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By _____, Deputy
23CV002126

1 SEMNAR & HARTMAN, LLP
2 Babak Semnar, Esq. (SBN 224890)
3 Jared M. Hartman, Esq. (SBN 254860)
4 41707 Winchester Rd. Suite 201
5 Temecula, California 92590
6 Telephone: (951) 293-4187
7 Facsimile: (888) 819-8230

8 Attorneys for PLAINTIFF, GWENDOLYN MARTIN

9
10 **IN THE SUPERIOR COURT**
11 **FOR THE COUNTY OF SACRAMENTO**

12 GWENDOLYN MARTIN, an individual,

Case No.: 23CV002126

13 PLAINTIFF,

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

14 vs.

15 NEWREZ, LLC, d/b/a SHELLPOINT
16 MORTGAGE;

- 17 **1. CALIFORNIA MILITARY
FAMILIES FINANCIAL RELIEF
ACT;**
18 **2. CALIFORNIA ROSENTHAL ACT;**
19 **3. CALIF. CONSUMER CREDIT
REPORTING AGENCIES ACT;**
20 **4. NEGLIGENT
MISREPRESENTATIONS;**
21 **5. INTENTIONAL/RECKLESS
MISREPRESENTATIONS**

22 DEFENDANTS.

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

24 PLAINTIFF, GWENDOLYN MARTIN (hereinafter, "PLAINTIFF"), an individual, by
and through her attorneys of record, hereby complains and alleges in this Complaint as follows:

INTRODUCTION

1. This action arises out of DEFENDANT NEWREZ, LLC'S d/b/a SHELLPOINT
MORTGAGE (hereinafter, "NEWREZ") (collectively, "DEFENDANTS") violations of the State
of California Military Families Financial Relief Act (Calif. Military and Veteran's Code §§ 800-

BY FAX

1 812); the State of California Consumer Credit Reporting Agencies Act (Calif. Civ. Code §§
2 1785.25-1785.31); the State of California Rosenthal Act (hereinafter “Rosenthal Act”) (Calif.
3 Civil Code §§1788-1788.32); and common law causes of action.

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

7 3. California’s enactment of legislation conferring certain benefits with regard to
8 civil obligations, liabilities, and litigation on military personnel called to active service or duty
9 evidences the Legislature’s intent to protect such members of our Armed Forces.

10 4. For example, the Comments to California Bill Analysis, A.B. 306 Assem.,
11 4/26/2005 states in part:

12 A recent Pentagon survey found that 31% of families of reservists and National Guard
13 members see a decrease in income when a spouse is called to duty. Too much debt
14 and financial worries are a burden to service members and can have serious
15 consequences. Federal and state governments have long recognized the need to
16 provide certain legal protections for individuals entering or called to active duty in
17 the military service. During times of past national crisis, Congress and state
18 legislatures have passed various laws to protect service members while deployed on
19 active duty. **The goal of these laws was to allow service members to focus on their
20 military duties without worrying about civil obligations back home and to
21 ensure that service members and their families would not face undue economic
22 hardships as a result of their military service** (emphasis added).

23 The author of this bill argues that **no Californian should be subjected to financial
24 hardship as a result of their choice to serve and that because California's service
25 members are currently being activated at near record levels, now is the time for
26 California to stand up and protect the financial security of these brave soldiers
27 and their families** (emphasis added).

28 5. Furthermore, California Bill Analysis, A.B. 3212 Assem., 4/10/2018 states in part:
29 “The need to provide active duty members of the military, as well as National Guard and Reserve
30 service members who are called to active duty, with a certain measure of protection in civil
31

1 liability cases is long-recognized, first during the Civil War and later, in the form of the Soldiers
2 and Sailors Relief Act of 1940.”

3 6. Additionally, California Bill Analysis, A.B. 3212 Assem., 5/2/2018 shows that the
4 Purpose of the Bill to amend Military and Veterans’ Code § 800, et seq. was as follows:

5 Purpose. This bill seeks to ease the legal and financial burdens placed on military
6 personnel and their families by expanding and strengthening several consumer
7 protections provided to active duty California service members. This bill is
8 sponsored by the state attorney general. According to the author:

9 California leads the nation in protecting the rights of military members under state
10 law. But current state military consumer protections apply only to members of the
11 National Guard and reservists who are called to active duty. These protections do
12 not cover the more than 100,000 full time members of the active components of the
13 armed forces who live in California.

