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6 **U.S. DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8 BRANDON RADLE, an individual,
9 Plaintiff,

10 vs.

11 PRO CUSTOM, a business entity,
form unknown; and DOES 1-10,
12 Defendants.

Case No.: '15CV0366 BEN NLS

**COMPLAINT FOR VIOLATIONS
OF:**

1. **U.S. SERVICEMEMERS
CIVIL RELIEF ACT, 50
U.S.C.S. APPX § 501, et seq.**
2. **CALIFORNIA ROSENTHAL
ACT, CALIF. CIV. CODE
1788, et seq.**

13 TO THE CLERK OF THE COURT, ALL PARTIES, AND THE HONORABLE U.S.
14 DISTRICT COURT JUDGE:

15 Plaintiff, an individual, by and through his attorneys of record, BABAK
16 SEMNAR JARED M. HARTMAN of SEMNAR & HARTMAN, LLP, hereby
17 complains and alleges as follows:

18 **INTRODUCTION**

19 1. Plaintiff brings this action to challenge the actions of Defendant PRO
20 CUSTOM (hereinafter “Defendant”) for violating his rights as a deployed U.S. Marine
21 when Defendant executed a non-judicial lien sale upon Plaintiff’s vehicle being stored

1 at Defendant's location during Plaintiff's period of deployment.

2 2. This action arises out of Defendant's violations of the U.S.
3 Servicemembers' Civil Relief Act (50 U.S.C.S. APPX § 501, *et seq.*) ("USSCRA"), and
4 the California Rosenthal Fair Debt Collection Practices Act (Cal. Civ. Code §§ 1788-
5 1788.32) ("RFDCPA").

6 3. In 50 USCS Appx § 502, the U.S. Legislature made the following findings
7 and purpose in creating the USSCRA:

8 The purposes of this Act are—

- 9 (1) to provide for, strengthen, and expedite the national defense
10 through protection extended by this Act [50 USCS Appx §§
11 501 *et seq.*] to servicemembers of the United States to enable
such persons to devote their entire energy to the defense needs of
the Nation; and
- 12 (2) to provide for the temporary suspension of judicial and
13 administrative proceedings and transactions that may adversely
14 affect the civil rights of servicemembers during their military
service.

15 4. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature issued the
16 following findings and purpose in creating the RFDCPA:

17 (a)(1) The banking and credit system and grantors of credit to
18 consumers are dependent upon the collection of just and owing debts.
Unfair or deceptive collection practices undermine the public
19 confidence which is essential to the continued functioning of the
banking and credit system and sound extensions of credit to
consumers.

20 (2) There is need to ensure that debt collectors and debtors exercise
21 their responsibilities to another with fairness and honesty and due
regard for the rights of the other.

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(b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts, as specified in this title.

JURISDICTION & VENUE

5. This action arises out of Defendant’s violations of the USSCRA, over which the U.S. District Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 50 U.S.C.S. APPX § 597a; and the State of California RFDCPA, over which the U.S. District Court has supplemental jurisdiction 28 U.S.C. § 1367(a).

6. Because Defendant conducts business within the State of California and is physically located at 303 South Coast Highway in the City of Oceanside, personal jurisdiction is established.

7. Because all tortious conduct occurred while Plaintiff resided in the County of San Diego and because Defendant is located within the County of San Diego, venue properly lies in this court.

PARTIES & DEFINITIONS

8. Plaintiff is a natural person whose residence is at Camp Pendleton, State of California.

9. Defendant regularly does business in the State of California and is physically located in the City of Oceanside.

10. Pursuant to 50 U.S.C.S. APPX § 511(1), Plaintiff is a “servicemember”, as he is an Active Duty member of the U.S. Marine Corps, which is included within the

1 definition of “the uniformed services” and “the armed forces” pursuant to 10 U.S.C. §
2 101(a)(4)-(a)(5).

3 11. The actions complained of herein occurred during Plaintiff’s “military
4 service” as defined in 50 U.S.C.S. APPX § 511(2)(A)(i), as Plaintiff has at all times
5 relevant herein served full-time duty as an active member of the U.S. Marine Corps
6 within the meaning of 10 U.S.C. § 101(d)(1).

