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6 **U.S. DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA—SOUTHERN DIVISION

7 THOMAS R. NEUMANN, an
8 Individual; and MARCELA C.
NEUMANN, an Individual,
9 Plaintiffs,

10 vs.

11 WESTSTAR MORTGAGE, INC.;
12 and DOES 1-10,
Defendants.

Case No

**COMPLAINT FOR VIOLATIONS
OF:**

1. CALIFORNIA MILITARY FAMILIES FINANCIAL RELIEF ACT,
2. CALIFORNIA ROSENTHAL ACT,
3. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS,
4. FEDERAL RICO

14 TO THE CLERK OF THE COURT, ALL PARTIES, AND THE UNITED
15 STATES DISTRICT COURT JUDGE:

16 Complainants, THOMAS & MARCELA NEUMANN, both Individuals, by and
17 through their attorneys of record, hereby complain and allege in this Complaint as
18 follows:

19 **INTRODUCTION**

20 1. This action arises out of Defendant WESTSTAR MORTGAGE INC.'s
21 (hereinafter "Defendant WESTSTAR") violations of the State of California Military

1 within the meaning of Calif. Civil Code § 1788.2(e) of the Rosenthal Act.

2 11. Because Plaintiffs, natural persons allegedly obligated to pay money
3 and/or collateral security to Defendant arising from a consumer credit transaction, the
4 money allegedly owed was a “consumer debt” within the meaning of California Civil
5 Code § 1788.2(f) of the Rosenthal Act.

6 12. Plaintiffs are informed and believe that Defendant regularly collects or
7 attempts to collect on behalf of themselves debts owed or due or asserted to be owed or
8 due, and is therefore a “debt collector” within the meaning of Calif. Civil Code §
9 1788.2(c) of the Rosenthal Act, and thereby engages in “debt collection” within the
10 meaning of California Civil Code § 1788.2(b) of the Rosenthal Act, is also therefore a
11 “person” within the meaning of California Civil Code § 1788.2(g) of the Rosenthal Act,
12 and is also a “creditor” under California Civil Code § 1788.2(i).

13 **STATUTORY PROTECTIONS**
14 **OF CALIFORNIA MILITARY SERVICE-MEMBERS**

15 13. Section 800(a)(1)(A) of the Calif. Military and Veterans’ Code reads:

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

19 ...

(A) An obligation secured by a mortgage or deed of trust.

20 14. Section 804 of the Calif. Military and Veterans’ Code reads:

21 ///

1 During the period specified in Section 800, the reservist may defer
2 the payment of principal and interest on the specified obligations.
3 No penalties shall be imposed on the nonpayment of principal or
4 interest during this period. No interest shall be charged or
5 accumulated on the principal or interest on which the payment
6 was delayed. No foreclosure or repossession of property on which
7 payment has been deferred shall take place during the period
8 specified in Section 800.

9
10 15. Section 811(a) of the Calif. Military and Veterans' Code reads:

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

15
16 16. Violations of these protections as codified by the Calif. Military and
17 Veterans' Code are enforceable by Section 812 as follows:

18 (a) A person violating any provision of this chapter shall be liable for
19 actual damages, reasonable attorney's fees, and costs incurred by
20 the service member or other person entitled to the benefits and
21 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

17 17. Plaintiffs THOMAS and MARCELA are a married couple.

18 18. Plaintiffs entered into a mortgage loan agreement with Defendant that
19 required Defendant to provide funds for Plaintiffs to purchase real property located
20 within the City of La Habra, State of California, and for Plaintiffs to in return owe a
21 debt to Defendant for the purchase amount in addition to interest.

1 19. Plaintiff THOMAS is an Officer in the California Army National Guard
2 with top security clearance, and he received orders in October of 2013 to be called to
3 active duty beginning October 18, 2013 and to be deployed overseas beginning
4 November 19, 2013 for a period not to exceed 400 days.

5 20. Plaintiffs' financial obligation on the mortgage loan with Defendant was
6 incurred prior to Plaintiff THOMAS' active duty beginning October 18, 2013.

7 21. Plaintiff THOMAS' deployment was part of his obligation to dutifully and
8 honorably serve our country for issues arising out of the Iraq and Afghanistan conflicts.

9 22. As he was advised to do so by his Judge Advocates General representative,
10 Plaintiff THOMAS delivered a letter to Defendant dated October 28, 2013, signed
11 under penalty of perjury, informing Defendant of his recent order to active duty and
12 deployment, and requested to defer payments under the laws applicable to active duty
13 service-members, and included with the letter a copy of his deployment orders.