14 Currently, most of the protections expire quickly after a service member leaves
15 active duty. This is problematic because service members need time after
16 deployment to reintegrate and may face financial distress during this period of
17 transition.

18 7. DEFENDANTS’ actions taken with respect to PLAINTIFF’S residential home
19 mortgage loan obligations do not comply nor comport with the legislative intent to protect the
20 financial security of our service members fighting for our country

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

23 9. DEFENDANT NEWREZ is a business entity that regularly does business within
24 the State of California, County of Sacramento, and maintains an agent for service of process
within the State of California at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.
Therefore, personal jurisdiction is established.

10. Because all tortious conduct occurred while PLAINTIFF resided in the City of Elk
Grove, County of Sacramento, and the actions taken by DEFENDANTS that give rise to this

1 lawsuit pertain to a home mortgage loan for real property located within the City of Elk Grove,
2 County of Sacramento, and witnesses are located therein, venue properly lies in this Court.

3 **PARTIES & DEFINITIONS**

4 11. PLAINTIFF is a natural person whose permanent residence is in the City of Elk
5 Grove, County of Sacramento.

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

9 13. DEFENDANTS alleged that PLAINTIFF owed money that they were allegedly
10 collecting for a mortgage loan for a residence, and PLAINTIFF is therefore informed and believes
11 that the money alleged to have been owed originated from monetary credit that was extended to
12 PLAINTIFF primarily for personal, family, or household purposes, and is therefore a “debt” as
13 that term is defined by Calif. Civil Code § 1788.2(d) of the Rosenthal Act.

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

18 15. Because PLAINTIFF, a natural person allegedly obligated to pay money arising
19 from a consumer credit transaction, the money allegedly owed was a “consumer debt” within the
20 meaning of California Civil Code § 1788.2(f) of the Rosenthal Act.

21 16. PLAINTIFF is informed and believe that DEFENDANTS regularly collect or
22 attempt to collect debts on behalf of others that are owed or due or asserted to be owed or due,
23 and is therefore a “debt collector” within the meaning of Calif. Civil Code § 1788.2(c) of the
24 Rosenthal Act, and thereby engage in “debt collection” within the meaning of California Civil

1 Code § 1788.2(b) of the Rosenthal Act, are also therefore each a “person” within the meaning of
2 California Civil Code § 1788.2(g) of the Rosenthal Act, and each is also a “creditor” under
3 California Civil Code § 1788.2(i).

4 17. PLAINTIFF is a natural person whose permanent residence is in the County of
5 Sacramento, and each is a “consumer” as that term is defined by Calif. Civ. Code § 1785.3(b) of
6 the CCCRAA.

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

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

17 **STATUTORY PROTECTIONS**
18 **OF CALIFORNIA MILITARY RESERVIST SERVICEMEMBERS**

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

22 _____
23
24 ¹ The obligation to defer payments on a mortgage or deed of trust pursuant to § 800(a) became
effective January 1, 2006, Enacted Legislation Added by Stats.2005, c. 291 (A.B.306), § 2.

1 21. Section 800(b) requires only that the reservist submit a written request for
2 deferment that encloses a copy of the military orders, and explicitly states that email
3 communication is sufficient to satisfy such a written request.

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

9 23. Section 804 of the Calif. Military and Veterans' Code reads:

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

14 24. Section 805 of the Calif. Military and Veterans' Code reads:

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

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

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

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

24 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

1 or other person entitled to the benefits and protections of this chapter.

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

4 27. Pursuant to Section 813(a)-(b) of the Calif. Military and Veterans' Code, any
5 potential deficiency, legal insufficiency, or lack of entitlement to a request for deferment
6 submitted by a reservist is waived if the lender/servicer fails to provide a written explanation
7 within 30 days as to why it believes any such deficiency, legal insufficiency, or lack of entitlement
8 may exist, and in such a case the reservist is therefore entitled to the deferment benefits provided
9 herein despite the existence of any potential deficiency, legal insufficiency, or lack of entitlement.

