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Attorneys for Plaintiffs, JEREMIAH PEYUS and GISELLE PEYUS

**SUPERIOR COURT FOR THE
COUNTY OF ORANGE**

Assigned for all purposes

Judge Walter Schwarm

JEREMIAH PEYUS, an individual,
GISELLE PEYUS, an individual

Case No.: 30-2021-01186085-CU-BT-CJC

CIVIL UNLIMITED JURISDICTION

PLAINTIFFS,

vs.

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

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

1. CALIFORNIA MILITARY FAMILIES FINANCIAL RELIEF ACT;
2. CALIFORNIA ROSENTHAL ACT;
3. NEGLIGENT MISREPRESENTATIONS;
4. UNFAIR COMPETITION LAWS

DEFENDANTS.

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

Plaintiffs, JEREMIAH PEYUS and GISELLE PEYUS (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;
collectively, "DEFENDANTS") violations of the State of California Military Families Financial

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

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

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

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

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

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

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

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 insurance premium, or other civil obligation or liability of a person in military
2 service shall not provide the basis for affecting credit ratings, denial or
3 revocation of credit, or a change by the lender in the terms of an existing credit
4 arrangement.

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

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

10 19. Violations of these protections as codified by the Calif. Military and Veterans'
11 Code are enforceable by Section 812 as follows:

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

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

18 **FACTUAL ALLEGATIONS**

19 20. PLAINTIFF JEREMIAH PEYUS is the spouse of PLAINTIFF GISELLE PEYUS.

20 21. At some point prior to October 12, 2018, PLAINTIFFS incurred a home mortgage
21 loan obligation with DEFENDANTS as the servicers acting as an agent on behalf of the lender(s).

22 22. PLAINTIFF GISELLE PEYUS received orders dated October 12, 2018, pursuant
23 to 10 U.S.C. § 12302, ordering her to report to active duty effective October 15, 2018 and be
24 deployed through September 30, 2019.

25 23. Upon receiving the October 2018 deployment orders, PLAINTIFFS delivered to
26 DEFENDANTS a written request that specifically requested a deferment of the home mortgage
27 loan obligation pursuant to the Calif. Military & Veterans' Code.

28 24. PLAINTIFFS enclosed a copy of the deployment orders with the deferment
29 request.

30 **COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL**

1 25. Pursuant to Sections 800 and 811 of the Calif. Military and Veterans' Code,
2 PLAINTIFFS therefore were both entitled to a 180-day deferment of the principal and interest.

3 26. As the deferment was required to be applied to principal and interest,
4 PLAINTIFFS were only required to pay each month their escrow amount of approximately
5 \$589.19 for taxes and insurance.

6 27. DEFENDANTS accepted the deferment request by letter dated December 3, 2019,
7 and therein informed PLAINTIFFS that their payment obligations would be deferred for principal
8 and interest and their only obligation would be to pay the escrow payments for December 1, 2018
9 through May 1, 2018 in the amount of \$589.18 each month.

10 28. This letter, therefore, indicates DEFENDANTS' acknowledgment of its
11 obligations to, and also indicates DEFENDANT'S intention to, comply with the applicable
12 statutes entitling PLAINTIFFS to a mandatory deferment, without penalty.

13 29. PLAINTIFFS relied in good faith on DEFENDANT'S written communications
14 that DEFENDANTS were honoring the deferment protections.

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

17 31. However, DEFENDANTS failed to "extend the term of the obligation by the
18 amount of months the obligation was deferred" as required by § 800(e).

19 32. Instead, DEFENDANTS simply calculated what would be the full amount of
20 principal and interest for 6 months (December through May), totaling \$19,253.16, and
21 categorized that amount as a "second unpaid principal balance".

22 33. For one thing, this is a violation of § 800(e) because § 800(e) clearly requires the
23 maturity of the loan to be extended by the amount of the months equal to the deferment period
24 and does not permit a lender to compartmentalize the total deferred amount as a lump sum

1 payment owed at the end of the deferment period.

2 34. For another thing, this is a misrepresentation of what the amount of \$19,253.16 is
3 composed of because that amount is both the deferred principal and the deferred interest, which
4 means it is false to categorize that amount as “unpaid principal”.

