor” as that term is defined by California Civil Code § 1788.2(h) of the Rosenthal Act.

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

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

18 10. Because PLAINTIFFS, natural persons allegedly obligated to pay money and/or
19 collateral security to DEFENDANT arising from a consumer credit transaction, the money
20 allegedly owed was a “consumer debt” within the meaning of California Civil Code § 1788.2(f)
21 of the Rosenthal Act.

22 11. PLAINTIFFS are informed and believes that DEFENDANT regularly collects or
23 attempts to collect on behalf of themselves debts owed or due or asserted to be owed or due, and
24 is therefore a “debt collector” within the meaning of Calif. Civil Code § 1788.2(c) of the

1 Rosenthal Act, and thereby engages in “debt collection” within the meaning of California Civil
2 Code § 1788.2(b) of the Rosenthal Act, is also therefore a “person” within the meaning of
3 California Civil Code § 1788.2(g) of the Rosenthal Act, and is also a “creditor” under California
4 Civil Code § 1788.2(i).

5 12. In so far as this matter pertains to PLAINTIFFS’ credit reports, each PLAINTIFF
6 is a natural person and is therefore a “consumer” as that term is defined by Calif. Civ. Code §
7 1785.3(b) of the CCCRAA.

8 13. This matter pertains to PLAINTIFFS’ “consumer credit reports”, as that term is
9 defined by Calif. Civ. Code § 1785.3(c) of the CCCRAA, in that inaccurate misrepresentations
10 of PLAINTIFFS’ credit worthiness, credit standing, and credit capacity were made via written,
11 oral, or other communication of information by a consumer credit reporting agency, which is used
12 or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in
13 establishing Plaintiff’s eligibility for, among other things, credit to be used primarily for personal,
14 family, or household purposes, and employment purposes.

15 14. As far as this matter pertains to the CCCRAA, DEFENDANT is a partnership,
16 corporation, association, or other entity, and is therefore a “person” as that term is defined by
17 Calif. Civ. Code § 1785.3(j) of the CCCRA.

18 **STATUTORY PROTECTIONS**
19 **OF CALIFORNIA MILITARY RESERVIST SERVICE-MEMBERS**

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

23 16. Pursuant to Section 800(e), the term of the credit obligation is required to be
24 extended as follows: “If a lender defers payments on a closed end credit obligation or an open-

1 end credit obligation with a maturity date, pursuant to this chapter, the lender shall extend the
2 term of the obligation by the amount of months the obligation was deferred.”

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

4 During the period specified in Section 800, the reservist may defer the
5 payment of principal and interest on the specified obligations. No
6 penalties shall be imposed on the nonpayment of principal or interest
7 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 specified in Section 800.

8 18. Section 805 of the Calif. Military and Veterans’ Code reads:

9 Subject to subdivisions (e) and (f) of Section 800, a stay, postponement, or
10 suspension under this chapter of the payment of any tax, fine, penalty,
11 insurance premium, or other civil obligation or liability of a person in military
service shall not provide the basis for affecting credit ratings, denial or
revocation of credit, or a change by the lender in the terms of an existing credit
arrangement.

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

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

16 20. Violations of these protections as codified by the Calif. Military and Veterans’

17 Code are enforceable by Section 812 as follows:

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

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

22 **FACTUAL ALLEGATIONS**

23 21. PLAINTIFF AMY FREEDMAN is the spouse of PLAINTIFF DANIEL
24 FREEDMAN.

1 22. At some point prior to December 1, 2018, PLAINTIFFS incurred a home mortgage
2 loan obligation with DEFENDANT as the lender.

3 23. PLAINTIFF DANIEL FREEDMAN is a military reservist member of the
4 California Air Force National Guard.

5 24. By orders dated October 17, 2018, PLAINTIFF DANIEL FREEDMAN received
6 orders pursuant to 10 U.S.C. § 12302 to report to active duty effective January 3, 2019 and be
7 deployed through September 23, 2019.