10 28. It must also be noted that, pursuant to CMVC § 401(a)(3) and (a)(5), it is unlawful
11 for a creditor to furnish to the credit reporting agencies any adverse credit reporting and/or that a
12 borrower is a member of either an active or reserve component of the Armed Forces. Such a
13 violation is punishable criminally as follows, pursuant to CMVC § 401(e): "Any person violating
14 any provision of this section is guilty of a misdemeanor, and shall be punishable by imprisonment
15 not to exceed one year or by a fine not to exceed one thousand dollars (\$1,000), or both.

16 **FACTUAL ALLEGATIONS**

17 29. PLAINTIFF is presently a Second Lieutenant with the California Air National
18 Guard.

19 30. PLAINTIFF is presently 36 years old, and has one child presently aged 5 years.

20 31. PLAINTIFF'S family is a dedicated military family, with PLAINTIFF also being
21 a disabled veteran from the U.S. Air Force, after being honorably discharged from active duty in
22 January 2017.

23 32. PLAINTIFF has Top Secret Clearance.
24

1 33. In July 2019, PLAINTIFF incurred a home mortgage loan obligation, for which
2 DEFENDANTS are presently the owners and/or servicers of the mortgage loan.

3 34. The mortgage loan is a VA backed loan.

4 35. The home mortgage loan is for PLAINTIFF'S primary place of residence in the
5 City of Elk Grove, County of Sacramento.

6 36. PLAINTIFF received deployment orders, pursuant to 10 U.S.C. § 12302, ordering
7 her to report to active-duty effective June 5, 2022 through September 30, 2023.

8 37. In or about July 2022, PLAINTIFF delivered to DEFENDANTS a written request
9 that requested a deferment of the home mortgage loan obligation pursuant to the Calif. Military
10 & Veterans' Code Section 800.

11 38. PLAINTIFF enclosed a copy of the deployment orders with the deferment request.

12 39. Pursuant to Sections 800 and 811 of the Calif. Military and Veterans' Code,
13 PLAINTIFF therefore was automatically entitled to up to 180-days' worth of deferment of the
14 principal and interest, and DEFENDANTS (as well any lender and any subsequent servicer) was
15 obligated to not only abide by the mandatory deferment but to also extend the maturity date of
16 the term of the obligation equal to the number of months of the deferment.

17 40. As the deferments were required to be applied to principal and interest,
18 PLAINTIFF was only required to pay each month the escrow amount for taxes and insurance.

19 41. DEFENDANTS responded by claiming that PLAINTIFF was eligible for
20 deferment and claimed that it would honor a deferment of principal and interest, such that only
21 escrow payments would be required by PLAINTIFF for every monthly payment due between
22 August 2022 and January 2023, with her full regular monthly payments resuming with the
23 payment due February 1, 2023.

24

1 42. PLAINTIFF trusted and relied on DEFENDANT’S promises and assurances that
2 PLAINTIFF would receive the mandatory deferment protections.

3 43. PLAINTIFF’S reliance on DEFENDANTS’ promises and assurances caused
4 PLAINTIFF to take no further steps to protect herself or to seek refinancing with a new lender,
5 which eventually has caused her to suffer great harm.

6 44. Unfortunately, however, DEFENDANTS persisted in sending written
7 correspondence that grossly mischaracterized the account and showed that DEFENDANTS were
8 attempting to collect amounts that were not owed and had been grossly mishandling the account.

9 45. DEFENDANTS have sent multiple written correspondence to PLAINTIFF that
10 falsely and unlawfully claims that PLAINTIFF is in default and past due for several thousands of
11 dollars, which DEFENDANTS calculated by adding and compounding the full regular monthly
12 payment from every month of the deferment (August 2022 through January 2023).

13 46. DEFENDANTS have sent multiple written correspondence to PLAINTIFF that
14 falsely and unlawfully claim PLAINTIFF is subject to foreclosure proceedings.

