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7
8 **U.S. DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA—EASTERN DIVISION

9 PATRICIA MASON, an Individual;
and DONALD MASON, an Individual,
10
11 Plaintiffs,

12 vs.

13 BMW FINANCIAL SERVICES NA,
a limited liability company;
14 PATRICK K. WILLIS COMPANY,
an incorporated entity; and DOES 1-
50,

15 Defendants.

Case No.: 5:14-cv-01357-VAP-DTB

**FIRST AMENDED COMPLAINT
FOR VIOLATIONS OF:**

1. CALIFORNIA MILITARY FAMILIES FINANCIAL RELIEF ACT,
2. CALIFORNIA ROSENTHAL ACT,
3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
4. FEDERAL FAIR DEBT COLLECTION PRACTICES ACT,
5. CALIFORNIA CONSUMER CREDIT REPORTING AGENCIES ACT

18 TO THE CLERK OF THE COURT, ALL PARTIES, AND THE HONORABLE
19 SUPERIOR COURT JUDGE:

20 Complainants, PATRICIA & DONALD MASON, both Individuals, by and
21 through their attorneys of record, BABAK SEMNAR of SEMNAR LAW FIRM, INC.

1 and JARED M. HARTMAN of HARTMAN LAW OFFICE, INC., hereby complains
2 and alleges in this First Amended Complaint as follows:

3 **INTRODUCTION**

4 1. This action arises out of Defendant BMW FINANCIAL SERVICE's
5 (hereinafter "Defendant BMW") and Defendant PATRICK K. WILLIS COMPANY's
6 (hereinafter "Defendant PKW") violations of the State of California Military Families
7 Financial Relief Act (Calif. Military and Veteran's Code §§800-812) as it pertains to
8 both Plaintiffs; the State of California Rosenthal Act (hereinafter "Rosenthal Act")
9 (California Civil Code §§1788-1788.32) as it pertains to both Plaintiffs; the State of
10 California tort of Intentional Infliction of Emotional Distress (*Hughes v. Pair* (2009) 46
11 Cal.4th 1035, 1050—1051) as it pertains to both Plaintiffs; Defendant PKW's
12 violations of the Federal Fair Debt Collection Practices Act (hereinafter "FDCPA") (15
13 U.S.C. §§1692-1692p) as it pertains to both Plaintiffs; and Defendant BMW's
14 violations of the California Consumer Credit Reporting Agencies Act (hereinafter
15 "California CCRAA") (Calif. Civ. Code §1785.25(a)) as it pertains to Plaintiff
16 DONALD only.

17 2. Plaintiffs make the allegations below on information and belief, with the
18 exception of those allegations that pertain to plaintiffs personally, or to plaintiff's
19 counsel, which Plaintiffs allege on personal knowledge.

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

1 **JURISDICTION & VENUE**

2 4. The U.S. District Court has original subject matter jurisdiction pursuant to
3 28 U.S.C. §§ 1331 and 1332 because of the allegations of violation of the Federal Fair
4 Debt Collection Practices Act.

5 5. Defendant BMW is a limited liability company in the State of Delaware,
6 but conducts business within the State of California and County of Riverside, maintains
7 an agent for service of process within the City of Los Angeles, State of California, and
8 therefore personal jurisdiction is established.

9 6. Defendant PKW is an incorporated entity located in the City of
10 Sacramento, State of California, and therefore personal jurisdiction is established

11 7. Because all tortious conduct occurred while Plaintiffs resided in the City of
12 Wildomar, County of Riverside, and witnesses reside within the City of Wildomar,
13 County of Riverside, venue properly lies in this Court.

14 **PARTIES & DEFINITIONS OF**
15 **CONSUMER RIGHTS LAWS**

16 8. Plaintiffs are natural persons whose permanent residence is in the City of
17 Wildomar, County of Riverside, State of California.

18 9. Defendant BMW is a limited liability company out of the State of
19 Delaware, but regularly does business in the State of California and maintains an agent
20 for service of process in the City of Los Angeles, State of California.

21 10. Defendant BMW does business as “Alphera BMW Financial Services” out

1 of the State of Ohio, and has conducted business with Plaintiffs as the business entity
2 called “Alphera BMW Financial Services”.

3 11. Defendant PKW is headquartered and operates in the City of Sacramento,
4 State of California, and regularly does business in the State of California.

5 12. Defendant PKW does business as “American Recovery Services”, which is
6 PKW’s collateral security repossession business, and “American Recovery Services”
7 has a separate repossession unit known as “Skipbusters”.

8 13. At all times relevant herein, Defendant PKW was acting at the direction of,
9 on behalf of, and at the behest of Defendant BMW, and therefore agency rules apply to
10 create vicarious liability for Defendant BMW for the violations committed by
11 Defendant PKW.

12 14. Plaintiffs, as natural persons allegedly obligated to pay a consumer debt to
13 Defendants BMW and PKW alleged to have been due and owing, are therefore both
14 “consumers” as that term is defined by 15 U.S.C. § 1692a(3) of the FDCPA, and are
15 also therefore “debtors” as that term is defined by California Civil Code § 1788.2(h) of
16 the Rosenthal Act.

