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**SUPERIOR COURT FOR THE
COUNTY OF LOS ANGELES**

JULIO BERNAL, an individual,
VIBIAN BERNAL, an individual

PLAINTIFFS,

vs.

LAKEVIEW LOAN SERVICING, LLC;
LOANCARE, LLC; DOES 1 through 25,
inclusive,

DEFENDANTS.

Case No.: **21STCV12251**

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. CALIF. CONSUMER CREDIT
REPORTING AGENCIES ACT;**
- 4. NEGLIGENT
MISREPRESENTATIONS;**
- 5. UNFAIR COMPETITION LAWS**

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

Plaintiffs, JULIO BERNAL and VIBIAN BERNAL (hereinafter, "PLAINTIFFS"), both individuals, by and through their attorneys of record, hereby complains and alleges in this Complaint as follows:

INTRODUCTION

1. This action arises out of DEFENDANTS' LAKEVIEW LOAN SERVICING, LLC and LOANCARE, LLC (hereinafter, "LAKEVIEW" and "LOANCARE", respectively;

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1 collectively, “DEFENDANTS”) violations of the State of California Military Families Financial
2 Relief Act (Calif. Military and Veteran’s Code §§ 800-812); the State of California Consumer
3 Credit Reporting Agencies Act (Calif. Civ. Code §§ 1785.25-1785.31); the State of California
4 Rosenthal Act (hereinafter “Rosenthal Act”) (Calif. Civil Code §§1788-1788.32); and common
5 law causes of action.

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

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

11 4. DEFENDANT LAKEVIEW is a business entity that regularly does business
12 within the State of California, County of Los Angeles, and maintains an agent for service of
13 process within the State of California at CT Corporation System, 818 W Seventh St Ste 930, Los
14 Angeles, CA 90017. Therefore, personal jurisdiction is established.

15 5. DEFENDANT LOANCARE is a business entity that regularly does business
16 within the State of California, County of Los Angeles, and maintains an agent for service of
17 process within the State of California at CT Corporation System, 818 W Seventh St Ste 930, Los
18 Angeles, CA 90017. Therefore, personal jurisdiction is established.

19 6. Based on information and belief, DEFENDANTS were acting as the servicers on
20 behalf of, and with the full authority and consent of, the lender(s) of PLAINTIFFS’ home
21 mortgage loan, and as such, DEFENDANTS herein, by and through their conduct and
22 communication, legally bound the lender(s) for each and every allegation as well as each and
23 every claim and cause of action provided herein. The lender(s) will be identified as DOES 1
24 through 25 when the legal names are confirmed by DEFENDANTS in discovery. Accordingly,

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1 each and every allegation against DEFENDANTS is hereby meant to incorporate the lender(s) as
2 DOES 1 through 25 in its entirety.

3 7. Because all tortious conduct occurred while PLAINTIFFS resided in the City of
4 Baldwin Park, County of L.A., and the actions taken by DEFENDANTS that give rise to this
5 lawsuit pertain to a home mortgage loan for real property located within the City of Baldwin Park,
6 County of L.A., and witnesses are located therein, venue properly lies in this Court.

7 **PARTIES & DEFINITIONS**

8 8. PLAINTIFFS are both natural persons whose permanent residence is in the City
9 of Baldwin Park, County of L.A.

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

13 10. DEFENDANTS alleged that PLAINTIFFS owed money that they were allegedly
14 collecting for a mortgage loan for a residence in the City of Baldwin Park, County of Los Angeles,
15 and PLAINTIFFS are therefore informed and believe that the money alleged to have been owed
16 originated from monetary credit that was extended to PLAINTIFFS primarily for personal, family,
17 or household purposes, and is therefore a “debt” as that term is defined by Calif. Civil Code §
18 1788.2(d) of the Rosenthal Act.

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

23 12. Because PLAINTIFFS, natural persons allegedly obligated to pay money arising
24 from a consumer credit transaction, the money allegedly owed was a “consumer debt” within the

1 meaning of California Civil Code § 1788.2(f) of the Rosenthal Act.

2 13. PLAINTIFFS are informed and believe that DEFENDANTS regularly collect or
3 attempt to collect debts on behalf of others that are owed or due or asserted to be owed or due,
4 and is therefore a “debt collector” within the meaning of Calif. Civil Code § 1788.2(c) of the
5 Rosenthal Act, and thereby engage in “debt collection” within the meaning of California Civil
6 Code § 1788.2(b) of the Rosenthal Act, are also therefore each a “person” within the meaning of
7 California Civil Code § 1788.2(g) of the Rosenthal Act, and each is also a “creditor” under
8 California Civil Code § 1788.2(i).

9 14. Plaintiffs are each a natural person whose permanent residence is in the County of
10 Los Angeles, and each is therefore a “consumer” as that term is defined by Calif. Civ. Code §
11 1785.3(b) of the CCCRAA.

12 15. As far as this matter pertains to Plaintiffs’ “consumer credit reports”, as that term
13 is defined by Calif. Civ. Code § 1785.3(c) of the California CCRAA, in that inaccurate
14 misrepresentations of Plaintiffs’ credit worthiness, credit standing, and credit capacity were made
15 via written, oral, or other communication of information by a consumer credit reporting agency,
16 which is used or is expected to be used, or collected in whole or in part, for the purpose of serving
17 as a factor in establishing Plaintiffs’ eligibility for, among other things, credit to be used primarily
18 for personal, family, or household purposes, and employment purposes.

19 16. As far as this matter pertains to the California CCRAA, all Defendants are a
20 partnership, corporation, association, or other entity, and are therefore a “person” as that term is
21 defined by Calif. Civ. Code § 1785.3(j) of the California CCRAA.

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

24 17. Section 800(a)(1) of the Calif. Military and Veterans’ Code reads: “... a reservist

1 who is called to active duty may defer payments on any of the following obligations while serving
2 on active duty: (A) An obligation secured by a mortgage or deed of trust.”

3 18. Pursuant to Section 800(e), the term of the credit obligation is required to be
4 extended as follows: “If a lender defers payments on a closed end credit obligation or an open-
5 end credit obligation with a maturity date, pursuant to this chapter, **the lender shall extend the**
6 **term of the obligation by the amount of months the obligation was deferred.**” (emphasis
7 added).