8 25. Upon receiving the October 2018 deployment orders, PLAINTIFF DANIEL
9 FREEDMAN delivered to DEFENDANT a written request that specifically requested a
10 deferment of the home mortgage loan obligation pursuant to the Calif. Military & Veterans' Code.

11 26. PLAINTIFF DANIEL FREEDMAN enclosed a copy of the deployment orders
12 with the deferment request letter.

13 27. Pursuant to Sections 800 and 811 of the Calif. Military and Veterans' Code,
14 PLAINTIFFS therefore were both entitled to a 180 deferment of the principal and interest.

15 28. In December of 2018, DEFENDANT rejected PLAINTIFF DANIEL
16 FREEDMAN'S request for deferment.

17 29. Thereafter, PLAINTIFF DANIEL FREEDMAN sent a written request that
18 specifically requested a deferment of the home mortgage loan obligation pursuant to the Calif.
19 Military & Veterans' Code and again enclosed a copy of the deployment orders with the
20 deferment request letter.

21 30. The deferment is required to be applied to principal and interest, with
22 PLAINTIFFS only being required to pay each month their escrow amount of approximately
23 \$528.19 for taxes and insurance.

24 31. DEFENDANT then accepted the deferment request and by letter dated January 9,

1 2019 informed PLAINTIFFS that their payment obligations would be deferred pursuant to the
2 Calif. Military & Veterans' Code and the letter specifically stated, "you are not required to make
3 any principal and interest payment during the terms of the California Military Deferment Plan".

4 32. The deferment was therefore required of the principal and interest for a period of
5 180 days from January 1, 2019, which means the deferment period was set to expire on June 30,
6 2019, making the regular monthly payments due again as of July 1, 2019.

7 33. PLAINTIFFS have since made every escrow payment each month as required for
8 taxes and insurance.

9 34. However, despite the requirement of DEFENDANT pursuant to Section 800(e) to
10 extend the loan by the amount of the months deferred so that the monthly payments of principal
11 and interest can be deferred, DEFENDANT has instead persisted in sending written
12 communications every single month falsely claiming that PLAINTIFFS owe a grossly exorbitant
13 amount each month by the first of the subsequent month and only reducing the amount falsely
14 claimed to be owed by the amount of each monthly escrow payment.

15 35. In January 2019, DEFENDANT sent written communication falsely claiming that
16 PLAINTIFFS still owe their regular monthly payment of \$2,877.51 by February 1, 2019, which
17 is false because the regular monthly payment was required to be placed in deferment.

18 36. Each month thereafter, DEFENDANT has persisted in falsely claiming that
19 PLAINTIFFS owe monies that they do not owe by the first of each month

20 37. In February of 2019, DEFENDANT falsely claimed in one area of its written
21 communication that PLAINTIFFS owed \$15,177.30 by March 1, 2019, but then on the very same
22 communication falsely claimed that PLAINTIFFS owed \$15,219.08 by March 1, 2019.

23 38. In March of 2019, DEFENDANT falsely claimed in one area of its written
24 communication that PLAINTIFFS owed \$14,624.11 by April 1, 2019, but then on the very same

1 communication falsely claimed that PLAINTIFFS owed \$14,665.89 by April 1, 2019.

2 39. In April of 2019, DEFENDANT falsely claimed in one area of its written
3 communication that PLAINTIFFS owed \$14,095.92 by May 1, 2019, but then on the very same
4 communication falsely claimed that PLAINTIFFS owed \$14,179.48 by May 1, 2019.

5 40. In May of 2019, DEFENDANT falsely claimed in all areas of its written
6 communication that PLAINTIFFS owed \$14,095.92 by June 1, 2019.

7 41. In June of 2019, DEFENDANT falsely claimed in all areas of its written
8 communication that PLAINTIFFS owed \$15,123.39 by July 1, 2019.

9 42. In July of 2019, DEFENDANT then falsely claimed in one area of its written
10 communication that PLAINTIFFS owed \$18,289.32 by August 1, 2019, but then on the very same
11 communication falsely claimed that PLAINTIFFS owed \$19,325.24 by August 1, 2019.