17 15. Defendants BMW and PKW alleged that Plaintiffs owed them money
18 and/or repossession of collateral security that they were allegedly collecting for a
19 vehicle lease agreement that they had with Plaintiff DONALD, and Plaintiffs are
20 therefore informed and believe that the money alleged to have been owed originated
21 from monetary credit that was extended to Plaintiff DONALD primarily for personal,

1 family, or household purposes, and is therefore a “debt” as that term is defined by 15
2 U.S.C. § 1692a(5) of the FDCPA and Calif. Civil Code § 1788.2(d) of the Rosenthal
3 Act.

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

8 17. Because Plaintiffs, natural persons allegedly obligated to pay money
9 and/or collateral security to Defendants BMW and PKW arising from a consumer credit
10 transaction, the money allegedly owed was a “consumer debt” within the meaning of
11 California Civil Code § 1788.2(f) of the Rosenthal Act.

12 18. Plaintiffs are informed and believe that Defendant BMW regularly collect
13 or attempts to collect on behalf of themselves debts owed or due or asserted to be owed
14 or due, and is therefore a “debt collector” within the meaning of Calif. Civil Code §
15 1788.2(c) of the Rosenthal Act, and thereby engages in “debt collection” within the
16 meaning of California Civil Code § 1788.2(b) of the Rosenthal Act, is also therefore a
17 “person” within the meaning of California Civil Code § 1788.2(g) of the Rosenthal Act,
18 and is also a “creditor” under California Civil Code § 1788.2(i).

19 19. Plaintiffs are informed and believe that Defendant PKW regularly utilizes
20 the instrumentalities of interstate commerce and the mails in a business for which the
21 principal purpose is the collection of any debts, including repossession of collateral

1 security, is one who regularly collects or attempts to collect, directly or indirectly, debts
2 owed or due or asserted to be owed or due another, and is therefore a “debt collector”
3 within the meaning of 15 U.S.C. § 1692a(6) and California Civil Code § 1788.2(c), and
4 thereby engages in “debt collection” within the meaning of California Civil Code §
5 1788.2(b).

6 20. As it pertains to the California CCRAA, Plaintiff DONALD is a natural
7 person, and is therefore a “consumer” as that term is defined by Calif. Civ. Code §
8 1785.3(b) of the California CCRAA.

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

18 22. As it pertains to the California CCRAA, Defendant BMW is a partnership,
19 corporation, association, or other entity, and is therefore a “person” as that term is
20 defined by Calif. Civ. Code § 1785.3(j) of the California CCRAA.

21 ///

STATUTORY PROTECTIONS
OF MILITARY SERVICE-MEMBERS

1
2 23. Section 800(a)(e) of the Calif. Military and Veterans' Code reads:

3
4 [A]ny member of the United States Military Reserve or the
5 National Guard of this state who is called to active duty after the
6 enactment of this chapter and before January 1, 2014, as a part of
7 the Iraq and Afghanistan conflicts may defer payments on any of
8 the following obligations while serving on active duty:

9 ...

10 (E) Up to two vehicle loans. For purposes of this chapter,
11 "vehicle" means a vehicle as defined in Section 670 of the Vehicle
12 Code.

13
14 24. Section 804 of the Calif. Military and Veterans' Code reads:

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

22 25. Section 808(a) of the Calif. Military and Veterans' Code reads:

23 (a) During the period specified in Section 800, the reservist may
24 defer payments for leased vehicles without breach of the lease
25 or the foreclosure or repossession of the vehicle. If a lender
26 defers payments pursuant to this section, the lender shall
27 extend the term of the lease by the amount of months the lease
28 was deferred.

29 26. Section 811 of the Calif. Military and Veterans' Code reads:

30 (a) The spouse or legal dependent, or both, of a reservist who is
31 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.

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(b) This chapter applies only to an obligation specified in this chapter that was incurred prior to the date that a reservist was called to active duty.

27. 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.

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

FACTUAL ALLEGATIONS

28. Plaintiffs DONALD and PATRICIA are a married couple with a daughter, Amanda D.O.B. 8/11/2000.

29. Plaintiff DONALD had entered into a vehicle lease agreement with Defendant BMW under their business entity called "Alphera" on or about September 2011.

30. Plaintiff DONALD was the sole lessor of this vehicle lease agreement.

31. Plaintiff DONALD is enlisted with the California Army National Guard, but received orders dated October 7, 2013 to serve as active duty beginning October 18, 2013 for a period not to exceed 400 days and to be deployed overseas.

32. Plaintiff DONALD made installment payments upon the vehicle lease agreement prior to being ordered to active duty as described above, and never once

1 received a notice of default prior to entering active duty on October 18, 2013.

2 33. Plaintiff DONALD is currently deployed to dutifully and honorably serve
3 our country for issues arising out of the Iraq and Afghanistan conflicts.