5 35. Additionally, DEFENDANTS failed to reduce the amount of principal balance
6 owed by PLAINTIFFS by this deferred amount, and in October of 2019 when PLAINTIFFS paid
7 off the loan in full with refinancing by another lender, they were scammed into paying not only
8 their original full principal but also this additional “second unpaid principal balance” of
9 \$19,253.16.

10 36. Consequently, when PLAINTIFFS paid off the entire loan in October 2019, they
11 paid \$19,253.16 more than they otherwise should have paid, which means they were penalized,
12 punished, and scammed by simply triggering their absolute statutory rights to deferment as a
13 deployed military family.

14 37. Thereafter, each month, DEFENDANTS sent monthly statements that confirm
15 DEFENDANTS penalized, punished, and scammed PLAINTIFFS out of \$19,253.16.

16 38. For example, the monthly statement dated 10-15-18 says the principal balance is
17 \$614,365.07, and shows that PLAINTIFFS made a full payment on 10-12-18 for principal,
18 interest, and escrow.

19 39. Thereafter, the monthly statement dated 11-8-18 says the principal balance is
20 \$613,588.07, and shows that PLAINTIFFS made a full payment made on 11-8-18 for principal,
21 interest, and escrow.

22 40. After the letter dated 12-3-18 acknowledging PLAINTIFFS’ deferment, the
23 monthly statement dated 12-6-18 says the principal balance is \$613,588.07, and shows that
24 PLAINTIFFS made an escrow only payment on 12-5-18.

1 41. Then, the monthly statement dated 1-7-19 says the principal balance is
2 \$613,588.07, and shows that PLAINTIFFS made an escrow only payment on 1-7-19.

3 42. The monthly statement dated 2-12-19 says the principal balance is \$613,588.07,
4 and shows that PLAINTIFFS made an escrow only payment on 2-11-19.

5 43. Then, the monthly statement dated 3-7-19 says the principal balance is
6 \$613,588.07, and shows that PLAINTIFFS made an escrow only payment on 3-5-19.

7 44. Then, the monthly statement dated 4-2-19 says the principal balance is
8 \$613,588.07, and shows PLAINTIFFS made an escrow only payment on 4-1-19.

9 45. However, the monthly statement dated 5-6-19 says the principal balance is
10 \$613,588.07, and now for the first time also adds “deferred principal balance of \$19,253.16”,
11 which is equal to 6 months’ worth of principal and interest.

12 46. This begs the question of, if the deferred amount of \$19,253.16” is now being
13 categorized as a “deferred principal balance”, then why is the principal balance of \$613,588.07
14 not reduced accordingly?

15 47. Then, the monthly statement dated 6-10-19 says the principal balance is
16 \$612,808.00, but also again adds “deferred principal balance of \$19,253.16” and shows that
17 PLAINTIFFS made a full monthly payment of principal, interest, and escrow on 6-7-19.

18 48. Then again, the monthly statement dated 7-9-19 says the principal balance is
19 \$612,024.84, but also again adds “deferred principal balance of \$19,253.16”, and shows that
20 PLAINTIFFS made a full monthly payment of principal, interest, and escrow on 7-8-19.

21 49. Then again, the monthly statement dated 8-8-19 says the principal balance is
22 \$611,238.58, but also again adds “deferred principal balance of \$19,253.16”, and shows that
23 PLAINTIFFS made a full monthly payment of principal, interest, and escrow on 8-8-19.

24 50. Then again, the monthly statement dated 9-10-19 says the principal balance is

1 \$610,449.21, but also again adds “deferred principal balance of \$19,253.16”, and shows that
2 PLAINTIFFS made a full monthly payment of principal, interest, and escrow on 9-9-19.

3 51. Then again, the monthly statement dated 10-4-19 says the principal balance is
4 \$609,656.71, but also again adds “deferred principal balance of \$19,253.16” and shows that
5 PLAINTIFFS made a full monthly payment of principal, interest, and escrow on 10-3-19.