12 43. The written communication in July 2019 now also started falsely claiming that the
13 amount of \$15,395.26 is now overdue and started applying late fees.

14 44. Moreover, by separate written communication dated July 10, 2019, DEFENDANT
15 falsely claimed that PLAINTIFFS are 159 days delinquent and threatened foreclosure if
16 PLAINTIFFS do not pay \$18,289.32 by August 1, 2019, and also breaks down the false claim
17 that PLAINTIFFS missed their regular monthly payments for each of the months of January,
18 February, March, April, May, and June of 2019.

19 45. Each of the amounts claimed by DEFENDANT in each of the written
20 communications above is absolutely and unequivocally false, because the mandates of the
21 deferment statute required the principal and interest to be deferred and not owed during the
22 months of the deferment.

23 46. DEFENDANT'S act of requiring PLAINTIFFS to owe the false amount claimed
24 above effectively operated as a penalty against PLAINTIFFS for requesting and obtaining the

1 deferment.

2 47. DEFENDANT'S act of threatening foreclosure in July of 2019 if PLAINTIFFS
3 do not pay \$18,289.32 by August 1, 2019 effectively operated as a penalty against PLAINTIFFS
4 for requesting and obtaining the deferment and amounts to threats to take repossession action that
5 cannot legally be taken since the claimed amount in default is false and PLAINTIFFS are actually
6 not in default by that amount and are not delinquent by 159 days.

7 48. Also, upon PLAINTIFF DANIEL FREEDMAN'S return from deployment,
8 PLAINTIFFS attempted to buy a new home so that they could sell the home subject of
9 DEFENDANT'S mortgage in order to get rid of DEFENDANT and its abusive tactics.

10 49. At some point in August of 2019, PLAINTIFFS were informed by their loan
11 officer that their application to purchase a new home could not move forward exclusively because
12 DEFENDANT was reporting that, as of May 31, 2019, PLAINTIFFS were already more than 180
13 days late on their mortgage loan obligation and that they are past due in an amount in excess of
14 \$28,000.00.

15 50. By claiming as of May 31, 2019 that PLAINTIFFS were more than 180 days past
16 due, this means DEFENDANT is submitting false credit reporting that PLAINTIFFS were
17 obligated to owe payments during the deferment period that they legally and contractually did not
18 owe.

19 51. By claiming as of May 31, 2019 that PLAINTIFFS were past due in an amount in
20 excess of \$28,000.00 means DEFENDANT also submitted false credit reporting that
21 PLAINTIFFS were obligated to owe payments that they legally and contractually did not owe
22 during the deferment period.

23 52. However, it is expressly prohibited for DEFENDANT to submit negative credit
24 reporting during the period of deferment, pursuant to Section 805.

1 53. Furthermore, DEFENDANT’S act of credit reporting that PLAINTIFFS are past
2 due in an amount in excess of \$28,000.00 is more than \$10,000.00 higher than the amount that
3 DEFENDANT is claiming is owed in its written communications to PLAINTIFFS, which means
4 even the amount that DEFENDANT reported is past due is grossly exaggerated and false.

5 54. When PLAINTIFFS attempted to discuss this situation with DEFENDANT and
6 requested that DEFENDANT remove the negative reporting, DEFENDANT claimed that this is
7 how they handle such deferments for their accounting purposes.

8 55. The fact that DEFENDANT claims to know of its obligations under the law but
9 persists in sending written communications to both PLAINTIFFS and the consumer credit
10 reporting agencies that contains unequivocally false information shows that DEFENDANT’S
11 violations are willful, as they are done knowingly in violation of the law and are done with the
12 intent to cause harm and injury to PLAINTIFFS.

13 56. Upon information and belief, DEFENDANT’S acts of sending written
14 communications to both PLAINTIFFS and the consumer credit reporting agencies that contains
15 unequivocally false information was done with malice with the specific intent to cause harm and
16 to punish PLAINTIFFS for requesting a deferment.