4 34. As he was advised to do so by his Judge Advocates General representative,
5 Plaintiff DONALD delivered a letter to Defendant BMW's business entity called
6 "Alphera" dated October 15, 2013, signed under penalty of perjury, informing
7 Defendant BMW of his recent order to active duty and requested to defer payments
8 under the laws applicable to active duty service-members, and included with the letter a
9 copy of his deployment orders.

10 35. Upon information and belief, Defendant BMW maliciously waited until a
11 time that they knew Plaintiff DONALD would be deployed before attempting to collect
12 payments from Plaintiff PATRICIA.

13 36. Sometime in approximately January 2014, Defendant BMW began calling
14 Plaintiff PATRICIA on an almost daily basis demanding payment upon the vehicle
15 lease, and Plaintiff PATRICIA received several calls from Defendant BMW demanding
16 payments or repossession of the vehicle.

17 37. Plaintiff PATRICIA received these calls from Defendant BMW's agent
18 Ryan, and a phone call placed to the number left by Ryan for PATRICIA reveals that
19 Ryan's voice message answers as "Ryan Payne with BMW group".

20 38. Plaintiff PATRICIA often received multiple calls a day from Defendant
21 BMW during this time period.

1 39. Plaintiff PATRICIA requested on several occasions that Defendant
2 BMW's agents stop calling her but the calls would never cease.

3 40. During that time in January 2014, Plaintiff PATRICIA spoke to Defendant
4 BMW's collection agent named Ryan at various time, who was very rude and
5 argumentative with Plaintiff PATRICIA, and Plaintiff PATRICIA repeatedly informed
6 him that Plaintiff DONALD had sent them a written letter, signed under penalty of
7 perjury, that included as an enclosure a copy of his active duty orders.

8 41. However, Defendant BMW's agent Ryan repeatedly and falsely claimed to
9 Plaintiff PATRICIA that the laws do not protect them, there would be no deferments on
10 the payments, and that she and Plaintiff DONALD owed Defendant BMW the
11 installment payments on the vehicle lease agreement.

12 42. Upon information and belief, Defendant BMW hired the services of
13 Defendant PKW to recover possession of the vehicle as collateral security on the
14 vehicle loan in March of 2014.

15 43. Defendant PKW does business as "American Recovery Services", and
16 within that business entity Defendant PMK operates a repossession unit known as
17 "Skipbusters".

18 44. Upon information and belief, at all times relevant herein, "Skipbusters"
19 was acting as the repossession unit of Defendant PKW, and Defendant PKW was
20 therefore acting as an agent on behalf of, at the direction of, and at the behest of
21 Defendant BMW.

1 45. Defendant PKW's agent Lisa called Plaintiff PATRICIA on an almost
2 daily basis, often-times calling multiple times per day despite Plaintiff PATRICIA
3 having informed Defendant PKW' agent Lisa that Plaintiffs had already invoked their
4 protections under the Military laws.

5 46. Defendant PKW's agent Lisa repeatedly told Plaintiff PATRICIA that
6 Plaintiffs were not protected under the law, she does not care about the law, and the
7 repossession would occur regardless of whether Plaintiff PATRICIA agreed.

8 47. During at least one conversation with Defendant BMW's agent Ryan,
9 Ryan told Plaintiff PATRICIA that he would stop Lisa from repossessing the vehicle
10 but only after receiving a payment from Plaintiff PATRICIA.

11 48. Ryan and Lisa repeatedly threatened to send a reposessor to seize the
12 vehicle from Plaintiff PATRICIA if she did not provide an immediate payment over the
13 phone.

14 49. During times that Plaintiff PATRICIA did not answer the phone, many
15 messages left by Defendant PKW's agent Lisa upon PATRICIA's voicemails included
16 threats that the vehicle would be repossessed and that they "do not care about" the
17 military protection laws.

18 50. Plaintiff PATRICIA was so emotionally distraught over the harassing
19 conduct and threats of repossession by Ryan and Lisa that during one conversation
20 when Ryan claimed he was going to authorize Lisa to repossess the vehicle if
21 PATRICIA did not make an immediate payment over the phone, PATRICIA did make

1 a payment in the amount of \$391.79 with a credit card and has incurred fees and interest
2 thereupon.

3 51. During one conversation with Defendant PKW's agent Lisa when Lisa told
4 Plaintiff PATRICIA that she was setting up an appointment for a reposessor to come
5 seize the vehicle, Plaintiff PATRICIA told Lisa to stop calling her and hung up the
6 phone, and then Lisa promptly called back and left an angry message demanding that
7 Plaintiff PATRICIA not hang up on her again.

8 52. Defendant PKW's agent Lisa had also left many threatening voicemails for
9 Plaintiff PATRICIA, threatening that she had better not drive this vehicle to anywhere
10 because their company is connected to surveillance cameras and they would find her
11 and repossess the vehicle, even if she is at the grocery store.