8 19. Section 804 of the Calif. Military and Veterans’ Code reads:

9 During the period specified in Section 800, the reservist may defer the
10 payment of principal and interest on the specified obligations. No
11 penalties shall be imposed on the nonpayment of principal or interest
12 during this period. No interest shall be charged or accumulated on the
13 principal or interest on which the payment was delayed. No foreclosure
14 or repossession of property on which payment has been deferred shall
15 take place during the period specified in Section 800.

16 20. Section 805 of the Calif. Military and Veterans’ Code reads:

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

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

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

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

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

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

3 **FACTUAL ALLEGATIONS**

4 23. PLAINTIFF JULIO BERNAL is the spouse of PLAINTIFF VIBIAN BERNAL.

5 24. At some point prior to August 3, 2017, PLAINTIFFS incurred a home mortgage
6 loan obligation with DEFENDANTS as the servicers acting as an agent on behalf of the lender(s).

7 25. The home mortgage loan was for Plaintiffs' primary place of residence in the City
8 of Baldwin Park.

9 26. PLAINTIFF JULIO BERNAL received orders dated August 3, 2017, pursuant to
10 10 U.S.C. § 12302, ordering him to report to active duty effective September 21, 2017 and be
11 deployed for a period of 400 days.

12 27. Upon receiving the August 2017 deployment orders, PLAINTIFFS delivered to
13 DEFENDANTS a written request that specifically requested a deferment of the home mortgage
14 loan obligation pursuant to the Calif. Military & Veterans' Code.

15 28. PLAINTIFFS enclosed a copy of the deployment orders with the deferment
16 request.

17 29. Pursuant to Sections 800 and 811 of the Calif. Military and Veterans' Code,
18 PLAINTIFFS therefore were both entitled to a 180-day deferment of the principal and interest,
19 and DEFENDANTS were obligated to not only abide by the mandatory deferment but to also
20 extend the term of the obligation by the amount of months of the deferment.

21 30. As the deferments were required to be applied to principal and interest,
22 PLAINTIFFS were only required to pay each month their escrow amount for taxes and insurance.

23 31. Almost immediately, however, DEFENDANTS began to falsely claim that
24 PLAINTIFFS were in default of their mortgage loan by failing to pay the regular monthly

1 payments for principal and interest.

2 32. At least one letter dated November 17, 2017 falsely claims that their “regular
3 monthly payment” of \$1,618.89 that was due November 1, 2017 remains unpaid, and also shows
4 that DEFENDANTS added late charges.

5 33. There were other false claims by DEFENDANTS during this time period that
6 PLAINTIFFS were in default of their regular monthly payments, despite the fact that
7 PLAINTIFFS were protected by a mandatory deferment of principal and interest.

8 34. By court order dated May 17, 2018, from the Superior Court for the County of San
9 Luis Obispo, PLAINTIFFS were granted an extension of the deferment of their principal and
10 interest to December 31, 2018 pursuant to Calif. Military & Vets. Code § 409.3. Attached as
11 Exhibit A is a true and correct copy of said court order.

12 35. Upon information and belief, DEFENDANTS claimed at the time that they would
13 honor the deferment protections.

14 36. PLAINTIFFS relied in good faith on DEFENDANTS’ communications that
15 DEFENDANTS were honoring the deferment protections.

16 37. PLAINTIFFS thereafter made every escrow payment each month as required for
17 taxes and insurance.

18 38. However, DEFENDANTS failed to “extend the term of the obligation by the
19 amount of months the obligation was deferred” as required by § 800(e).

20 39. Instead, DEFENDANTS simply calculated what would be the full amount of
21 principal and interest for the deferred months and categorized that amount as a “second unpaid
22 principal balance”.

23 40. For one thing, this is a violation of § 800(e) because § 800(e) clearly requires the
24 maturity of the loan to be extended by the amount of the months equal to the deferment period

1 and does not permit a lender to compartmentalize the total deferred amount as a lump sum
2 payment owed at the end of the deferment period.

3 41. For another thing, this is a misrepresentation of what the amount is composed of
4 because that amount is both the deferred principal and the deferred interest, which means it is
5 false to categorize that amount as “unpaid principal”.

6 42. Additionally, DEFENDANTS failed to reduce the amount of principal balance
7 owed by PLAINTIFFS by this deferred amount, and instead DEFENDANTS have now tacked
8 that “second unpaid principal” amount on to PLAINTIFFS total principal balance.

9 43. Consequently, although the original loan amount was \$295,696.00, and in March
10 2018 the payment history on the account shows that the principal balance was \$290,766.89, and
11 eventually went down to \$289,766.74 in March 2019, in April 2019 DEFENDANTS’ unlawful
12 actions in adding the “second unpaid principal” to the total principal balance made the unpaid
13 principal balance jump by \$19,303.35 to the false claim that the total principal balance was now
14 \$309,070.09.

15 44. This is undeniably and indisputably false because DEFENDANTS’ obligations
16 were to extend the maturity date of the loan by the amount of months equal to the deferment, and
17 not simply calculate the amount of what would be equal to the deferred months and then add it
18 on to the total unpaid principal without any reduction of the unpaid principal by the amount that
19 was calculated as the deferred amount.

20 45. Then again, in June 2019, DEFENDANTS increased the principal balance by
21 another unexplained \$6,434.15 so that the total claimed principal balance jumped to \$315,504.24.

22 46. After making regular monthly payments for several months and brining the
23 principal balance down to \$307,559.68, DEFENDANTS once again in September 2019 increased
24 the principal balance by another unexplained \$6,434.15 so that the total claimed principal balance

1 jumped to \$313,487.63.

2 47. Furthermore, DEFENDANTS have sent several monthly statements that confirm
3 DEFENDANTS have implemented a scam to penalize, punish, and defraud PLAINTIFFS by at
4 least \$25,737.50.