17 57. Moreover, DEFENDANT’S communications falsely claiming that PLAINTIFFS
18 owe amounts each month that they do not owe means DEFENDANT has uttered false
19 representations as to the status of the account and that DEFENDANT has been attempting to
20 collect monies in violation of California statute, which means DEFENDANT is attempting to
21 collect monies that PLAINTIFFS are not and were not obligated to owe either legally or
22 contractually.

23 58. Moreover, on or about August 20, 2019, DEFENDANT informed PLAINTIFFS
24 that they are required to agree to and execute a loan modification agreement in order to correct

1 the false negative credit reporting and to bring the account current.

2 59. However, PLAINTIFFS are absolutely not obligated to agree to and execute a loan
3 modification agreement because DEFENDANT was instead the party obligated to provide
4 deferment relief and protections to PLAINTIFFS by way of extending the life of the loan by the
5 amount of months of deferment and instead allowing them to simply return to their regular
6 monthly payments upon expiration of the deferment period.

7 60. Consequently, DEFENDANT'S attempt to trick PLAINTIFFS into submitting to
8 a loan modification agreement is clearly and attempt by DEFENDANT to sweep its own
9 violations "under the rug" and thereby deceive and trick PLAINTIFFS into foregoing any ability
10 to pursue such violations against DEFENDANT.

11 61. DEFENDANT'S mistreatment and improper handling of the account has caused
12 PLAINTIFFS to suffer emotional distress and mental anguish over the thought that the home
13 might be unlawfully and illegally foreclosed upon, such as loss of sleep, anxiety, worry, fear,
14 shame, embarrassment, headaches, sweatiness, clamminess, increased heart rate, and shaking.

15 62. PLAINTIFFS have also suffered fear, concern, anxiety, and worry that the VA
16 might withdraw its guarantee of the home mortgage loan and refuse to provide PLAINTIFFS with
17 any other home mortgage loan guarantee in the future as a result of DEFENDANT falsely
18 claiming that PLAINTIFFS are in default.

19 63. Furthermore, PLAINTIFFS have also suffered financial and economic injury by
20 way of being denied in their application for a new home loan and by having to suffer a significant
21 reduction in their credit scores.

22 64. If PLAINTIFFS are able to eventually proceed with a new home loan application,
23 then they will have suffered damages by way of significant delay causing them to have to pay
24 higher interest rates and higher monthly payments, and it remains to be seen whether

1 PLAINTIFFS will even be able to be granted any such application.

2 65. PLAINTIFFS have also suffered significant damages to their reputations and
3 standing as creditworthy consumers and have suffered damage to their ability to obtain credit and
4 to also obtain favorable credit terms.

5 **FIRST CAUSE OF ACTION**
6 **CALIF. MILITARY FAMILIES FINANCIAL RELIEF ACT**
7 **CALIF. MILITARY & VETS.' CODE §§ 800-812**
8 **(BY AND ON BEHALF OF ALL PLAINTIFFS)**

9 66. PLAINTIFFS repeat, re-allege, and incorporate by reference all other paragraphs,
10 as if fully set forth herein.

11 67. PLAINTIFFS had invoked protection under this Act by sending the required
12 written notice, under penalty of perjury, that included a copy of deployment orders.

13 68. Pursuant to Calif. Military & Vets.' Code § 811, these rights also protect
14 PLAINTIFF AMY as the spouse of PLAINTIFF DANIEL as the deployed servicemember.

15 69. By falsely claiming on multiple occasions that PLAINTIFFS are in default upon
16 the account and that PLAINTIFFS owe false amounts of principal and interest, and by informing
17 the consumer credit reporting agencies of the same false information, DEFENDANT has violated
18 Calif. Military & Vets.' Code §§ 800 & 804 in several ways.

19 70. As a result of these violations, PLAINTIFFS have suffered actual damages by way
20 of mental anguish and distress as described in the factual allegations above.