12 53. Upon information and belief, when "Skip Busters" was not successful in
13 repossessing the vehicle, Defendant BMW retained the company "Fumble Recovery"
14 for repossession services in April of 2014.

15 54. As Defendant BMW's agent, acting on behalf of and at the direction of
16 Defendant BMW, a reposessor named "David M." from "Fumble Recovery" went to
17 Plaintiff PATRICIA's residence and left a pre-printed "Notice" upon the door that
18 claimed it was a crime under the California Penal Code to conceal property with the
19 intent to defraud, hinder, or delay creditors of their rights, and this "Notice" included
20 "David M.'s" name and phone number with a note to "PLEASE CONTACT US
21 IMMEDIATELY".

1 55. Plaintiff PATRICIA was so emotionally distraught over the harassing
2 conduct and threats uttered by Ryan and Lisa that she cried on a daily basis; lived her
3 daily life with fear, nervousness, and anxiety; was afraid to leave the house out of fear
4 that the vehicle would be repossessed in her absence; and was afraid to leave the house
5 in that vehicle out of fear that the vehicle would be forcefully repossessed from her in
6 public.

7 56. Plaintiff PATRICIA was so emotionally distraught over the harassing
8 conduct and threats uttered by Ryan and Lisa that Plaintiff DONALD ultimately
9 blocked Defendant BMW's number from being able to call PATRICIA's phone.

10 57. Plaintiff DONALD was so emotionally distraught over Ryan and Lisa's
11 conduct in repeatedly harassing and threatening his wife PATRICIA that he felt
12 hopeless and distraught about the fact that he was deployed overseas and was not home
13 to help his wife in this ordeal, and he grew to be very bitter, angry, frustrated, and
14 depressed on a daily basis to the point where it has severely affected his ability to
15 perform his military duties in Guantanamo, he has received many comments from
16 superiors and colleagues about his demeanor and poor work performance, and he had to
17 seek counseling from his Senior Enlisted Leader.

18 58. Plaintiffs' daughter, Amanda D.O.B. 8/11/2000, also grew upset and
19 concerned over seeing her mother cry on a daily basis and break down emotionally to
20 the point of being almost incapable of performing daily functions that Amanda began to
21 complain of stomach pains and Plaintiffs had to take Amanda in for a check-up for a

1 suspected ulcer, which further compounded Plaintiff PATRICIA's and DONALD's
2 emotional distress.

3 59. In order to attempt to help his family, Plaintiff DONALD tried multiple
4 times to speak to Defendant BMW's agents telephonically, but was told multiple times
5 that he was not protected by the laws, the payments would not be deferred, and the
6 vehicle would be repossessed.

7 60. Sometime towards the end of May 2014, Plaintiff DONALD called
8 Defendant BMW to discuss the issues, and was informed by Defendant BMW's agent
9 that there was nothing they could do because they had issued a charge-off for the
10 vehicle and had reported a derogatory item upon his personal consumer credit report
11 that included the fact that the vehicle had been charged off.

12 61. During the conversation identified above, Defendant BMW refused to
13 allow Plaintiff DONALD to speak to a supervisor, claiming that the supervisors refuse
14 to speak to customers.

15 62. On or about July 11, 2014, Plaintiff DONALD discovered that Defendant
16 BMW's business entity "Alphera" has reported the following inaccurate and misleading
17 derogatory information upon his consumer credit reports:

- 18 a. Defendant reported upon Plaintiff's DONALD's Equifax report that the
19 vehicle installment loan was opened September 1, 2011; is a "bad debt &
20 placed for collection & skip"; has a high balance of \$18,804.00; that the
21 total past due is \$19,179.00; and that the account was "charged off

1 transferred to recovery”;

2 b. Defendant reported upon Plaintiff’s DONALD’s Equifax report that the
3 vehicle installment loan was opened September 1, 2011; that the total past
4 due is \$19,179.00; and that the payment status is “charge off”;

5 c. Defendant reported upon Plaintiff’s DONALD’s Transunion report that the
6 vehicle installment loan was opened September 26, 2011; is “charged off
7 as bad debt”; has a high balance of \$24,370.00; that the total past due is
8 \$19,179.00; and that the account was “transferred to recovery”.

9 63. The derogatory information reported by Defendant BMW is inaccurate at
10 best, or at worst is misleading in such a way and to such an extent that it can be
11 expected to adversely affect credit decisions, because Plaintiff DONALD properly
12 invoked his financial protections under the military laws and should have never been
13 found to be delinquent or derogatory by Defendant.

14 64. Plaintiff DONALD is informed and believes that Defendant BMW’s
15 inaccurate and misleading reporting of these derogatory items was done willfully and
16 knowingly because he spoke to Defendant’s representatives multiple times about how
17 he properly invoked his protections, but was callously and blatantly ignored.