14 23. By letter dated March 27, 2014, Defendant acknowledged receiving
15 Plaintiff THOMAS' deferment request and informed Plaintiff THOMAS that Defendant
16 would be putting a stop on his account and he would not be issued any late fees or
17 derogatory reporting to the credit reporting bureaus.

18 24. It is unclear as to why Defendant waited until March 27, 2014 to send
19 acknowledgement of Plaintiff THOMAS' deferment notice that was delivered in
20 October of 2013.

21 25. Unfortunately, however, Defendant had already been considering Plaintiffs

1 as being in default upon the mortgage loan and had been repeatedly adding late fees and
2 late charges to the account, and had been threatening to foreclose upon the property.

3 26. Statements sent to Plaintiffs by Defendant make it clear that Defendant had
4 placed Plaintiffs' account in past due status for the months of December 2013, January
5 2014, February 2014, March 2014, April 2014, May 2014, June 2014, July 2014,
6 August 2014, and September 2014.

7 27. Statements sent to Plaintiffs by Defendant make it clear that Defendant had
8 been issuing late fees and late charges upon Plaintiffs' account for every month that
9 Defendant marked the account as past due.

10 28. By letter dated December 12, 2013, Defendant claimed that the mortgage
11 payment was past due.

12 29. By letter dated June 2, 2014, Defendant claimed that the mortgage
13 payments were past due as of December 1, 2013, foreclosure would be imminent with
14 Plaintiffs having to cover the cost of foreclosure, and in order to avoid foreclosure and
15 acceleration of the entire loan balance Plaintiffs had to pay within the next 30 days
16 every monthly payment since December of 2013—which totaled \$20,832.00—and also
17 threatened that derogatory information could be reported upon Plaintiffs' consumer
18 credit reports.

19 30. Plaintiff THOMAS has even received notice from the Veterans' Affairs
20 that Defendant reported to them that Plaintiffs were in default on the mortgage loan,
21 which has caused significant embarrassment and humiliation to Plaintiffs because

1 Defendant's allegations of default are false.

2 31. Defendant's reporting of the default status to the Veterans' Affairs caused
3 Plaintiffs to fear that Plaintiff THOMAS could lose his top security clearance and
4 possibly have his deployment terminated and possibly be stripped of his ranking or
5 even be less than honorably discharged from military service entirely, as top security
6 clearance is required for his position as an Officer.

7 32. The fear and worry that Plaintiff THOMAS could have suffered
8 devastating career consequences caused significant emotional disturbance to Plaintiffs
9 in that they both experienced undue stress, anxiety, worry, and loss of sleep.

10 33. For some unknown reason, in response to Plaintiff's October 2013 letter
11 triggering Plaintiffs' right to deferment, Defendant sent to Plaintiffs a letter in
12 November of 2013 that purported to be a notice of forbearance.

13 34. Defendant's November 2013 letter claims that Defendant has carefully
14 reviewed Plaintiffs' account and found that Plaintiffs qualify for a temporary reduction
15 of the mortgage payments.

16 35. Defendant's November of 2013 forbearance letter indicates that the
17 account will be considered delinquent and Plaintiffs' credit scores may be negatively
18 impacted, which are unlawful since no penalties may be imposed during the period of
19 deferment that Plaintiffs were entitled to under the military protection laws.

20 36. Although Defendant instituted a suspension of the monthly payments for
21 six months beginning November of 2013 pending forbearance, Defendant completely

1 missed the fact that Plaintiffs were entitled to deferment as a California military family,
2 and Defendant maintained during those months of suspended payments that Plaintiffs
3 were past due and charged late penalties for those very same months.

4 37. Defendant also sent to Plaintiffs a letter in May of 2014 that falsely claims
5 that Plaintiffs had accepted a loan modification agreement and that Plaintiffs had to pay
6 a lump sum of \$6,125.93 to fund the modification, and to send the funds to Defendant's
7 "Loss Mitigation" department.

8 38. Plaintiffs never once requested a modification from Defendant and never
9 once accepted any offer of modification from Defendant.

10 39. After Plaintiff THOMAS complained to Defendant that their demand of a
11 lump sum of \$6,125.93 to fund a modification loan that Plaintiffs never actually agreed
12 to, Plaintiffs received another letter dated July 25, 2014 maintaining that their
13 modification payments were delinquent and they now owed \$6,526.32 in order to
14 complete the modification and to extend the maturity of the loan—despite the fact that
15 Plaintiffs were entitled to deferment and extension of the maturity date pursuant to the
16 military protection laws and this July 25th letter even expressly admits that Defendant
17 knows Plaintiffs are so entitled.