5 48. For example:

6 a. The November 2020 monthly statement claims that the “Outstanding principal
7 balance” is \$281,042.89, but also falsely claims there is a “deferred balance” owed
8 in the amount of \$25,737.50;

9 b. The December 2020 monthly statement claims that the “Outstanding principal
10 balance” is \$280,517.16, but also falsely claims there is a “deferred balance” owed
11 in the amount of \$25,737.50;

12 c. The January 2021 monthly statement claims that the “Outstanding principal
13 balance” is \$279,990.00, but also falsely claims there is a “deferred balance” owed
14 in the amount of \$25,737.50;

15 d. The February 2021 monthly statement claims that the “Outstanding principal
16 balance” is \$279,461.42, but also falsely claims there is a “deferred balance” owed
17 in the amount of \$25,737.50; and

18 e. The March 2021 monthly statement claims that the “Outstanding principal balance”
19 is \$278,931.40, but also falsely claims there is a “deferred balance” owed in the
20 amount of \$25,737.50.

21 49. This begs the question of, if the deferred amount of \$25,737.20 is now being
22 categorized as a “deferred balance” that is owed but unpaid, then why is the principal balance not
23 reduced accordingly?

24 50. In other words, when DEFENDANTS categorized \$25,737.20 as an unpaid

1 “deferred balance”, then DEFENDANTS should have reduced the original principal balance by
2 that amount, but by failing to do so, PLAINTIFFS are therefore placed in a position of having to
3 pay both the full original principal balance plus this unpaid “deferred balance” of \$25,737.20 in
4 order to completely pay off their loan, which, in effect, means PLAINTIFFS are being penalized,
5 punished, and scammed by simply triggering their absolute statutory rights to deferment as a
6 deployed military family.

7 51. Upon information and belief, DEFENDANTS’ records will show that there were
8 many other months where DEFENDANTS sent written communications to PLAINTIFFS with
9 false representations as to the amounts owed on the account similar to the above and have also
10 engaged in many other communications with PLAINTIFFS whereby DEFENDANTS falsely
11 claimed that PLAINTIFFS were in default of the account and owed amounts that they did not
12 owe due to their deferment protections.

13 52. In March of 2021, contemplating seeking refinancing with another lender to
14 escape DEFENDANTS’ gross mishandling of their account, PLAINTIFFS requested a payoff
15 quote to see exactly how much they might need to obtain in a refinancing loan application.

16 53. By letter dated March 17, 2021, DEFENDANTS claim that the total unpaid
17 principal balance is \$304,137.45, and due to additional \$2,134.44 in completely unexplained “fees
18 and charges”, the total amount to pay in full is now \$307,372.94.

19 54. In effect, therefore, DEFENDANTS have confirmed that they have implemented
20 a scam whereby PLAINTIFFS, as a deployed military family, are being penalized, punished, and
21 defrauded by simply triggering their absolute statutory rights to deferment.

22 55. Additionally, PLAINTIFF JULIO received additional orders for active duty dated
23 September 10, 2018 that ordered him to be deployed for 250 days beginning September 17, 2018.

24 56. PLAINTIFFS submitted another written request for deferment to DEFENDANTS

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1 on September 11, 2018 and attached copies of the deployment orders.

2 57. Despite this new deferment period, DEFENDANTS submitted false and
3 inaccurate credit reporting information to the consumer credit reporting agencies that
4 PLAINTIFFS were in default of the account, and falsely claimed that PLAINTIFFS were 90 days
5 and 120 days delinquent in March of 2019 and April 2019, respectively.

6 58. However, this reporting was false and inaccurate because PLAINTIFFS had
7 secured another deferment protection due to deployment orders dated September 10, 2018 that
8 showed JULIO was ordered to be deployed for 250 days beginning September 17, 2018, and
9 PLAINTIFFS submitted a deferment request to DEFENDANTS on September 11, 2018.

10 59. PLAINTIFFS have suffered, and still do suffer, emotional harm as a direct and
11 proximate result of this negative credit reporting, such as loss of sleep, worry, fear, shame,
12 embarrassment, headaches, increased heart rate, and shaking.

13 60. As a direct and proximate result of DEFENDANTS' overall mistreatment and
14 improper handling of the account, PLAINTIFFS have also suffered, and still do suffer, emotional
15 distress and mental anguish , such as loss of sleep, worry, fear, shame, embarrassment, headaches,
16 increased heart rate, and shaking.

17 61. Furthermore, PLAINTIFFS have also suffered financial and economic injuries.

18 62. Upon information and belief, DEFENDANTS acted with malice and oppression
19 in deliberate and willful disregard of PLAINTIFFS' rights, because they each acted with such a
20 high degree of risk of committing a legal violation that was higher than mere carelessness, because
21 the laws that protect PLAINTIFFS in these circumstances are very clear and unambiguous yet
22 DEFENDANTS utterly failed to properly comply, which means DEFENDANTS deserve
23 exemplary and punitive damages.

24 63. The malice and oppression of DEFENDANTS is, in part, proven by the fact that

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1 DEFENDANTS have been placed on explicit notice by Court Orders that its policies and
2 procedures with respect to deployed military protections are in violation of applicable California
3 statutes (including, but not limited to, the February 10, 2020 Order attached hereto as Exhibit B
4 in the case of *Thienes v. LoanCare, LLC*, Sup. Court for County of Marin, Case No. CIV1803296),
5 yet DEFENDANTS continue to persist in numerous violations of such statutes anyway without
6 any effort to correct its errors with respect to PLAINTIFFS.

7
8 **FIRST CAUSE OF ACTION**
9 **CALIF. MILITARY FAMILIES FINANCIAL RELIEF ACT**
10 **CALIF. MILITARY & VETS.’ CODE §§ 800-812**
11 **(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)**

12 64. PLAINTIFFS repeat, re-allege, and incorporate by reference all other paragraphs,
13 as if fully set forth herein.

14 65. PLAINTIFFS had invoked protection under this Act by sending the required
15 written notices that included copies of the applicable deployment orders.

16 66. Pursuant to Calif. Military & Vets.’ Code § 811, these rights protect both
17 PLAINTIFF JULIO and his spouse PLAINTIFF VIBIAN.

18 67. By falsely claiming on multiple occasions that PLAINTIFFS owed several
19 thousands of dollars in an unpaid “deferred balance”, but without reducing the actual principal
20 balance, DEFENDANTS violated Calif. Military & Vets.’ Code in several ways.