6 52. Then, the payoff quote dated 10-18-19 says “first unpaid principal balance
7 \$609,656.71” and “second unpaid principal balance \$19,253.16”.

8 53. Therefore, in order to pay off this loan with the refinancing, PLAINTIFFS were
9 forced to pay principal of both \$609,656.71 plus \$19,253.16 for a total claimed unpaid principal
10 of \$629,313.42.

11 54. In other words, when DEFENDANTS categorized \$19,253.16 as a “second unpaid
12 principal balance”, then DEFENDANTS should have reduced the original principal balance by
13 that amount, but by failing to do so, PLAINTIFFS were therefore placed in a position by having
14 to pay both the full original principal balance plus this “second unpaid principal balance
15 \$19,253.16” in order to close the refinancing loan, which, in effect, means PLAINTIFFS were
16 penalized, punished, and scammed by simply triggering their absolute statutory rights to
17 deferment as a deployed military family.

18 55. Additionally, even though the amount of \$19,253.16 is actually a calculation of
19 both principal plus interest for a total of 6 months, DEFENDANTS misrepresented this amount
20 as only “second unpaid principal balance”, which means their refinancing loan considered the
21 total 6 months’ worth of interest (\$14,498.16) as principal, which in turn means PLAINTIFFS are
22 now having to pay interest to their new lender on this amount (since the new lender paid this
23 amount believing it to be part of the unpaid principal) even though it should not have been paid
24 at all to DEFENDANTS during the refinancing, and as a result PLAINTIFFS are now having to

1 suffer damages by way of paying more to their new lender in interest that they otherwise would
2 not have to pay.

3 56. DEFENDANTS' act of requiring PLAINTIFFS to owe the false amounts claimed
4 above effectively operated as a penalty and punishment against PLAINTIFFS for merely
5 triggering their unequivocal statutory rights to obtain the deferment.

6 57. As a direct and proximate result of DEFENDANTS' mistreatment and improper
7 handling of the account, PLAINTIFFS have suffered emotional distress and mental anguish , such
8 as loss of sleep, anxiety, worry, fear, shame, embarrassment, headaches, increased heart rate, and
9 shaking.

10 58. Furthermore, PLAINTIFFS have also suffered financial and economic injuries.

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

17 60. The malice and oppression of DEFENDANTS is, in part, proven by the fact that
18 DEFENDANTS have been placed on explicit notice by Court Orders that its policies and
19 procedures with respect to deployed military protections are in violation of applicable California
20 statutes (including, but not limited to, the February 10, 2020 Order attached hereto as Exhibit A
21 in the case of *Thienes v. LoanCare, LLC*, Sup. Court for County of Marin, Case No. CIV1803296),
22 yet DEFENDANTS continue to persist in numerous violations of such statutes anyway without
23 any effort to correct its errors with respect to PLAINTIFFS.

24 ///

1 **FIRST CAUSE OF ACTION**
2 **CALIF. MILITARY FAMILIES FINANCIAL RELIEF ACT**
3 **CALIF. MILITARY & VETS.’ CODE §§ 800-812**
4 **(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)**

5 61. PLAINTIFFS repeat, re-allege, and incorporate by reference all other paragraphs,
6 as if fully set forth herein.

7 62. PLAINTIFFS had invoked protection under this Act by sending the required
8 written notice that included a copy of deployment orders.

9 63. Pursuant to Calif. Military & Vets.’ Code § 811, these rights protect both
10 PLAINTIFF JEREMIAH as the spouse of PLAINTIFF GISELLE as the deployed servicemember.

11 64. By falsely claiming on multiple occasions that PLAINTIFFS owed several
12 thousands of dollars in “second unpaid principal balance”, DEFENDANTS violated Calif. Military
13 & Vets.’ Code in several ways.

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

16 66. As a direct and proximate result of DEFENDANTS’ actions, PLAINTIFFS have
17 suffered loss of time, loss of quality of life, as well as emotional and financial injuries.

18 67. PLAINTIFFS are also entitled to, and seek, attorneys’ fees and costs.

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

22 69. As PLAINTIFF GISELLE currently remains on orders for active duty, any
23 calculation of the period of statute of limitations has been tolled by the time period of deployment
24 pursuant to Calif. Military and Vets’ Code §404.