18 65. The inaccurate derogatory information above has caused Plaintiff
19 DONALD to suffer actual damages in that his consumer credit score has dropped to a
20 number lower than it otherwise should be because he should have never been found to
21 be in default by Defendant BMW in the first place, and it has caused Plaintiff

1 DONALD to suffer feelings of embarrassment, shame, and humiliation over the fact
2 that his creditworthiness is now much lower than it otherwise should be, and has also
3 caused him frustration and feelings of despair and hopelessness over the fact that he
4 followed the advice of his J.A.G. officer on how to invoke his military protections but
5 was still found in default by Defendant and has been left with the only option of seeking
6 legal recourse.

7 **FIRST CAUSE OF ACTION**
8 **(AS AGAINST BOTH DEFENDANTS JOINTLY AND SEVERALLY)**
9 **(ON BEHALF OF BOTH PLAINTIFFS DONALD AND PATRICIA**
10 **INDIVIDUALLY)**
11 **CALIF. MILITARY FAMILIES FINANCIAL RELIEF ACT**
12 **CALIF. MILITARY & VETS.' CODE §§ 800-812**

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

15 67. Plaintiffs had invoked protection under this Act by sending the required
16 written notice, under penalty of perjury, that included a copy of Plaintiff DONALD's
17 deployment orders, as required by Calif. Military & Vets.' Code §804(b).

18 68. Pursuant to Calif. Military & Vets.' Code §811, these rights also protect
19 Plaintiff PATRICIA as the spouse of Plaintiff DONALD.

20 69. By completing refusing to honor Plaintiff's invocation of their rights to
21 protection under this Act, by repeatedly threatening to repossess the vehicle even in
public, by repeatedly and falsely informing both Plaintiffs that they were not protected
under the law, by repeatedly informing both Plaintiffs that the lease payments would

1 not be deferred, by repeatedly insisting on collection of payments, by treating non-
2 payments as a breach of the lease agreement, by sending multiple repossessioners to
3 Plaintiff PATRICIA's residence in an attempt to repossess the vehicle, and by placing
4 the vehicle in a charge-off status and thereafter reporting a derogatory item upon
5 Plaintiff DONALD's consumer credit report, Defendant BMW and Defendant PKW
6 violated Calif. Military & Vets.' Code §§ 800, 804, & 808.

7 70. As a result of these violations, Plaintiffs suffered actual damages by way of
8 severe emotional distress as described in the factual allegations above.

9 71. Plaintiffs are further informed and believe that the aforesaid conduct was
10 malicious and oppressive by both Defendant BMW and Defendant PKW, as those terms
11 are defined by California Civil Code sections 3294(c)(1) and 3294(c)(2), entitling
12 Plaintiffs to punitive damages.

13
14 **SECOND CAUSE OF ACTION**
15 **(AS AGAINST BOTH DEFENDANTS JOINTLY AND SEVERALLY)**
16 **(ON BEHALF OF BOTH PLAINTIFFS DONALD AND PATRICIA**
17 **INDIVIDUALLY)**
18 **CALIF. ROSENTHAL ACT**
19 **CALIF. CIV. CODE §§ 1788-1788.32**

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

73. By placing multiple telephone calls to Plaintiff PATRICIA with the intent
to annoy and harass her—including Defendant PKW's agent Lisa immediately calling
PATRICIA back after PATRICIA told her to stop calling—Defendant BMW and

1 Defendant PKW engaged in harassing, oppressive, and abusive conduct in violation of
2 15 U.S.C. § 1692d of the Federal FDCPA, and engaged in unfair and unconscionable
3 means in an attempt to collect a debt in violation of 15 U.S.C. § 1692f of the Federal
4 FDCPA. Both of these violations of the FDCPA are incorporated into the Rosenthal
5 Act via Calif. Civil Code § 1788.17. This conduct also violates Calif. Civil Code
6 §§1788.11(d)-(e) of the Rosenthal Act.

7 74. By repeatedly insisting to Plaintiffs PATRICIA and DONALD that they
8 are not protected under the laws and the payments would not be deferred, Defendant
9 BMW and Defendant PKW engaged in harassing, oppressive, and abusive conduct in
10 violation of 15 U.S.C. § 1692d of the Federal FDCPA; uttered false, deceptive, and
11 misleading representations in connection with their attempt to collect a debt in violation
12 of 15 U.S.C. § 1692e of the Federal FDCPA; and engaged in unfair and unconscionable
13 means in an attempt to collect a debt in violation of 15 U.S.C. § 1692f of the Federal
14 FDCPA. Each of these violations of the FDCPA are incorporated into the Rosenthal
15 Act via Calif. Civil Code § 1788.17.

16 75. By Lisa leaving a voicemail for Plaintiff PATRICIA with the false
17 information that their company is connected to surveillance videos and they would find
18 her and repossess the vehicle even if at the grocery store, Defendant BMW and
19 Defendant PKW engaged in harassing, oppressive, and abusive conduct in violation of
20 15 U.S.C. § 1692d of the Federal FDCPA; uttered false, deceptive, and misleading
21 representations in connection with their attempt to collect a debt in violation of 15

1 U.S.C. § 1692e of the Federal FDCPA; and engaged in unfair and unconscionable
2 means in an attempt to collect a debt in violation of 15 U.S.C. § 1692f of the Federal
3 FDCPA. Each of these violations of the FDCPA are incorporated into the Rosenthal
4 Act via Calif. Civil Code § 1788.17.