21 68. By falsely claiming in the March 2021 payoff quote that PLAINTIFFS owed
22 several thousands of dollars more on their principal balance than what they actually owed, which
23 was calculated by DEFENDANTS adding the un unpaid “deferred balance” to the actual principal
24 balance, DEFENDANTS violated Calif. Military & Vets.’ Code in several ways.

69. By imposing penalties upon PLAINTIFFS for securing a deferment to which they
were statutorily entitled, DEFENDANT violated Calif. Military & Vets.’ Code in several ways.

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1 70. As a direct and proximate result of DEFENDANTS' actions, PLAINTIFFS have
2 suffered loss of time, loss of quality of life, as well as emotional and financial injuries.

3 71. PLAINTIFFS are also entitled to, and seek, attorneys' fees and costs.

4 72. PLAINTIFFS are further informed and believes that the aforesaid conduct was
5 malicious and oppressive, as those terms are defined by California Civil Code sections 3294(c)(1)
6 and 3294(c)(2), deserving of punitive and exemplary damages.

7 73. As PLAINTIFFS currently remain on orders for active duty, any calculation of the
8 period of statute of limitations has been tolled by the time period of deployment pursuant to Calif
9 Military and Vets' Code §404.

10 **SECOND CAUSE OF ACTION**
11 **CALIF. ROSENTHAL ACT**
12 **CALIF. CIV. CODE §§ 1788-1788.32**
13 **(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)**

14 74. PLAINTIFFS repeat, re-allege, and incorporate by reference all other paragraphs,
15 as if fully set forth herein.

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

21 Notwithstanding any other provision of this title, every debt collector
22 collecting or attempting to collect a consumer debt shall comply with
23 the provisions of Sections 1692b to 1692j, inclusive, of, and shall be
24 subject to the remedies in Section 1692k of, Title 15 of the United
States Code. However, subsection (11) of Section 1692e and Section
1692g shall not apply to any person specified in paragraphs (A) and

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1 (B) of subsection (6) of Section 1692a of Title 15 of the United States
2 Code or that person's principal. The references to federal codes in this
3 section refer to those codes as they read January 1, 2001.

4 76. At all times relevant, DEFENDANTS were each obligated to comply with all such
5 requirements of the Federal FDCPA incorporated into the Rosenthal Act pursuant to Calif. Civ.
6 Code § 1788.17.

7 77. By falsely claiming that PLAINTIFFS owed several thousands of dollars in an
8 unpaid “deferred balance”, but without reducing the actual principal balance, DEFENDANTS
9 engaged in multiple violations of the FDCPA as follows, all of which are necessarily violations of
10 the Rosenthal FDCPA via Calif. Civ. Code 1788.17:

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

23 78. By falsely claiming in the March 2021 payoff quote that PLAINTIFFS owe several
24 thousands of dollars more on their principal balance than what they actually owe, which was

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1 calculated by DEFENDANTS adding the un unpaid “deferred balance” to the actual principal
2 balance, DEFENDANTS engaged in multiple violations of the FDCA as follows, all of which are
3 necessarily violations of the Rosenthal FDCPA via Calif. Civ. Code 1788.17:

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

16 79. By furnishing false and misleading information to the consumer credit reporting
17 agencies that PLAINTIFFS were more than 30 days past due during the deferment period,
18 DEFENDANTS engaged in multiple violations of the Federal FDCA as follows, all of which are
19 necessarily violations of the Rosenthal FDCPA via Calif. Civ. Code 1788.17:

- 20 a. 15 U.S.C. §1692d by engaging in conduct the natural consequence of which is to
21 oppress PLAINTIFFS in connection with the collection of a debt,
- 22 b. 15 U.S.C. §1692e by using false, deceptive, and misleading representations in
23 connection with the collection of a debt,
- 24 c. 15 U.S.C. §1692e(2)(A) by falsely representing the character, amount, and legal

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1 status of the debt,

2 d. 15 U.S.C. §1692e(8), by furnishing credit reporting information to the consumer
3 credit reporting agencies that DEFENDANTS knew or should know is false,

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

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

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

10 80. The actions taken by DEFENDANTS 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 81. DEFENDANTS' violations of the Rosenthal FDCPA were willful, because
14 DEFENDANTS at all times knew that the actions giving rise to such violations were wrongful and
15 in violation of the law, and were also in direct contradiction to its own acknowledgement with
16 PLAINTIFFS that it was granting them the deferment.

17 82. As a proximate result of DEFENDANTS' actions, PLAINTIFFS have suffered loss
18 of time, loss of quality of life, as well as emotional and financial injuries.

19 83. PLAINTIFFS are also entitled to, and seek, up to \$1,000.00 in statutory damages
20 plus attorneys' fees and costs.

21 84. As PLAINTIFFS currently remain on orders for active duty, any calculation of the
22 period of statute of limitations has been tolled by the time period of deployment pursuant to Calif
23 Military and Vets' Code §404.

24 ///

1 **THIRD CAUSE OF ACTION**
2 **CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT**
3 **CALIF. CIV. CODE § 1785.25(a)**
4 **(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)**

5 85. PLAINTIFFS repeat, re-allege, and incorporate by reference each of the above
6 paragraphs as though set forth fully herein.

7 86. As the furnishers of information to credit reporting agencies, DEFEDNANTS at
8 all times remained obligated to not furnish information on a specific transaction or experience to
9 any consumer credit reporting agency if it knew or should have known the information was
10 incomplete or inaccurate, as required by Calif. Civ. Code § 1785.25(a) of the California CCRAA.

11 87. Even if the derogatory reporting is technically accurate, it is still a violation of this
12 law if the derogatory reporting is misleading in such a way and to such an extent that it can be
13 expected to adversely affect credit decisions. *Cisneros v. U.D. Registry, Inc.* (1995) 39 Cal. App.
14 4th 548.

15 88. A credit reporting violation is “willful” if it involves the commission not only of
16 acts known to violate the staute, but also “reckless disregard of statutory duty.” *Safeco Ins. Co.*
17 *of Am. v. Burr*, 551 U.S. 47, 56-57 (2007).

18 89. The Ninth Circuit in *Syed v. M-I, LLC* (2017) 853 F.3d 492, FN 7 recently stated,
19 with respect to credit reporting violations, “[W]here a party’s action violates an unambiguous
20 statutory requirement, that fact alone may be sufficient to conclude that violation is reckless, and
21 therefore willful. ... [R]ecklessness may be determined by objective evidence alone.”