15 47. DEFENDANTS have also charged to PLAINTIFF multiple “property inspection”
16 fees that are only charged as a first step in starting the foreclosure process, which, in turn, signifies
17 that DEFENDANTS did, in fact, take the first steps in starting the foreclosure process against
18 PLAINTIFF on multiple occasions.

19 48. In January 2023, DEFENDANTS then unilaterally created a balloon payment of
20 several thousands of dollars that DEFENDANTS have falsely alleged that PLAINTIFF is in
21 default and past due upon and informed PLAINTIFF that she owes this significant amount of
22 money at the end of the life of the loan.

1 49. Each written correspondence sent by DEFENDANTS amounts to a separate
2 incident of engaging in multiple false representations of the nature, character, and amount owed
3 and false representations of the nature, character, and status of the account.

4 50. Each false written correspondence sent by DEFENDANTS caused PLAINTIFF to
5 suffer fear and worry over her family’s financial affairs, and to also suffer fear and worry over
6 whether her family might lose their home due exclusively to gross errors committed by a company
7 that they had no choice in servicing their account, and to also suffer fear and worry over whether
8 the VA might withdraw its guarantee of the loan.

9 51. PLAINTIFF also was forced to call in to DEFENDANTS each month during her
10 deferment period to make only her escrow payment that was due each month, during which time
11 DEFENDANTS would falsely accuse PLAINTIFF of being in default and past due for several
12 thousands of dollars, which would result in PLAINTIFF having to spend upwards of 30-60
13 minutes during each call explaining the deferment only to be informed by DEFENDANTS that
14 the agents are not aware of any such thing as a “military deferment”.

15 52. The fact that DEFENDANTS’ agents admitted to PLAINTIFF that they are not
16 aware of any such thing as a “military deferment” underscores and confirms that DEFENDANTS
17 have implemented absolutely no training protocol for their agents to understand and comply with
18 the mandatory deferment mandated by California statute.

19 53. PLAINTIFF has suffered significant emotional distress over these false
20 representations and false attempts by DEFENDANTS to attempt to collect monies that were not
21 owed due to the mandatory deferment protections.

22 54. Additionally, DEFENDANTS’ gross mishandling of the account has also included
23 multiple acts of furnishing grossly inaccurate information to the consumer credit reporting
24 agencies, which includes (but is not limited to) the following:

- 1 a. inaccurately and falsely claiming that the total balance owed is much higher than
2 what the actual balance is truly owed; and,
- 3 b. inaccurately and falsely claiming that PLAINTIFF is 60, 90, 120, and 150 days
4 late during the months that she was on deferment.

5 55. The negative credit reporting has caused PLAINTIFF to be concerned and worried
6 over the possibility of discipline within the military, possibility of demotion and/or less than
7 honorable discharge, and possibly being stripped of her Top Security Clearance, as negative credit
8 history risks her being deprived of her security clearance level because the military considers
9 someone with negative credit history as being at risk for bribery and manipulation by foreign
10 adversaries.²

11 56. In May 2023, PLAINTIFF requested a payoff quote to see exactly how much she
12 might need to obtain in a refinancing loan application in order to escape DEFENDANTS'
13 seemingly endless violations and mishandling of the account.

14 57. By letter dated May 20, 2023, DEFENDANTS claimed that the total unpaid
15 principal balance is \$339,868.97, plus a "Deferred Principal" owed in the amount of \$7,282.00,
16 and plus a "Deferred Interest" owed in the amount of \$5,399.42, and that the total amount owed
17 to pay in full is \$353,246.48, despite the fact that the original principal amount was \$347,217.09
18 prior to the deferment being implemented in July 2022.

19 58. This means, in effect, that PLAINTIFF is being considered as having paid \$0.00
20 in any principal since she began making her regular monthly payments in full February 2023, and
21 did in fact make payments towards principal and interest for every month from February 2023 to

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23
24 ² See also, <https://www.consumerfinance.gov/about-us/blog/warno-new-security-clearance-guidelines-make-it-more-important-ever-servicemembers-monitor-their-credit/>.

1 present, which means she is now being considered by DEFENDANTS as obligated to owe more
2 in principal and interest than what she in fact does owe.