5 76. By threatening and attempting to repossess the vehicle despite Plaintiffs
6 clearly being protected from such conduct, Defendant BMW and Defendant PKW
7 engaged in harassing, oppressive, and abusive conduct in violation of 15 U.S.C. §
8 1692d of the Federal FDCPA; uttered false, deceptive, and misleading representations
9 in connection with their attempt to collect a debt in violation of 15 U.S.C. § 1692e of
10 the Federal FDCPA; threatened and attempted an action that cannot be legally taken in
11 violation of 15 U.S.C. § 1692e(5) of the Federal FDCPA; engaged in unfair and
12 unconscionable means in an attempt to collect a debt in violation of 15 U.S.C. § 1692f
13 of the Federal FDCPA; and constitutes unlawful threats of dispossession when
14 dispossession is exempt by law in violation of 15 U.S.C. § 1692f(6)(C) of the Federal
15 FDCPA. Each of these violations of the FDCPA are incorporated into the Rosenthal
16 Act via Calif. Civil Code § 1788.17.

17 77. By Defendant BMW's agent, David M. of Fumble Recovery—acting on
18 behalf of and at the direction of Defendant BMW—leaving a notice at Plaintiff
19 PATRICIA's residence threatening that she is committing a crime by concealing the
20 vehicle, Defendant BMW engaged in harassing, oppressive, and abusive conduct in
21 violation of 15 U.S.C. § 1692d of the Federal FDCPA; uttered false, deceptive, and

1 misleading representations in connection with their attempt to collect a debt in violation
2 of 15 U.S.C. § 1692e of the Federal FDCPA; threatened and attempted an action that
3 cannot be legally taken in violation of 15 U.S.C. § 1692e(5) of the Federal FDCPA;
4 falsely implied that she has committed a crime in violation of 15 U.S.C. § 1692e(10) of
5 the Federal FDCPA; engaged in unfair and unconscionable means in an attempt to
6 collect a debt in violation of 15 U.S.C. § 1692f of the Federal FDCPA. Each of these
7 violations of the FDCPA are incorporated into the Rosenthal Act via Calif. Civil Code §
8 1788.17.

9 78. By Defendant BMW informing Plaintiff DONALD that there was nothing
10 they could do to help him resolve this issue because the car had already been charged
11 off and a derogatory mark having been issued upon DONALD's credit report, and then
12 refusing to allow DONALD to speak to a supervisor, Defendant BMW engaged in
13 harassing, oppressive, and abusive conduct in violation of 15 U.S.C. § 1692d of the
14 Federal FDCPA; and engaged in unfair and unconscionable means in an attempt to
15 collect a debt in violation of 15 U.S.C. § 1692f of the Federal FDCPA. Each of these
16 violations of the FDCPA are incorporated into the Rosenthal Act via Calif. Civil Code §
17 1788.17.

18 79. As a result of these violations, Plaintiffs suffered severe emotional distress
19 as described in the factual allegations above.

20 80. Each of the violations above by Defendant PKW apply not only to
21 Defendant PKW individually, but also to Defendant BMW under a theory of vicarious

1 liability because Defendant PKW was at all times acting as an agent of Defendant
2 BMW and was acting at the direction of, on behalf of, and at the behest of Defendant
3 BMW.

4 **THIRD CAUSE OF ACTION**
5 **(AS AGAINST BOTH DEFENDANTS JOINTLY AND SEVERALLY)**
6 **(ON BEHALF OF BOTH PLAINTIFFS DONALD AND PATRICIA**
7 **INDIVIDUALLY)**
8 **(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

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

11 82. “A cause of action for intentional infliction of emotional distress exists
12 when there is ‘(1) extreme and outrageous conduct by the defendant with the intention
13 of causing, or reckless disregard of the probability of causing, emotional distress; (2)
14 the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and
15 proximate causation of the emotional distress by the defendant’s outrageous conduct.’
16 A defendant’s conduct is ‘outrageous’ when it is so ‘extreme as to exceed all bounds
17 of that usually tolerated in a civilized community.’ And the defendant’s conduct must
18 be ‘intended to inflict injury or engaged in with the realization that injury will result.’
19 ” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050—1051 [95 Cal.Rptr.3d 636, 209 P.3d
20 963]).

21 83. Plaintiffs are informed and believe, and on that basis allege, Defendant
BMW’s and Defendant PKW’s conduct as heretofore described was intended to cause
Plaintiffs severe emotional distress in order to force them to give up their rights for

1 protection under the laws, and/or was in reckless disregard of the probability of causing
2 such emotional distress.