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

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1 are necessarily violations of the Rosenthal FDCPA via Calif. Civ. Code 1788.17:

- 2 a. 15 U.S.C. §1692d by engaging in conduct the natural consequence of which is to
3 oppress PLAINTIFFS in connection with the collection of a debt,
- 4 b. 15 U.S.C. §1692e by using false, deceptive, and misleading representations in
5 connection with the collection of a debt, b
- 6 c. 15 U.S.C. §1692e(2)(A) by falsely representing the character, amount, and legal
7 status of the debt,
- 8 d. 15 U.S.C. §1692e(10) by using false representations and deceptive means to
9 attempt to collect a debt,
- 10 e. 15 U.S.C. §1692f by using unfair and unconscionable means to attempt to collect a
11 debt,
- 12 f. 15 U.S.C. §1692f(1) by collecting an amount not authorized by agreement or by
13 law.

14 76. By furnishing false and misleading information to the consumer credit reporting
15 agencies that PLAINTIFFS were more than 180 days past due in the amount of more than
16 \$28,000.00, which is also more than what DEFENDANT even claimed to PLAINTIFFS directly
17 that they owed, DEFENDANT has engaged in multiple on-going violations of the Federal FDCA
18 as follows, all of which are necessarily violations of the Rosenthal FDCPA via Calif. Civ. Code
19 1788.17:

- 20 a. 15 U.S.C. §1692e(8), by furnishing credit reporting information to the consumer
21 credit reporting agencies that DEFENDANT knew or should know is false,
- 22 g. 15 U.S.C. §1692d by engaging in conduct the natural consequence of which is to
23 oppress PLAINTIFFS in connection with the collection of a debt,
- 24 h. 15 U.S.C. §1692e by using false, deceptive, and misleading representations in

1 connection with the collection of a debt,

2 i. 15 U.S.C. §1692e(2)(A) by falsely representing the character, amount, and legal
3 status of the debt,

4 j. 15 U.S.C. §1692e(10) by using false representations and deceptive means to
5 attempt to collect a debt,

6 k. 15 U.S.C. §1692f by using unfair and unconscionable means to attempt to collect a
7 debt,

8 l. 15 U.S.C. §1692f(1) by collecting an amount not authorized by agreement or by
9 law.

10 77. The actions taken by DEFENDANT that form the basis of PLAINTIFFS'
11 Rosenthal FDCPA violations in this matter were always done in an attempt to collect money from
12 PLAINTIFFS and were never done to simply enforce the security interest.

13 78. DEFENDANT'S violations of the Rosenthal FDCPA were willful, because
14 DEFENDANT at all times knew, or should have known, that the actions giving rise to such
15 violations were wrongful and in violation of the law, and were also in direct contradiction to its
16 own agreement with PLAINTIFFS that it was granting them the deferment requested under
17 California law.

18 79. DEFENDANT'S violations have caused PLAINTIFFS damages as explained in the
19 factual allegations above.

20 **THIRD CAUSE OF ACTION**
21 **CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT**
22 **Calif. Civ. Code §1785.25**
(BY AND ON BEHALF OF ALL PLAINTIFFS)

23 80. PLAINTIFFS repeat, re-allege, and incorporate by reference the above paragraphs,
24 as if fully set forth herein.

1 as if fully stated herein.

2 88. PLAINTIFFS and DEFENDANT have entered into a written home mortgage loan
3 agreement.

4 89. In every agreement there exists the implied covenant that the parties will act with
5 good faith and fair dealings with each other.

6 90. However, DEFENDANT has breached this covenant by first agreeing with
7 PLAINTIFFS that they would honor the deferment under California law, but then persisting in the
8 following: 1) failing to actually ensure that it had the ability to honor its agreement to provide
9 PLAINTIFFS a deferment under California law; 2) failing to follow through on its requirement
10 and agreement to provide PLAINTIFFS a deferment under California law; 3) attempting to collect
11 monies each month that PLAINTIFFS did not and do not owe; 4) threatening foreclosure if
12 PLAINTIFFS do not pay the inflated amount that they do not owe; and 5) submitting false credit
13 reporting that PLAINTIFFS are in more than 180 days in default in an amount that they do not
14 owe.