3 59. However, any such claims are false.

4 60. In effect, therefore, DEFENDANTS have confirmed that they have implemented
5 a scam whereby PLAINTIFF, as a deployed military servicemember, is being penalized, punished,
6 and defrauded by simply triggering her absolute statutory rights to deferment.

7 61. PLAINTIFF has suffered, and still does suffer, emotional and financial harm as a
8 direct and proximate result of this negative credit reporting, such as loss of sleep, worry, fear,
9 shame, embarrassment, headaches, increased heart rate, and shaking.

10 62. Upon information and belief, DEFENDANTS acted with malice and oppression
11 in deliberate and willful disregard of PLAINTIFF'S rights, because they acted with such a high
12 degree of risk of committing a legal violation that was higher than mere carelessness, because the
13 laws that protect PLAINTIFF in these circumstances are very clear and unambiguous, and also
14 because DEFENDANTS have been sued for these very same violations by other servicemembers,
15 yet DEFENDANTS utterly failed to properly comply, which means DEFENDANTS deserve
16 exemplary and punitive damages.

17 63. Assuming, but without conceding, that DEFENDANTS might assert there exists
18 a potential deficiency, legal insufficiency, or lack of entitlement to PLAINTIFF'S request for
19 deferment, DEFENDANTS' failure to provide any written explanation of any basis for a
20 rejection/denial of the request within 30 days, as mandated by Section 813, therefore results in
21 any potential deficiency, legal insufficiency, or lack of entitlement having been waive, which
22 results in PLAINTIFF therefore being entitled to the benefits requested despite any such potential
23 deficiency, legal insufficiency, or lack of entitlement (if there even is any).

24 ///

1 breach of an obligation not arising from contract ...) does not apply.³ Upon information and
2 belief, DEFENDANTS have (or are likely to have) mortgage servicing engagements with other
3 military families throughout the State of California, which means DEFENDANTS deserve to
4 suffer exemplary damages so that they do not inflict similar violations upon other military families,
5 in addition to deserving punishment for attempting to rip off PLAINTIFFS themselves.

6 72. Under California law, even where a claim formally sounds in negligence, if the
7 PLAINTIFF can make a showing that defendant's conduct goes beyond gross negligence and
8 demonstrates a knowing and reckless disregard, punitive damages may be available. *In re*
9 *Yahoo! Inc. Customer Data Security Breach Litigation* (N.D. Cal.2018) 313 F.Supp.3d 1113.

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

16 74. 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
22 ³ In the statute authorizing punitive damages for “an action for the breach of an obligation not arising from
23 contract,” the word “contract” is used in its ordinary sense to mean an agreement between the parties, not an
24 obligation imposed by law despite the absence of any such agreement. *Brewer v. Premier Golf Properties, LP*
(App. 4 Dist. 2008) 168 Cal.App.4th 1243, review denied; *Ward v. Taggart* (1959) 51 Cal.2d 736, 336 P.2d
534. Further, exemplary damages may be recovered in tort action upon a proper showing of malice, fraud or
oppression even though the tort incidentally involves a breach of contract. *Chelini v. Nieri* (1948) 32 Cal.2d 480,
196 P.2d 915; *Haigler v. Donnelly* (1941) 18 Cal.2d 674, 117 P.2d 331.

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

9 75. At all times relevant, DEFENDANTS were each obligated to comply with all such
10 requirements of the Federal FDCPA incorporated into the Rosenthal Act pursuant to Calif. Civ.
11 Code § 1788.17.

12 76. By falsely claiming on multiple occasions that PLAINTIFFS owe several
13 thousands of dollars more than what PLAINTIFFS actually owe, DEFENDANTS have engaged
14 in multiple violations of the FDCPA as follows, all of which are necessarily violations of the
15 Rosenthal FDCPA via Calif. Civ. Code 1788.17:

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

1 77. By furnishing false, inaccurate, and misleading information to the consumer credit
2 reporting agencies that PLAINTIFFS were delinquent during the deferment period and that their
3 balance owed is much higher than what it actually is, DEFENDANTS has engaged in multiple
4 violations of the Federal FDCA as follows, all of which are necessarily violations of the Rosenthal
5 FDCPA via Calif. Civ. Code 1788.17:

- 6 a. 15 U.S.C. §1692d by engaging in conduct the natural consequence of which is to
7 oppress PLAINTIFFS in connection with the collection of a debt,
- 8 b. 15 U.S.C. §1692e by using false, deceptive, and misleading representations in
9 connection with the collection of a debt,
- 10 c. 15 U.S.C. §1692e(2)(A) by falsely representing the character, amount, and legal
11 status of the debt,
- 12 d. 15 U.S.C. §1692e(8), by furnishing credit reporting information to the consumer
13 credit reporting agencies that DEFENDANTS knew or should know is false,
- 14 e. 15 U.S.C. §1692e(10) by using false representations and deceptive means to
15 attempt to collect a debt,
- 16 f. 15 U.S.C. §1692f by using unfair and unconscionable means to attempt to collect a
17 debt,
- 18 g. 15 U.S.C. §1692f(1) by collecting an amount not authorized by agreement or by
19 law.

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

23 79. DEFENDANTS' violations of the Rosenthal FDCPA were willful, because
24 DEFENDANTS at all times knew that the actions giving rise to such violations were wrongful

1 and in violation of the law, and were also in direct contradiction to its own acknowledgement
2 with PLAINTIFFS that it was granting them the deferment.

3 80. As a proximate result of DEFENDANTS' actions, PLAINTIFFS have suffered
4 loss of time, loss of quality of life, as well as emotional and financial injuries.

5 81. PLAINTIFFS are also entitled to, and seek, up to \$1,000.00 in statutory damages
6 plus attorneys' fees and costs.

7 **THIRD CAUSE OF ACTION**
8 **CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT**
9 **CALIF. CIV. CODE § 1785.25(a)**
10 **(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)**

11 82. PLAINTIFFS repeat, re-allege, and incorporate by reference each of the above
12 paragraphs as though set forth fully herein.

13 83. As the furnisher of information to credit reporting agencies, DEFENDANTS at all
14 times remained obligated to not furnish information on a transaction or experience to any
15 consumer credit reporting agency if they knew or should have known the information was
16 incomplete or inaccurate, as required by Calif. Civ. Code § 1785.25(a) of the California CCRAA.

17 84. Even if the derogatory reporting is technically accurate, it is still a violation of this
18 law if the derogatory reporting is misleading in such a way and to such an extent that it can be
19 expected to adversely affect credit decisions. *Cisneros v. U.D. Registry, Inc.* (1995) 39 Cal. App.
20 4th 548.

21 85. A credit reporting violation is "willful" if it involves the commission not only of
22 acts known to violate the statute, but also "reckless disregard of statutory duty." *Safeco Ins. Co.*
23 *of Am. v. Burr*, 551 U.S. 47, 56-57 (2007).

24 86. The Ninth Circuit in *Syed v. M-I, LLC* (2017) 853 F.3d 492, FN 7 recently stated,
with respect to credit reporting violations, "[W]here a party's action violates an unambiguous

1 statutory requirement, that fact alone may be sufficient to conclude that violation is reckless, and
2 therefore willful. ... [R]ecklessness may be determined by objective evidence alone.”

3 87. DEFENDANTS violated the obligations under Section 1785.25(a) of the Calif.
4 CCRAA by reporting to the consumer credit reporting agencies that PLAINTIFFS were
5 delinquent during months that they were under mandatory deferment, and that the amounts owed
6 were much higher than actually owed, when in reality DEFENDANTS either knew or should
7 have known the furnished information was factually false and inaccurate.

8 88. DEFENDANTS’ violations were negligent at a minimum, because a reasonable
9 person would not have reported the account in such a manner.

10 89. PLAINTIFFS are also informed and believe that DEFENDANTS’ violations were
11 willful in that DEFENDANTS know of their obligations pursuant to Section 1785.25(a), yet acted
12 with such a high degree of risk of committing a legal violation that was higher than mere
13 carelessness by failing to review and consider their own internal records in committing these
14 violations, and because the reporting was in direct contradiction to the statutory protections
15 afforded to PLAINTIFFS as a deployed military family.