22 90. DEFENDANTS violated their obligations under Section 1785.25(a) of the Calif.
23 CCRAA by reporting to the consumer credit reporting agencies that PLAINTIFFS were
24 delinquent during months that they in fact were not, when in reality DEFENDANTS either knew
or should have known the furnished information was factually false and inaccurate.

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 91. DEFENDANTS' violations were negligent at a minimum, because a reasonable
2 person would not have reported the account in such a manner.

3 92. PLAINTIFFS are also informed and believe that DEFENDANTS' violations were
4 willful in that DEFENDANTS know of their obligations pursuant to Section 1785.25(a), yet acted
5 with such a high degree of risk of committing a legal violation that was higher than mere
6 carelessness by failing to review and consider its own internal records in committing this
7 violation, and because the reporting was in direct contradiction to the statutory protections
8 afforded to PLAINTIFFS as a deployed military family.

9 93. As a proximate result of DEFENDANTS' actions, PLAINTIFFS have suffered
10 loss of time, loss of quality of life, as well as emotional and financial injuries.

11 94. PLAINTIFFS are therefore entitled to, and seek, actual damages, statutory
12 damages of \$5,000.00 per willful violation, attorneys' fees and costs, and injunctive relief
13 pursuant to Calif. Civ. Code § 1785.31

14 95. As PLAINTIFFS currently remain on orders for active duty, any calculation of the
15 period of statute of limitations has been tolled by the time period of deployment pursuant to Calif.
16 Military and Vets' Code §404.

17 **FOURTH CAUSE OF ACTION**
18 **NEGLIGENT MISREPRESENTATIONS**
19 **(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)**

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

22 97. DEFENDANTS misrepresented to PLAINTIFFS in its that they would provide
23 PLAINTIFFS with statutory protections to which they are unequivocally entitled.

24 98. However, DEFENDANTS' representations were false, as DEFENDANTS did not

1 have either the ability or the intent to provide PLAINTIFFS with the statutory protections to
2 which they are unequivocally entitled.

3 99. DEFENDANTS uttered these statements with the intent to induce PLAINTIFFS'
4 reliance on them.

5 100. PLAINTIFFS justifiably relied on these statements at taking advantage of the
6 deferment protections and only paying the escrow payments each month.

7 101. However, as a direct result of the falsity of the representations, PLAINTIFFS have
8 since been forced to suffer emotional and financial injuries to their detriment.

9 102. DEFENDANTS knew, or acted with reckless disregard, that their representations
10 were false and knew that PLAINTIFFS were relying on such representations to their detriment.

11 103. DEFENDANTS had no reasonable grounds for believing the representations were
12 true when made.

13 104. As a direct and proximate result of DEFENDANTS' actions, PLAINTIFFS have
14 suffered loss of time, loss of quality of life, as well as emotional and financial injuries.

15 105. PLAINTIFFS are also entitled to, and seek, attorneys' fees and costs.

16 106. PLAINTIFFS are further informed and believes that the aforesaid conduct was
17 malicious and oppressive, as those terms are defined by California Civil Code sections 3294(c)(1)
18 and 3294(c)(2), deserving of punitive and exemplary damages.

19 107. As PLAINTIFFS currently remain on orders for active duty, any calculation of the
20 period of statute of limitations has been tolled by the time period of deployment pursuant to Calif.
21 Military and Vets' Code §404.

22 ///

23 ///

24 ///

1 **FIFTH CAUSE OF ACTION**
2 **BUS. & PROF. CODE §§ 17200, *et seq.***
3 **(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)**

4 108. PLAINTIFFS repeat, re-allege, and incorporate by reference each of the above
5 paragraphs as though set forth fully herein.

6 109. Bus. & Prof. Code § 17200 states, in relevant part, that:

7 [U]nfair competition shall mean and include any unlawful, unfair or fraudulent
8 business act or practice and unfair, deceptive, untrue or misleading advertising and
9 any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of
10 Division 7 of the Business and Professions Code.

11 110. DEFENDANTS' acts, conduct, and practices, as alleged herein, were unlawful in
12 that their conduct violated multiple statutes as set forth in the preceding causes of actions.

13 111. The injury to PLAINTIFFS greatly outweighs any alleged countervailing benefit to
14 consumers or competition under all of the circumstances, and served no purpose but to benefit
15 DEFENDANTS financially.

16 112. There were reasonably available alternatives to further DEFENDANTS' legitimate
17 business interests, other than the conduct described herein.

18 113. Because DEFENDANTS have violated the unfair competition laws, Bus. & Prof.
19 Code §§ 17200, *et seq.*, an action under Bus. & Prof. Code § 17206 is proper and necessary to
20 prevent DEFENDANTS from continuing to engage in further improper and unlawful employment
21 practices.

22 114. As a result of DEFENDANTS' unlawful, unfair and fraudulent business practices,
23 PLAINTIFFS have suffered injury in fact and have lost money or property.

24 115. Pursuant to California Bus. and Prof. Code § 17203, PLAINTIFFS are therefore
entitled to restitution of all monies paid to and/or received by DEFENDNATS and disgorgement
of all profits accruing to DEFENDANTS because of its unfair and improper business practices.