3 84. Defendant BMW's and Defendant PKW's conduct as heretofore described
4 exceeded all bounds tolerated by a decent society, as a reasonable person could not
5 possibly claim that Defendants' conduct in attempting to threaten and force Plaintiffs
6 into waiving their statutory rights would be accepted and tolerated by a decent society.

7 85. Plaintiffs further allege that Defendant BMW's and Defendant PKW'
8 conduct in fact caused them severe emotional distress in that they each had struggled
9 with bouts of anxiety, humiliation, fear, nervousness, loss of sleep, feelings of
10 hopelessness and despair, and stress as a result of the egregiously offensive conduct.

11 86. Plaintiff PATRICIA was so emotionally distraught over the harassing
12 conduct and threats uttered by Ryan and Lisa that she cried on a daily basis; lived her
13 daily life with fear, nervousness, and anxiety; was afraid to leave the house out of fear
14 that the vehicle would be repossessed in her absence; and was afraid to leave the house
15 in that vehicle out of fear that the vehicle would be forcefully repossessed from her in
16 public.

17 87. Plaintiff PATRICIA was so emotionally distraught over the harassing
18 conduct and threats uttered by Ryan and Lisa that Plaintiff DONALD ultimately
19 blocked Defendant BMW's number from being able to call PATRICIA's phone.

20 88. Plaintiff DONALD was so emotionally distraught over Defendants'
21 conduct in repeatedly harassing and threatening his wife PATRICIA that he felt

1 hopeless and distraught about the fact that he was deployed overseas and was not home
2 to help his wife in this ordeal, and he grew to be very bitter, angry, frustrated, and
3 depressed on a daily basis to the point where it has severely affected his ability to
4 perform his military duties in Guantanamo, he has received many comments from
5 superiors and colleagues about his demeanor and poor work performance, and he had to
6 seek counseling from his Senior Enlisted Officer.

7 89. Plaintiffs' daughter, Amanda D.O.B. 8/11/2000, also grew upset and
8 concerned over seeing her mother cry on a daily basis and break down emotionally to
9 the point of being almost incapable of performing daily functions that Amanda began to
10 complain of stomach pains and Plaintiffs had to take Amanda in for a check-up for a
11 suspected ulcer, which further compounded Plaintiff PATRICIA's and DONALD's
12 emotional distress.

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

17 91. Each of the violations above by Defendant PKW apply not only to
18 Defendant PKW individually, but also to Defendant BMW under a theory of vicarious
19 liability because Defendant PKW was at all times acting as an agent of Defendant
20 BMW and was acting at the direction of, on behalf of, and at the behest of Defendant
21 BMW.

1 95. By Lisa leaving a voicemail for Plaintiff PATRICIA with the false
2 information that their company is connected to surveillance videos and they would find
3 her and repossess the vehicle even if at the grocery store, Defendant BMW and
4 Defendant PKW engaged in harassing, oppressive, and abusive conduct in violation of
5 15 U.S.C. § 1692d of the Federal FDCPA; uttered false, deceptive, and misleading
6 representations in connection with their attempt to collect a debt in violation of 15
7 U.S.C. § 1692e of the Federal FDCPA; and engaged in unfair and unconscionable
8 means in an attempt to collect a debt in violation of 15 U.S.C. § 1692f of the Federal
9 FDCPA.

10 96. By Lisa repeatedly threatening and attempting to repossess the vehicle
11 despite Plaintiffs clearly being protected from such conduct, Defendant BMW and
12 Defendant PKW engaged in harassing, oppressive, and abusive conduct in violation of
13 15 U.S.C. § 1692d of the Federal FDCPA; uttered false, deceptive, and misleading
14 representations in connection with their attempt to collect a debt in violation of 15
15 U.S.C. § 1692e of the Federal FDCPA; threatened and attempted an action that cannot
16 be legally taken in violation of 15 U.S.C. § 1692e(5) of the Federal FDCPA; engaged in
17 unfair and unconscionable means in an attempt to collect a debt in violation of 15
18 U.S.C. § 1692f of the Federal FDCPA; and constitutes unlawful threats of dispossession
19 when dispossession is exempt by law in violation of 15 U.S.C. § 1692f(6)(C) of the
20 Federal FDCPA.

21 97. As a result of these violations, Plaintiffs suffered severe emotional distress

1 as described in the factual allegations above.

2 98. Each of the violations above by Defendant PKW apply not only to
3 Defendant PKW individually, but also to Defendant BMW under a theory of vicarious
4 liability because Defendant PKW was at all times acting as an agent of Defendant
5 BMW and was acting at the direction of, on behalf of, and at the behest of Defendant
6 BMW.

7 **FIFTH CAUSE OF ACTION**
8 **(AS AGAINST DEFENDANT BMW ONLY)**
9 **(ON BEHALF OF PLAINTIFF DONALD ONLY)**
10 **CALIFORNIA CCRAA**
11 **Calif. Civ. Code § 1785.25(a)**

12 99. Plaintiff DONALD repeats, re-alleges, and incorporates by reference, all
13 other paragraphs as if fully stated herein.