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

18 91. PLAINTIFFS are therefore entitled to, and seek, actual damages, statutory
19 damages of \$5,000.00 per willful violation, attorneys’ fees and costs, and injunctive relief
20 pursuant to Calif. Civ. Code § 1785.31.

21 **FOURTH CAUSE OF ACTION**
22 **NEGLIGENT MISREPRESENTATIONS**
(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)

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

1 93. DEFENDANTS have misrepresented to PLAINTIFFS that they would provide
2 PLAINTIFFS with statutory protections to which they are unequivocally entitled.

3 94. However, DEFENDANTS' representations were false, as DEFENDANTS did not
4 have either the ability or the intent to provide PLAINTIFFS with the statutory protections to
5 which they are unequivocally entitled.

6 95. DEFENDANTS uttered these statements with the intent to induce PLAINTIFFS'
7 reliance on them.

8 96. DEFENDANTS are in possession of the letters, notes, and phone call recordings
9 of the misrepresentations made to PLAINTIFFS, which means DEFENDANTS are assumed to
10 possess knowledge of the facts at least equal, if not superior, to that possessed by PLAINTIFFS.

11 97. PLAINTIFFS justifiably relied on these statements at taking advantage of the
12 deferment protections and not seeking refinancing with any other lender that actually had the
13 ability and intent to properly implement the mandatory deferment protections.

14 98. However, as a direct result of the false representations, PLAINTIFFS have since
15 been forced to suffer emotional and financial injuries to their detriment.

16 99. DEFENDANTS knew, or acted with reckless disregard, that their representations
17 were false and knew that PLAINTIFFS were relying on such representations to their detriment.

18 100. DEFENDANTS had no reasonable grounds for believing the representations were
19 true when made.

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

22 102. PLAINTIFFS are also entitled to, and seek, attorneys' fees (pursuant to Civ. Code
23 § 1021.5) and costs.

24

1 103. PLAINTIFFS are further informed and believes that the aforesaid conduct was
2 malicious and oppressive, as those terms are defined by California Civil Code sections 3294(c)(1)
3 and 3294(c)(2), deserving of punitive and exemplary damages. The obligations of
4 DEFENDANTS in this Cause of Action are not arising from contract, as the obligations arise
5 specifically from common law, which in turn means the limitation of § 3294(a) (“In an action for
6 the breach of an obligation not arising from contract ...”) does not apply. Upon information and
7 belief, DEFENDANTS have (or are likely to have) mortgage servicing engagements with other
8 military families throughout the State of California, which means DEFENDANTS deserve to
9 suffer exemplary damages so that they do not inflict similar violations upon other military families,
10 in addition to deserving punishment for attempting to rip off PLAINTIFFS themselves.

11 104. Under California law, even where a claim formally sounds in negligence, if the
12 PLAINTIFF can make a showing that defendant's conduct goes beyond gross negligence and
13 demonstrates a knowing and reckless disregard, punitive damages may be available. *In re*
14 *Yahoo! Inc. Customer Data Security Breach Litigation* (N.D.Cal. 2018) 313 F.Supp.3d 1113.

15 **FIFTH CAUSE OF ACTION**
16 **INTENTIONAL/RECKLESS MISREPRESENTATIONS**
17 **(BY AND ON BEHALF OF ALL PLAINTIFFS, AS AGAINST ALL DEFENDANTS)**

18 105. PLAINTIFFS repeat, re-allege, and incorporate by reference each of the above
19 paragraphs as though set forth fully herein.

20 106. DEFENDANTS misrepresented to PLAINTIFFS that they would provide
21 PLAINTIFFS with statutory protections to which they are unequivocally entitled.

22 107. However, DEFENDANTS’ representations were false, as DEFENDANTS did not
23 have either the ability or the intent to provide PLAINTIFFS with the statutory protections to
24 which they are unequivocally entitled.

1 108. DEFENDANTS uttered these statements with the intent to induce PLAINTIFFS'
2 reliance on them.