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

TRIAL BY JURY

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

DATED: 3-30-21

SEMNR & HARTMAN, LLP



Jared M. Hartman

JARED M. HARTMAN, Esq.
Attorneys for Plaintiffs

EXHIBIT A

4/23/2018 8:41 AM

MIL-020

ATTORNEY (Name, State Bar number, and address): LET Jon-Erik G. Storm CA Bar #227349 CDM - Legal Support Command 10 Sonoma Ave. Bldg. 738 San Luis Obispo, CA 93405 TELEPHONE NO.: 805-467-7128 FAX NO.: E-MAIL ADDRESS: jon-erik.storm@ca-jag.us CPT Julio Bernal ATTORNEY FOR (Name):	FOR COURT USE ONLY <h1>FILED</h1> MAY 17 2018  SAN LUIS OBISPO SUPERIOR COURT BY  K. Martindelcampo, Deputy Clerk CASE NUMBER: 18CV-0240
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Luis Obispo STREET ADDRESS: 1035 Palm St. Rm. 385 MAILING ADDRESS: CITY AND ZIP CODE: San Luis Obispo CA 93408 BRANCH NAME: San Luis Obispo	
PETITIONER/PLAINTIFF: CPT Julio Bernal, ARNG RESPONDENT/DEFENDANT: Lakeview Loan Servicing, LLC	
ORDER ON PETITION FOR RELIEF FROM FINANCIAL OBLIGATIONS DURING MILITARY SERVICE	

1. The application was duly considered
- a. at a hearing on (date): **05/17/18** in Department: **2** of the above-entitled court.
- b. The following persons were present at the hearing:
- (1) Petitioner/Plaintiff (3) Petitioner/Plaintiff's attorney (name): **Jon-Erik Storm**
- (2) Respondent/Defendant (4) Respondent/Defendant's attorney (name):
- (5) No person appeared

THE COURT FINDS

2. Petitioner is or was an officer or enlisted member of the National Guard or a reservist of the United States military reserves and
- a. has been called or ordered into full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
- b. is currently in full-time active duty service in the state or federal armed services or reserves. (Mil. & Vet. Code, § 400.)
- c. is within six months of having completed full-time active duty in the state or federal armed services. (Mil. & Vet. Code, §§ 400, 409.3(a).)
- d. none of the above apply to petitioner.
3. Petitioner's ability to pay to respondent a financial obligation or liability incurred before the effective date of the orders for petitioner's most current period of active duty (check one): has has not been materially affected by reason of petitioner's most current military service.
4. Other findings (if any):

THE COURT ORDERS


5. The petition for relief is denied.
6. The petition for relief is granted as follows (check all relief granted):
- a. Petitioner's obligation to pay respondent the financial obligation identified below is deferred (identify financial obligation by creditor, loan number, property address, or other identifying information):
- Lakeview Loan Servicing Loan Number: 0024053134 on property address: 13019 PARKVIEW DR
BALDWIN PARK, CA 91706
- (1) The deferral of payments begins on (date of beginning of active military service):

PETITIONER/PLAINTIFF: CPT Julio Bernal	CASE NUMBER.
RESPONDENT/DEFENDANT: Lakeview Loan Servicing LLC	

6. a. (2) The deferral of payments ends on (date of release from active military service): 31 DEC 2018
If petitioner is released from active military service before this end date, petitioner must immediately notify respondent of the date of his or her release and must resume payments on the first day of the month following release.
- b. On deferral of an obligation requiring installment payments: The deferred obligations of principal and interest are to be added to the principal balance of the loan identified above and the maturity date is to be extended by a period of time equal to the period in which petitioner is in active military service, with the rate of interest to be as described in the contract.
- Other terms (if any):
- c. On deferral of an obligation not requiring installment payments: The deferred obligation described above is to be paid as follows:
- (1) In a lump sum at the end of the deferral period.
- (2) Over a period of time equal to the period of active military service, in equal monthly payments, with interest accruing at _____ percent per year
- (3) Other terms (if any):
- d. On deferral of an obligation to pay income tax: The obligation of petitioner to pay income tax is deferred until six months after the petitioner's release from active military service. (Mil & Vet. Code, § 409.6.)
- (1) Current expected release date is (date):
- (2) Deferral of payments ends on (date): **If petitioner is released from active military service before this end date, petitioner must immediately notify respondent of the date of his or her release and must resume payments on the first day of the month six months following release.**
- (3) No interest will accrue on the tax amounts during the deferral period, and no penalties will be imposed for nonpayment of taxes during that period.
- e. During the period of deferral, respondent may not exercise any remedies otherwise available for petitioner's failure to comply with the terms of the financial obligation. Respondent may not impose fines, penalties, or late charges and may not institute or continue proceedings to attach or foreclose on property securing the obligation.
7. Other orders (if any):

Date:

May 17 18



 JUDGE OF THE SUPERIOR COURT

Page 2 of 2

EXHIBIT B

FILED

FEB 10 2020

JAMES H. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: M. Murphy, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

DARREN THIENES,)	
)	Case No. CIV1803296
Petitioner,)	
)	ORDER AFTER HEARING
v.)	
)	
LOANCARE, LLC,)	
)	
Respondent)	
)	

On January 8, 2020, this matter came on for hearing on Petitioner Chief Warrant Officer 2 Darren Thienes’s motion to compel compliance with the order for relief during military service pursuant to Military and Veterans Code section 409.3 (section 409.3), signed on October 15, 2018 by Judge Chernus. (“Deferment Order”) After oral argument at the hearing, the court directed the parties to submit supplemental briefing on this issue and Petitioner’s request for attorney’s fees, which the parties have done. On February 5, 2020, the court considered further oral argument by the parties and thereafter took the matter under submission.

After considering all of the arguments, pleadings, declarations, and attachments submitted by the parties, the court is not persuaded that Respondent LoanCare, LLC has shown compliance with the Deferment Order while Petitioner was on active duty. Consequently, Petitioner’s motion is granted. (Code Civ. Proc. § 128(a)(4); Mil & Vet Code § 409.3.) Petitioner’s request for attorney’s fees is granted in part. Petitioner’s request to strike Respondent’s opposition and supporting declarations is denied.

Order After Hearing

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Summary of Factual and Procedural History

On September 14, 2018, Petitioner filed against Respondent a Petition for Relief From Financial Obligation During Military Service pursuant to section 409.3. Petitioner is a member of the National Guard and was called to active duty in the U.S. Army on December 30, 2017. Based on his call to active duty, Petitioner sought relief from Respondent pursuant to Military and Veterans Code section 409.3. On October 12, 2018, Petitioner and Respondent entered into a stipulation regarding a proposed order with respect to Petitioner's requested relief. (Exhibit A to the Declaration of MAJ (CA) John C. Kakinuki in Support of Reply to LoanCare's Opposition to Motion to Compel Compliance with Order for Relief During Military Service (Kakinuki Decl.)