7 12. As a natural person, Plaintiff is therefore a “person” as that term is defined
8 by California Civil Code § 1788.2(g) of the RFDCPA.

9 13. Plaintiff, a natural person, is both a “debtor” as that term is defined by
10 California Civil Code § 1788.2(h) of the RFDCPA, because he entered into a consumer
11 credit transaction for Defendant to provide goods and services for Plaintiff to pay in the
12 future, and for which Defendant has still been collecting payments from Plaintiff even
13 after Defendant took possession of the goods and re-sold them to someone else.

14 14. The credit extended by Defendant constitutes a “consumer credit
15 transaction” with Plaintiff, as that term is defined by California Civil Code § 1788.2(e)
16 of the RFDCPA, because the goods and services were provided by Defendant to
17 Plaintiff without payment being exchanged at the time of transaction, and in exchange
18 for Plaintiff paying Defendant over the course of time.

19 15. Because Plaintiff, a natural person, was allegedly obligated to pay money
20 to Defendant for goods installed upon Plaintiff’s vehicle, the money allegedly owed
21 was therefore both a “consumer debt” as that term is defined by California Civil Code §

1 1788.2(f) of the RFDCPA and a “debt” as that term is defined by California Civil Code
2 § 1788.2(d) of the RFDCPA.

3 16. Defendant, in the ordinary course of business, regularly, and on behalf of
4 themselves, engages in the practice of collecting “consumer debts”, in that they
5 regularly install goods upon customer’s vehicles in exchange for the charges to be paid
6 in the future over a series of payments, and Defendant therefore engages in “debt
7 collection” as that term is defined by California Civil Code section 1788.2(b) of the
8 RFDCPA.

9 17. Because Defendant engages in “debt collection”, Defendant is therefore a
10 “debt collector” as that term is defined by California Civil Code section 1788.2(c) of
11 the RFDCPA.

12 **FACTUAL ALLEGATIONS**

13 18. Plaintiff makes the allegations below on information and belief, with the
14 exception of those allegations that pertain to Plaintiff’s personal knowledge.

15 19. At all times relevant herein, Plaintiff is and was a full-time active duty
16 member of the U.S. Marine Corps.

17 20. Sometime in approximately January 2013, Plaintiff agreed for Defendant
18 to install rims and a stereo system upon Plaintiff’s vehicle in exchange for Plaintiff
19 agreeing that the charges for such goods and services would be paid in the future by
20 way of automated deduction of approximately \$64.05 out of each paycheck every two
21 weeks.

1 21. Thereafter, sometime in approximately June of 2013, Plaintiff took his
2 vehicle to Defendant's location in the City of Oceanside for Defendant to provide
3 maintenance work upon the vehicle after it sustained significant damage out of a motor
4 vehicle accident.

5 22. On September 23, 2013, Plaintiff received notification from his
6 Commanding Officer that his Marine Corps unit had been ordered to deploy for at least
7 180 days, to return in April of 2014.

8 23. Plaintiff promptly notified Defendant's store owner—Sean [Last Name
9 Unknown]—of his recent order to deployment.

10 24. Plaintiff then was informed that the work upon his vehicle would not be
11 completed by the time Plaintiff was to leave for deployment.

12 25. Sean promised to store Plaintiff's vehicle at their location until Plaintiff's
13 return from deployment.

14 26. Plaintiff then left for deployment with the peace of mind that his vehicle
15 would be stored and secured pending his return from deployment.

16 27. Unfortunately, however, when Plaintiff returned from deployment on or
17 about April 23, 2014, he discovered for the first time that Defendant had sold his
18 vehicle through a non-judicial lien sale to recoup the costs for services performed upon
19 his vehicle, which was approximately \$2,200.00.

20 28. Defendant executed the lien sale without first obtaining a court order.

21 29. Upon Plaintiff's return from deployment and discovering the lien sale,

1 Plaintiff inquired as to why Defendant sold the vehicle after promising to hold it and
2 was confronted with the false allegation that Plaintiff had abandoned the vehicle.