3 109. DEFENDANTS are in possession of the letters, notes, and phone call recordings
4 of the misrepresentations made to PLAINTIFFS, which means DEFENDANTS are assumed to
5 possess knowledge of the facts at least equal, if not superior, to that possessed by PLAINTIFFS.

6 110. PLAINTIFFS justifiably relied on these statements at taking advantage of the
7 deferment protections and not seeking refinancing with any other lender that actually had the
8 ability and intent to properly implement the mandatory deferment protections.

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

11 112. DEFENDANTS knew, or acted with reckless disregard⁴, that their representations
12 were false and knew that PLAINTIFFS were relying on such representations to their detriment.

13 113. DEFENDANTS had no reasonable grounds for believing the representations were
14 true when made.

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

17 115. PLAINTIFFS are also entitled to, and seek, attorneys' fees (pursuant to Civ. Code
18 § 1021.5) and costs.

19 116. 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)

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⁴ A defendant may be liable for deceit without actual knowledge that the representation was false if the plaintiff can
prove the defendant's reckless disregard for the truth. CAL. CIV. CODE §1710(1); *In re Cheryl E.*, 161 Cal. App. 3d
587, 599, 207 Cal. Rptr. 728 (1984).

1 and 3294(c)(2), deserving of punitive and exemplary damages. The obligations of
2 DEFENDANTS in this Cause of Action are not arising from contract, as the obligations arise
3 specifically from common law, which in turn means the limitation of § 3294(a) (“In an action for
4 the breach of an obligation not arising from contract ...”) does not apply. Upon information and
5 belief, DEFENDANTS have (or are likely to have) mortgage servicing engagements with other
6 military families throughout the State of California, which means DEFENDANTS deserve to
7 suffer exemplary damages so that they do not inflict similar violations upon other military families,
8 in addition to deserving punishment for attempting to rip off PLAINTIFFS themselves.

9 117. Under California law, even where a claim formally sounds in negligence, if the
10 PLAINTIFF can make a showing that defendant's conduct goes beyond gross negligence and
11 demonstrates a knowing and reckless disregard, punitive damages may be available. *In re*
12 *Yahoo! Inc. Customer Data Security Breach Litigation* (N.D.Cal. 2018) 313 F.Supp.3d 1113.

13 PRAYER FOR RELIEF

14 WHEREFORE, PLAINTIFFS pray that judgment be entered against each DEFENDANT
15 individually, in favor of each PLAINTIFF individually, and that PLAINTIFFS each be awarded
16 damages as follows:

17 1. Actual damages, as it relates to each and every cause of action provided herein, or
18 as the jury may allow, subject to proof at jury trial;

19 2. Punitive damages, from each DEFENDANT individually, pursuant to Cal. Civ.
20 Code § 3294, as the jury may allow, subject to proof at jury trial;

21 3. Plus statutory damages of \$5,000.00 for each individual willful violation of the
22 Calif. Consumer Credit Reporting Agencies Act, pursuant to Calif. Civ. Code § 1785.31(a)(2)(A)-
23 (C);

24 4. Plus statutory damages of \$1,000.00 from each DEFENDANT individually

1 pursuant to Calif. Civ. Code §1788.30(b);

2 5. Prejudgment interest at the maximum legal rate;

3 6. Reasonable attorneys' fees and costs;

4 7. General, special and consequential damages, to the extent allowed by law;

5 8. Injunctive relief to order DEFENDANTS to remove any and all inaccurate credit
6 reporting and to furnish accurate and truthful information to each and every consumer credit
7 reporting agency;

8 9. Injunctive relief to order DEFENDANTS to comply with all statutory obligations
9 referenced herein;

10 10. Injunctive relief to order DEFENDANTS to cease and desist any and all efforts to
11 falsely allege that PLAINTIFFS are in default and past due;

12 11. Injunctive relief to order DEFENDANTS to cease and desist any and all efforts to
13 implement foreclosure proceedings; and,

14 12. Such other relief as the Court may deem just and proper.

15 **TRIAL BY JURY**

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

18
19 DATED: 5-21-23

SEMNR & HARTMAN, LLP

20 *Jared M. Hartman*
21 _____
JARED M. HARTMAN, Esq.
22 Attorneys for PLAINTIFFS
23
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