On October 15, 2018, the court entered the Order on Petition for Relief from Financial Obligation During Military Service, (*Id.*, Exh. B, the Deferment Order.) The Deferment Order provides, *inter alia*, that:

... (2) The deferral of principal and interest shall commence retroactively with the payment due on January 1, 2018 through the payment due on June 1, 2018, then resume with the payment due on October 1, 2018, and continue through the payment due on October 31, 2019. . . [and] shall resume his monthly payments of principal and interest on November 1, 2019. . .

(5) During the period of this deferment, interest shall not be charged or accumulated on the principal or interest on which the payment was delayed; and

(6) Interest and penalties erroneously charged or accumulated on the principal or interest during the period of this deferment, including without limitation in LoanCare's Statements dated April 16, May 16, June 16, July 18, August 16 and/or September 16, will be reversed and LoanCare will correct without delay any derogatory information that may have been sent to credit bureaus in that regard. . . .

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Compliance with the Court's Deferment Order

Petitioner asserts that Respondent has failed to comply with the Deferment Order by terminating Petitioner's deferment three months early and charging monthly miscalculations of principal in excess of \$2,100 a month along with various unexplained charges. Petitioner further contends that Respondent increased the principal due under the loan by over \$40,000.

As Petitioner explains, the Deferment Order required Respondent to defer Petitioner's principal and interest payments during two periods: 1st retroactively from January 1, 2018 through June 1, 2018 (six months); and 2nd prospectively from October 1, 2018 through October 31, 2019 (12 months). (Kakinuki Decl. ¶ 7, Exh. B.) Petitioner contends that Respondent did not correct all of the errors made on the retroactive first portion of the Deferment Order for January 1, 2018 through June 1, 2018. Petitioner further contends that Respondent began billing Petitioner for principal and interest three months before the end of the Deferment Order which required Respondent to defer the principal and interest payments (and not charge interest on those amounts) through October 31, 2019. (Kakinuki Decl. ¶ 8.) Petitioner provides the court with mortgage statements evidencing this violation. (See Kakinuki Decl., Exh. C-2 with a statement date of July 2, 2019 beginning to charge principal and interest.)

For example, the June 17, 2019 statement has an unexplained charge of \$1,277.50. (Kakinuki Decl., Exh. C-1.) Counsel for Petitioner further contends that the principal amount shown in the July 2, 2019 statement was the sum of the pre-deployment principal and interest-- $\$1,080.40 + \$2,139.58 = \$3,219.98$ —over \$2,100 more than the monthly amounts owed before the deferment commenced. (Kakinuki Decl. ¶¶ 10 & 11.) At oral argument on February 5, 2020, Respondent's counsel conceded that Respondent had made accounting errors in calculating Petitioner's mortgage payments, but claimed such errors were *de minimus* and in no way amounted to an overcharge in excess of \$40,000.00. The court disagrees with this conclusion.

Because of Respondent's failure to comply with the Deferment Order and despite numerous requests to correct the improper charges, Petitioner contends Respondent placed him in foreclosure danger by terminating his deferment prematurely by three months and by

1 converting the deferred amount into what amounts to be a second mortgage. (Reply Declaration
2 of Chief Warrant Officer 2 Darren Thienes, ¶ 5.) Petitioner argues that had Respondent properly
3 extended the deferment without the interest, he would not have had to refinance his mortgage to
4 mitigate the losses caused by Respondent's errors and overcharges. (*Id.* ¶ 4.)

5 On October 1, 2019, the new mortgagee paid off the loan from Respondent based upon
6 Respondent's pay off statement that included the improper overcharges in violation of the
7 Deferment Order, resulting in Petitioner owing over \$40,000 more than he should have, which is
8 now included in his new loan. (*Id.* ¶¶ 4-8.)

9 In opposition, Respondent claims that a total of 19 monthly payments were deferred from
10 January 1, 2018, full payments of which, in the amount of \$3,219.98, were tracked and placed in a
11 segregated account from the pre-deferment unpaid principal balance in a total amount of
12 \$61,179.62. (Declaration of Midge Baker, ¶ 13.) Respondent ultimately contends that it adjusted
13 the unpaid balance by deducting \$20,853.55 in the deferred principal from the listed \$61,179.62
14 Deferred Principal Balance total, leaving a balance of \$40,326.07 "which represents the deferred
15 interest portion for the 19 months." (Baker Decl., ¶ 15.) Ms. Baker further indicates that when the
16 payoff request was received in September 2019 in connection with Petitioner's refinance efforts
17 with another lender, the payoff funds, which included the \$40,326.07, for the remaining
18 indebtedness came to \$729,256.78 as set forth in the spreadsheet attached to her declaration.
19 (Baker Decl. ¶¶ 16-17.)

20 Petitioner's counsel notes without objection that between Summer 2017 to Fall 2018 while
21 deployed to the Middle East, he "filed scores of petitions throughout this state pursuant to section
22 409.3 of the Military and Veterans Code ("MVC"), including nearly twenty petitions with the
23 Superior Court for the County of Marin." (Kakinuki Decl. ¶ 3.) Moreover, petitioner's counsel
24 further states:

25
26 None of the other respondents in those cases, with the exception of one other mortgage
27 lender which is suspected to be using the same accounting system as Respondent
28 handled accounting of the mortgage after return of the service member in the manner
done by LoanCare and its affiliate and master servicer Lakeview Loan Servicing,
LLC. All others treated the deferment as extending the due date of the mortgage.

Order After Hearing

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2 (Kakinuki Decl. ¶ 4.)

3 Among its supplemental pleadings, Respondent submitted a declaration and supplemental
4 declaration of Certified Public Accountant Greg Halm, a managing director at Berkeley Research
5 Group. (“BRG”) Notably, Halm states, “While I have reviewed the text of CMVC 409.3 (section
6 409.3), I do not express an opinion on its interpretation. I have been instructed as to the meaning
7 of CMVC by LoanCare’s counsel.” (Halm Decl. ¶ 3.) While the court does not take issue with
8 Mr. Halm’s calculations, as set forth above, it does take issue with the Respondent’s
9 interpretation of section 409.3. Halm also states, “I have been instructed by LoanCare’s counsel
10 that the proper treatment of the 19 deferred payments...would be to account for the deferred
11 payments as deferred payment obligations, and cause the deferred payment obligations to be
12 repaid as follows....” (Halm Decl. ¶ 13.) Again, it is clear to this court that Halm is relying on
13 Respondent’s flawed interpretation of section 409.3. Consequently, this court finds Halm’s
14 declarations and Respondent’s interpretation of section 409.3 unpersuasive.