3 30. Plaintiff has never received any funds from Defendant that came out of the
4 lien sale.

5 31. This vehicle was a 2010 Chevy Impala in excellent condition with
6 approximately 80,000 miles.

7 32. Plaintiff purchased the vehicle in November of 2012 for approximately
8 \$14,416.00.

9 33. Since his return from deployment on or about April 23, 2014, Plaintiff has
10 been paying approximately \$360.00 per month to the company that financed Plaintiff's
11 purchase of the vehicle so as to not go into default on the loan and destroy his
12 creditworthiness, which has caused Plaintiff to be so financially strapped that he cannot
13 afford to purchase another vehicle to replace the one sold by Defendant.

14 34. Defendant has always been withdrawing out of Plaintiff's paychecks every
15 two weeks since January 2013 approximately \$64.05 for the accessories installed upon
16 the vehicle by Defendant, which means Plaintiff has been paying these funds for goods
17 that he no longer has the enjoyment of using as a result of Defendant's unlawful lien
18 sale.

19 35. Since his return from deployment on or about April 23, 2014, Plaintiff has
20 been without a vehicle and has been forced to suffer the embarrassment of asking for
21 rides from his friends to physical therapy sessions at least three times per week, which

1 Plaintiff is required to attend as a result of suffering an injury during deployment.

2 36. This ordeal has caused Plaintiff to suffer emotional distress and mental
3 anguish in that he has had to suffer embarrassment by asking for rides from his friends
4 to his physical therapy sessions at least three times per week, and has experienced
5 anger, frustration, anxiety, embarrassment, and feelings of hopelessness and fear over
6 whether he will be able to afford to pay for another vehicle and make other monthly
7 living expenses since he is paying approximately \$360.00 per month to the financing
8 company for a vehicle that he no longer has.

9 **FIRST CAUSE OF ACTION**
10 **U.S. SERVICEMEMBERS CIVIL RELIEF ACT**
11 **50 U.S.C. APPX. § 501, *et seq.***

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

14 38. Pursuant to 50 U.S.C. APPX. § 537(a)(1), no person may foreclose or
15 enforce any lien upon a servicemember's property or effects during or 90 days after a
16 servicemember's military service, without first obtaining a court order to do so.

17 39. Pursuant to 50 U.S.C. APPX. § 537(a)(2), a lien includes "a lien for
18 storage, repair, or cleaning of the property or effects of a servicemember or a lien on
19 such property or effects for any other reason.

20 40. Pursuant to the holding of *United States v Bomar* (1993, CA5 Tex) 8 F.3d
21 226, a lien under this definition includes a mechanic's lien for services performed upon
a vehicle.

1 41. Because Defendant promised to hold Plaintiff's vehicle during his period
2 of deployment, and Plaintiff has satisfied all foundational definitions for protection
3 under the USSCRA, and Defendant thereafter enforced a lien sale upon Plaintiff's
4 vehicle during his deployment without first obtaining a court order to do so, Defendant
5 therefore violated 50 U.S.C. APPX. § 537(a).

6 42. Pursuant to 50 U.S.C. APPX. § 537(b), such a violation amounts to a
7 criminal act, punishable as a misdemeanor by fines and/or imprisonment up to one year.

8 43. Pursuant to 50 U.S.C. APPX. § 597a, Plaintiff is entitled to recover actual
9 damages by way of loss of use of the vehicle, loss of the value of the vehicle, loss for
10 out of pocket monies paid monthly to the vehicle financing company, and emotional
11 distress and mental anguish, in addition to attorneys' fees and costs of litigation.

12 44. Pursuant to 50 U.S.C. APPX. § 526, the period of military service tolls any
13 applicable statute of limitations. Since Plaintiff returned from deployment on or about
14 April 23, 2014, his filing of the instant Complaint within one year of return satisfies the
15 statute of limitations.

16 45. Pursuant to 50 U.S.C. APPX. § 597b, Plaintiff is entitled to recover
17 punitive damages.