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COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1 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,
- 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 74. By falsely claiming in the October 2019 payoff quote that PLAINTIFFS owed
15 both a “first unpaid principal balance \$609,656.71” and a “second unpaid principal balance
16 \$19,253.16” in order to pay off this loan with the refinancing, which in turn resulted in
17 PLAINTIFFS being forced to pay principal of both \$609,656.71 plus \$19,253.16 for a total
18 claimed unpaid principal of \$629,313.42, DEFENDANTS engaged in multiple violations of the
19 FDCA as follows, all of which are necessarily violations of the Rosenthal FDCPA via Calif. Civ.
20 Code 1788.17:

- 21 a. 15 U.S.C. §1692d by engaging in conduct the natural consequence of which is to
22 oppress PLAINTIFFS in connection with the collection of a debt,
- 23 b. 15 U.S.C. §1692e by using false, deceptive, and misleading representations in
24 connection with the collection of a debt,

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

- 1 c. 15 U.S.C. §1692e(2)(A) by falsely representing the character, amount, and legal
2 status of the debt,
- 3 d. 15 U.S.C. §1692e(10) by using false representations and deceptive means to
4 attempt to collect a debt,
- 5 e. 15 U.S.C. §1692f by using unfair and unconscionable means to attempt to collect a
6 debt,
- 7 f. 15 U.S.C. §1692f(1) by collecting an amount not authorized by agreement or by
8 law.

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

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

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

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

20 79. As PLAINTIFF GISELLE currently remains on orders for active duty, any
21 calculation of the period of statute of limitations has been tolled by the time period of deployment
22 pursuant to Calif. Military and Vets' Code §404.

23 ///

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1 malicious and oppressive, as those terms are defined by California Civil Code sections 3294(c)(1)
2 and 3294(c)(2), deserving of punitive and exemplary damages.

3 91. As PLAINTIFF GISELLE currently remains on orders for active duty, any
4 calculation of the period of statute of limitations has been tolled by the time period of deployment
5 pursuant to Calif. Military and Vets' Code §404.

6 **FOURTH CAUSE OF ACTION**
7 **BUS. & PROF. CODE §§ 17200, *et seq.***
8 **(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)**

9 92. PLAINTIFFS repeat, re-allege, and incorporate by reference each of the above
10 paragraphs as though set forth fully herein.

11 93. Bus. & Prof. Code § 17200 states, in relevant part, that:

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

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

18 95. The injury to PLAINTIFFS greatly outweighs any alleged countervailing benefit to
19 consumers or competition under all of the circumstances, and served no purpose but to benefit
20 DEFENDANTS financially.

21 96. There were reasonably available alternatives to further DEFENDANTS' legitimate
22 business interests, other than the conduct described herein.

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

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

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
5 DATED: 2-25-21

SEMNAR & HARTMAN, LLP

6 *Jared M. Hartman*
7 JARED M. HARTMAN, Esq.
8 Attorneys for Plaintiffs
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EXHIBIT A

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

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

1
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

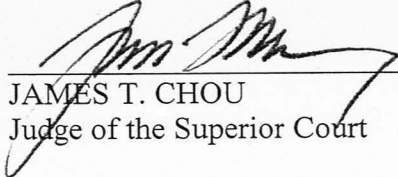
1 within the range of prevailing local rates for similar work by counsel of similar caliber.
2 Consequently, the court reduces the hourly rate for petitioner's counsel to \$450.00. The court
3 finds that the 112 hours claimed for work on this motion are reasonable.

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.
- 15
- 16

17
18 Date: February 10, 2020

19 
20 _____
21 JAMES T. CHOU
22 Judge of the Superior Court
23
24
25
26
27
28

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>
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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.

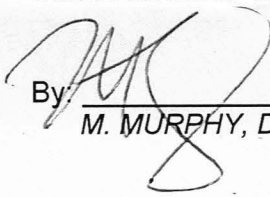
JOHN C. KAKINUKI, ESQ.
1050 NORTHGATE DRIVE, #270
SAN RAFAEL, CA 94903

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