15 Simply put, something is not right here. Respondents have now had multiple
16 opportunities to explain why Petitioner’s mortgage balance increased by over \$40,000.00 during
17 Petitioner’s deployment. Respondent has failed to provide any sound explanation for this
18 significant increase.

19 California’s enactment of legislation conferring certain benefits with regard to civil
20 obligations, liabilities, and litigation on military personnel called to active service or duty
21 evidences the Legislature’s intent to protect such members of our Armed Forces. The
22 spreadsheet and declarations provided by Respondent neither appear to comply with the Court’s
23 Deferment Order nor comport with the spirit of the legislative intent to protect the financial
24 security of our service members fighting for our country.

25 The court finds that the explanations and proffered spreadsheet by Respondent are
26 insufficient and fail to comply with the Deferment Order requiring all principal and interest
27 payments to be deferred subject to the terms set forth in the order regarding the same. (See
28

1 Kakinuki Decl., Exh. B, Deferment Order.) Thus the court grants the motion to compel
2 compliance.

3 *Attorney's Fees*

4 Petitioner requests attorney's fees in the amount of \$89,000.00 based upon counsel's
5 hourly rate of \$800.00 and 112 hours spent on this motion. Pursuant to Military and Veterans
6 Code section 401, subdivisions (a)(2)(B) and (d), when the creditor changes the terms of an
7 existing credit arrangement (e.g. the stipulated Deferment Order) the injured party is entitled to
8 actual damages, reasonable attorney's fees, and costs. (Mil. & Vet. Code, § 401(a)(2)(B) & (d).)
9 Respondent objects to the hourly rate of \$800.00 claimed by petitioner's counsel. Respondent's
10 counsel argues that his hourly rate for similar work is between \$200.00 to \$300.00. (Nunley
11 Decl. ¶ 4.) In their supplement pleadings, Respondent does not object to the 112 hours claimed
12 by Petitioner's counsel. At oral argument on February 5, 2020, Respondent objected to the hours
13 claimed based upon Petitioner's block billing.

14 The party claiming attorney's fees has the burden of proving that they are reasonable.
15 (See Code of Civ. Proc. § 1033.5(c)(5).) A request for fees should be supported by evidence of
16 the work performed, the hours worked, and the hourly rate charged. (*Lin v Jeng* (2012) 203
17 Cal.App.4th 1008, 1026.) The party seeking an award of fees has the burden of establishing
18 entitlement to an award and of documenting the appropriate hours spent and the hourly rates.
19 (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 486.) The opposing party has the
20 burden of identifying the challenged entries with sufficient argument and citations to the
21 evidence, general arguments that the fees claimed are duplicative or unrelated are insufficient.
(*Lunada Biomedical, supra*, 230 Cal.App.4th 459, 488.)

22 In awarding fees, a judge is not constrained by the amount sought by the successful party,
23 but must award a "reasonable" amount. (*Jackson v Yarbray* (2009) 179 Cal.App.4th 75, 92.) A
24 judge must assess each fee application on its own merits, taking into account what is reasonable
25 under the circumstances. (*Lunada Biomedical v Nunez, supra*, 230 Cal.App.4th at 488.)

26 This court has taken into account the nature of the work performed, the novelty and
27 difficulty of the questions involved, the experience and caliber of counsel, as well as their
28 customary billing rates, and the skill displayed in presenting the case. Based on its own expertise
and experience, the court finds that the rate proposed by Petitioner's counsel is high and not

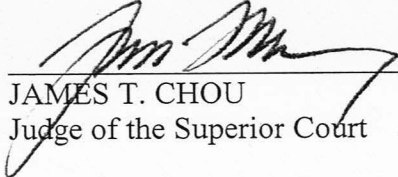
1 within the range of prevailing local rates for similar work by counsel of similar caliber.
2 Consequently, the court reduces the hourly rate for petitioner's counsel to \$450.00. The court
3 finds that the 112 hours claimed for work on this motion are reasonable.

4 *Order*

5 The court hereby orders:

- 6
- 7 1) Petitioner's request that the court strike from the record the supplemental opposition
8 filed by Respondent is denied;
- 9 2) by not later than February 28, 2020, Respondent shall refund petitioner \$40,326.07
10 plus interest from the date of payoff of Petitioner's loan to Respondent through and
11 including February 28, 2020 at the rate of Petitioner's current mortgage interest rate;
- 12 3) by no later than February 28, 2020, Respondent is ordered to pay attorney's fees,
13 payable to the California Military Department Support Fund, in the amount of
14 \$50,400.00.
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18 Date: February 10, 2020

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20 _____
21 JAMES T. CHOU
22 Judge of the Superior Court
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Order After Hearing

MARIN COUNTY SUPERIOR COURT

3501 Civic Center Drive
P.O. Box 4988
San Rafael, CA 94913-4988

<p>DARREN THIENES</p> <p>v.</p> <p>LOANCARE, LLC</p>	<p>CASE NO. CIV1803296</p> <p>PROOF OF SERVICE BY FIRST CLASS MAIL AND EMAIL</p> <p><i>Code of Civil Procedure Sections 1013a and 2015.5</i></p>
--	--

I am an employee of the Marin County Superior Court. I am over the age of 18 years and not a party to this action. My business address is 3501 Civic Center Drive, Hall of Justice, San Rafael, California.

On February 11, 2020, I served the following document(s): **ORDER AFTER HEARING** in said action to all interested parties, by placing the envelope for collection and mailing on the date shown thereon, so as to cause it to be mailed on that date following standard court practices. I am readily familiar with the court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

JOHN C. KAKINUKI, ESQ.
1050 NORTHGATE DRIVE, #270
SAN RAFAEL, CA 94903

CHARLES W. NUNLEY, II, ESQ.
2112 BUSINESS CENTER DRIVE, 2ND FL.
IRVINE, CA 92612

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

JAMES M. KIM
Court Executive Officer

Executed at San Rafael, California
On: February 11, 2020

By 

M. MURPHY, DEPUTY