18 46. Because Defendant promised to hold and secure Plaintiff's vehicle during
19 his deployment, but thereafter sold the vehicle unlawfully and has since failed to
20 provide to Plaintiff any difference between the value of the sale and the value of
21 Defendant's services, Defendant therefore acted with malice and reckless disregard of

1 Plaintiff's rights and entitles Plaintiff to recover punitive damages for the same as
2 punishment.

3 47. Because Defendant regularly advertises and markets to military members,
4 Defendant deserves punitive damages as a mechanism of deterrence to prevent similar
5 abusive conduct towards other military customers.

6 **SECOND CAUSE OF ACTION**
7 **CALIF. ROSENTHAL ACT**
8 **CALIF. CIV. CODE §§ 1788-1788.32**

9 48. Plaintiff repeats, re-alleges, and incorporates by reference all other
10 paragraphs, as if fully set forth herein.

11 49. By continuing to collect every two weeks out of Plaintiff's paycheck for
12 goods that were recovered by Defendant and re-sold to someone else, Defendant has
13 committed the following violations of the Federal FDCPA:

- 14 a. Engaged in unfair and unconscionable means in an attempt to collect a debt
15 in violation of 15 U.S.C. § 1692f of the Federal FDCPA;
- 16 b. Uttered false, deceptive, and misleading representations in connection with
17 their attempt to collect a debt in violation of 15 U.S.C. § 1692e of the
18 Federal FDCPA;
- 19 c. Falsely represented the character and legal status of any debt in violation of
20 15 U.S.C. § 1692e(2) of the Federal FDCPA;
- 21 d. Attempted an action that cannot be legally taken in violation of 15 U.S.C.
§ 1692e(5) of the Federal FDCPA;

1 e. Used false representation or deceptive means to collect or attempt to
2 collect any debt in violation of 15 U.S.C. § 1692e(10) of the Federal
3 FDCPA; and

4 f. Used unfair and unconscionable means to collect or attempt to collect any
5 debt in violation of 15 U.S.C. § 1692f of the Federal FDCPA.

6 50. All of the above violations of the Federal FDCPA are incorporated into the
7 RFDCPA via Calif. Civil Code § 1788.17, and are therefore all violations of the
8 Rosenthal Act.

9 51. As a result of these violations, Plaintiff suffered severe emotional distress
10 as described in the factual allegations above.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
13 Plaintiff be awarded damages from Defendant as follows:

14 **As to the First Cause of Action (USSCRA):**

15 1. Actual damages, as will be proven at trial, pursuant to 50 U.S.C. APPX. §
16 597a;

17 2. Punitive damages for malice, as a mechanism for punishing Defendant and
18 for deterrence to prohibit future violations against other military members, pursuant to
19 50 U.S.C. APPX. § 597b;

20 3. Punitive damages for reckless disregard, as a mechanism for punishing
21 Defendant and for deterrence to prohibit future violations against other military

1 members, pursuant to 50 U.S.C. APPX. § 597b;

2 4. Any reasonable attorney’s fees and costs to maintain the instant action,
3 pursuant to 50 U.S.C. APPX. § 597a;

4 5. Any other equitable relief that the Court may deem appropriate.

5 **As to the Second Cause of Action (RFDCPA):**

6 1. An award of actual damages pursuant to California Civil Code section
7 1788.30(a), as will be proven at trial;

8 1. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §
9 1788.30(b) for willful and knowing violations, which is cumulative and in addition to
10 all other remedies pursuant to California Civil Code § 1788.32; plus

11 2. An additional award of statutory damages of \$1,000.00 pursuant to 15
12 U.S.C. § 1692k(a)(2)(A), as incorporated into the Rosenthal Act via Calif. Civ. Code
13 §1788.17, which is cumulative and in addition to all other remedies pursuant to
14 California Civil Code § 1788.32; plus

15 3. An award of costs of litigation and reasonable attorney’s fees, pursuant to
16 Cal. Civ. Code section 1788.30(c).

17 DATED: 2/19/2015

/s/ Jared M. Hartman, Esq.
JARED M. HARTMAN, ESQ.
Attorney for Plaintiff

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TRIAL BY JURY

Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

DATED: 2/19/2015

/s/ Jared M. Hartman, Esq.
JARED M. HARTMAN, ESQ.
Attorney for Plaintiff,