15 91. PLAINTIFFS have been damaged as explained in the statement of facts above.

16 **FIFTH CAUSE OF ACTION**
17 **NEGLIGENCE**
(BY AND ON BEHALF OF ALL PLAINTIFFS)

18 92. PLAINTIFFS repeat, re-allege, and incorporate by reference the above paragraphs,
19 as if fully stated herein.

20 93. At all times mentioned herein, DEFENDANT had and owed a duty of reasonable
21 care to PLAINTIFFS in their representations to PLAINTIFFS, to ensure that their representations
22 were accurate and truthful, and also in their fair and accurate reporting of the account as pertaining
23 to PLAINTIFFS' standing as a customer, borrower, and consumer.

24 94. However, DEFENDANT has breached said duty of due care by the following: 1)

1 failing to actually ensure that it had the ability to honor its agreement to provide PLAINTIFFS a
2 deferment under California law; 2) failing to follow through on its requirement and agreement to
3 provide PLAINTIFFS a deferment under California law; 3) attempting to collect monies each
4 month that PLAINTIFFS did not and do not owe; 4) threatening foreclosure if PLAINTIFFS do
5 not pay the inflated amount that they do not owe; and 5) submitting false credit reporting that
6 PLAINTIFFS are in more than 180 days in default in an amount that they do not owe.

7 95. As a proximate result of DEFENDANT'S negligence, PLAINTIFFS have been
8 damaged as explained in detail in the statement of facts above.

9 96. DEFENDANT'S conduct was willful and wanton negligence because
10 DEFENDANT knew that its actions were highly likely to cause harm to PLAINTIFFS, and knew
11 that its conduct was contrary to the agreement for DEFENDANT to provide the deferment under
12 California law, yet DEFENDANT persisted in violating the requirements anyway.

13 97. DEFENDANT'S actions were willful, malicious, fraudulent and oppressive, and
14 were committed with the wrongful intent to injure PLAINTIFFS and in conscious disregard of
15 PLAINTIFFS' rights and DEFENDANT'S obligations, which entitles PLAINTIFFS to exemplary
16 and/or punitive damages in an amount to be proven at trial.

17 **SIXTH CAUSE OF ACTION**
18 **INTENTIONAL MISREPRESENTATIONS**
19 **(BY AND ON BEHALF OF ALL PLAINTIFFS)**

20 98. PLAINTIFFS repeat, re-allege, and incorporate by reference each of the above
21 paragraphs as though set forth fully herein.

22 99. DEFENDANT misrepresented to PLAINTIFFS that it had the ability and the
23 intent to provide PLAINTIFFS with a deferment under California law.

24 100. However, DEFENDANT'S representations were false, as DEFENDANT did not
have either the ability or the intent to provide PLAINTIFFS with a deferment under California

1 law.

2 101. DEFENDANT uttered these statements with the intent to induce PLAINTIFFS'
3 reliance on them.

4 102. PLAINTIFFS justifiably relied on these statements in not paying the principal and
5 interest and only paying the escrow payments for taxes and insurance.

6 103. However, due to the falsity of the representations, PLAINTIFFS have since been
7 forced to endure threats of foreclosure, numerous attempts by DEFENDANT to collect monies
8 that PLAINTIFFS do not owe, and also forced to suffer false and inaccurate negative creditor
9 reporting.

10 104. DEFENDANT knew, or acted with reckless disregard, that its representations
11 were false and knew that PLAINTIFFS were relying on such representations to their detriment.

12 105. As a proximate result of DEFENDANT'S negligence, PLAINTIFFS have been
13 damaged as explained in detail in the statement of facts above.

14 106. DEFENDANT'S conduct was willful and wanton because DEFENDANT knew
15 that its actions were highly likely to cause harm to PLAINTIFFS, and knew that its conduct was
16 contrary to the agreement for DEFENDANT to provide the deferment under California law, yet
17 DEFENDANT persisted in violating the requirements anyway.