14 100. As the furnisher of information to credit reporting agencies, Defendant
15 BMW is and always was obligated to not furnish information on a specific transaction
16 or experience to any consumer credit reporting agency if they knew or should have
17 known the information was incomplete or inaccurate, as required by Calif. Civ. Code §
18 1785.25(a) of the California CCRA.

19 101. Even if the derogatory reporting is technically accurate, it is still a
20 violation of this law if the derogatory reporting is misleading in such a way and to such
21 an extent that it can be expected to adversely affect credit decisions.

22 102. Because Defendant has misrepresented Plaintiff DONALD's
creditworthiness to make him appear as one who is derelict in his credit obligations

1 even though he should have never been found to be in default, and by reporting
2 inconsistent details regarding this one single account between the three credit reporting
3 agencies, Defendant has thereby repeatedly violated its obligations under Calif. Civ.
4 Code § 1785.25(a).

5 103. Plaintiff is informed and believes that Defendant's violation as described
6 above were knowing and willful because Defendant had multiple conversation with
7 Defendant's agents about how he properly invoked his protections but was repeatedly
8 and callously rebuffed every time.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray that judgment be entered against all Defendants
11 individually, and Plaintiffs individually be awarded damages as follows:

12 **As To the First Cause of Action (Calif. Military Families Financial Relief Act):**

13 1. An award of actual damages from all Defendants jointly and severally
14 pursuant to Calif. Military and Vets.' Code § 812, as will be proven at trial;

15 2. An award of costs of litigation and reasonable attorney's fees pursuant to
16 Calif. Military and Vets.' Code § 812;

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

20 4. Injunctive relief to prohibit them from committing such violations in the
21 future;

1 5. Such further relief as this Court may deem just and proper.

2 **As to the Second Cause of Action (Calif. Rosenthal Act):**

3 1. An award of actual damages from all Defendants jointly and severally
4 pursuant to California Civil Code section 1788.30(a), as will be proven at trial;

5 2. An award of statutory damages of \$1,000.00 from each Defendant
6 individually pursuant to Cal. Civ. Code § 1788.30(b) for all willful and knowing
7 violations, which is cumulative and in addition to all other remedies pursuant to
8 California Civil Code § 1788.32;

9 3. An additional award of statutory damages of \$1,000.00 from each
10 Defendant individually pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated into the
11 Rosenthal Act via Calif. Civ. Code §1788.17, which is cumulative and in addition to all
12 other remedies pursuant to California Civil Code § 1788.32;

13 4. An award of costs of litigation and reasonable attorney's fees, pursuant to
14 Cal. Civ. Code section 1788.30(c);

15 5. Injunctive relief to prohibit Defendant BMW from committing such
16 violations in the future;

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

18 **As to the Third Cause of Action (IED):**

19 1. For compensatory damages from all Defendants jointly and severally, as
20 will be proven at trial, pursuant to California Civil Code § 3333;

21 2. Attorney's fees pursuant to Calif. Code Civil Procedure § 1021.5;

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

4 4. For other and further relief as the court may deem proper.

5 **As to the Fourth Cause of Action (FDCPA):**

6 1. An award of actual damages from all Defendants jointly and severally
7 pursuant to 15 U.S.C. §1692k(a)(1), as will be proven at trial;

8 2. An award of statutory damages of up to \$1,000.00 pursuant to 15 U.S.C.
9 §1692k(a)(2)(A);

10 3. An award of costs of litigation and reasonable attorney's fees, pursuant to
11 15 U.S.C. §1692k(a)(3);

12 4. Injunctive relief to prohibit Defendants from committing such violations in
13 the future;

14 5. Such further relief this court may deem just and proper.

15 **As to the Fifth Cause of Action (Calif. CCRAA):**

16 1. Actual damages, as will be proven at trial, for Defendant BMW's negligent
17 violations of Calif. Civ. Code § 1785.25(a), pursuant to Calif. Civ. Code §
18 1785.31(a)(1);

19 2. Actual damages, as specified above and as will be proven at trial, plus
20 punitive damages of \$100.00-\$5,000.00 for every willful violation of Calif. Civ. Code §
21 1785.25(a) by Defendant BMW, pursuant to Calif. Civ. Code § 1785.31(a)(2)(A)-(C);

1 3. Injunctive relief to prohibit Defendant BMW from engaging in future
2 violations of Calif. Civ. Code § 1785.25(a), pursuant to Calif. Civ. Code § 1785.31(b);

3 4. Any reasonable attorney's fees and costs to maintain the instant action,
4 pursuant to Calif. Civ. Code § 1785.31(d).

5 DATED: 7/19/2014

HARTMAN LAW OFFICE, INC.

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/S/ Jared M. Hartman

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JARED M. HARTMAN, Esq.
Attorney for Plaintiffs

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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: 7/19/2014

HARTMAN LAW OFFICE, INC.

/S/ Jared M. Hartman
JARED M. HARTMAN, Esq.
Attorney for Plaintiffs