18 107. DEFENDANT'S actions were willful, malicious, fraudulent and oppressive, and
19 were committed with the wrongful intent to injure PLAINTIFFS and in conscious disregard of
20 PLAINTIFFS' rights and DEFENDANT'S obligations, which entitles PLAINTIFFS to exemplary
21 and/or punitive damages in an amount to be proven at trial.

22 **SEVENTH CAUSE OF ACTION**
23 **PROMISSORY ESTOPPEL**
(BY AND ON BEHALF OF ALL PLAINTIFFS)

24 108. PLAINTIFFS repeat, re-allege, and incorporate by reference each of the above

1 paragraphs as though set forth fully herein.

2 109. DEFENDANT misrepresented to PLAINTIFFS that it had the ability and the
3 intent to provide PLAINTIFFS with a deferment under California law.

4 110. However, DEFENDANT'S representations were false, as DEFENDANT did not
5 have either the ability or the intent to provide PLAINTIFFS with a deferment under California
6 law.

7 111. DEFENDANT uttered these statements with the intent to induce PLAINTIFFS'
8 reliance on them.

9 112. PLAINTIFFS justifiably relied on these statements in not paying the principal and
10 interest and only paying the escrow payments for taxes and insurance.

11 113. However, due to the falsity of the representations, PLAINTIFFS have since been
12 forced to endure threats of foreclosure, numerous attempts by DEFENDANT to collect monies
13 that PLAINTIFFS do not owe, and also forced to suffer false and inaccurate negative creditor
14 reporting.

15 114. DEFENDANT knew, or acted with reckless disregard, that its representations
16 were false and knew that PLAINTIFFS were relying on such representations to their detriment.

17 115. As a proximate result of DEFENDANT'S negligence, PLAINTIFFS have been
18 damaged as explained in detail in the statement of facts above.

19 116. DEFENDANT'S conduct was willful and wanton because DEFENDANT knew
20 that its actions were highly likely to cause harm to PLAINTIFFS, and knew that its conduct was
21 contrary to the agreement for DEFENDANT to provide the deferment under California law, yet
22 DEFENDANT persisted in violating the requirements anyway.

23 117. DEFENDANT'S actions were willful, malicious, fraudulent and oppressive, and
24 were committed with the wrongful intent to injure PLAINTIFFS and in conscious disregard of

1 PLAINTIFFS' rights and DEFENDANT'S obligations, which entitles PLAINTIFFS to exemplary
2 and/or punitive damages in an amount to be proven at trial.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFFS pray that judgment be entered against DEFENDANT, in
5 favor of each PLAINTIFF individually, and that PLAINTIFFS each be awarded damages as
6 follows:

7 1. Actual damages in the amount of \$250,000.00 for each PLAINTIFF individually,
8 or as the jury may allow, subject to proof at jury trial;

9 2. Punitive damages of \$500,000.00 for each PLAINTIFF individually, pursuant to
10 Cal. Civ. Code § 3294, or as the jury may allow, subject to proof at jury trial;

11 3. Plus punitive damages of \$5,000.00 for each individual willful violation of Calif.
12 Civ. Code § 1785.25(a) pursuant to Calif. Civ. Code § 1785.31(a)(2)(A)-(C), in favor of each
13 PLAINTIFF individually;

14 4. Plus statutory damages of \$1,000.00 for each PLAINTIFF individually pursuant to
15 Calif. Civ. Code §1788.30(b);

16 5. Injunctive relief to order DEFENDANT to delete all negative account history
17 during the months of deferment and to remove the false amount claimed to be in default;

18 6. Injunctive relief to order DEFENDANT to cease its efforts to claim PLAINTIFFS
19 owe in a lump sum any amount that was deferred;

20 7. Injunctive relief to order DEFENDANT to cease its threats of foreclosure;

21 8. Any reasonable attorney's fees and costs to maintain the instant action.

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1 **TRIAL BY JURY**

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

4 DATED: 8-22-19

SEMNR & HARTMAN, LLP

5 *Jared M. Hartman*
6 JARED M. HARTMAN, Esq.
7 Attorneys for Plaintiffs