18 40. By letter dated October 16, 2014, Defendant has also claimed that
19 Plaintiffs owe a total of \$32,876.00 by December 1, 2014, which is the amount owed
20 for every month since December of 2013, despite the fact that Plaintiffs were entitled to
21 deferment without any penalty and also entitled to maturity of the loan.

1 41. Upon information and belief, Defendant's claims of Plaintiffs having
2 accepted a modification loan were deliberately false and were intended to trick
3 Plaintiffs into paying additional money to Defendant since Defendant had not received
4 any mortgage payments during the past several months as a result of Plaintiff
5 THOMAS' deployment.

6 42. Upon information and belief, Defendant has established a pattern and
7 scheme of delivering letters to the families of deployed military members via interstate
8 mails demanding payment for deliberately fraudulent mortgage loan modifications that
9 the military members never actually enter into as a means of obtaining money from the
10 military members who want to avoid a foreclosure, despite the fact that deployed
11 military members are entitled to deferment and extension of maturity based on the
12 period of deferment.

13 43. During the time period that Plaintiffs' payments were supposed to have
14 been deferred, Defendant had been contacting Plaintiff MARCELA to inform her that
15 Plaintiffs were delinquent on their account and that Defendants were going to foreclose
16 on the house.

17 44. Also during the time period that Plaintiffs' payments were supposed to
18 have been deferred, Plaintiff THOMAS tried multiple times to inform Defendant that
19 Defendant was obligated by law to defer his mortgage payments and to not institute any
20 penalties or remedies for his failure to pay during the deferment period.

21 45. Unfortunately, however, Plaintiff THOMAS' efforts were rebuffed and

1 ignored.

2 46. Defendant's unlawful refusal to comply with the military credit protections
3 has caused significant emotional distress to Plaintiffs in that Plaintiff MARCELA—
4 who is not American by birth and is not familiar with legal proceedings in our
5 country—was afraid that Defendant was taking advantage of her while Defendant knew
6 she was without Plaintiff THOMAS and was afraid that she would be evicted from her
7 home while in the country alone, which caused Plaintiff MARCELA to lose sleep, cry
8 uncontrollably, and to not trust the claims of Plaintiff THOMAS that he was taking care
9 of the matter.

10 47. Plaintiff THOMAS was so emotionally distraught by Defendant's refusal
11 to honor the military credit protections that he felt hopeless and distraught about the fact
12 that he was deployed overseas and was not home to help his wife in this ordeal, and he
13 grew to be very bitter, angry, frustrated, and depressed on a daily basis to the point
14 where it has severely affected his ability to perform his military duties overseas.

15 **FIRST CAUSE OF ACTION**
16 **(ON BEHALF OF BOTH PLAINTIFFS)**
17 **CALIF. MILITARY FAMILIES FINANCIAL RELIEF ACT**
18 **CALIF. MILITARY & VETS.' CODE §§ 800-812**

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

21 49. Plaintiffs had invoked protection under this Act by sending the required
written notice, under penalty of perjury, that included a copy of Plaintiff THOMAS's

1 deployment orders, as required by Calif. Military & Vets.’ Code §800(b).

2 50. Pursuant to Calif. Military & Vets.’ Code §811, these rights also protect
3 Plaintiff MARCELA as the spouse of Plaintiff THOMAS.

4 51. By refusing to honor Plaintiffs’ invocation of their rights to protection
5 under this Act, by failing to place the mortgage payments in deferment, by placing the
6 account in delinquent past due status, by adding late fees and late penalties, by reporting
7 to the VA that the account was delinquent, by insisting that Plaintiffs owe a lump sum
8 to fund a modification for extension on the maturity of the loan, by insisting that
9 Plaintiffs owe the full amount for every month since December of 2013 in one single
10 payment, and by threatening foreclosure, Defendant violated Calif. Military & Vets.’
11 Code §§ 800 & 804.

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

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

17 **SECOND CAUSE OF ACTION**
18 **(ON BEHALF OF BOTH PLAINTIFFS THOMAS AND MARCELA**
19 **INDIVIDUALLY)**
20 **CALIF. ROSENTHAL ACT**
21 **CALIF. CIV. CODE §§ 1788-1788.32**

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

1 55. By completely refusing to honor Plaintiffs' invocation of their rights to
2 protection under the California Military Families Financial Relief Act, by failing to
3 place the mortgage payments in deferment, by placing the account in delinquent past
4 due status, by adding late fees and late penalties, by reporting to the VA that the
5 account was delinquent, by insisting that Plaintiffs owe money to fund a modification to
6 obtain extension on the maturity date of the loan, by insisting that Plaintiffs owe the full
7 amount for every month since December of 2013 in one payment, and by threatening
8 foreclosure, Defendant has engaged in harassing, oppressive, and abusive conduct in
9 violation of 15 U.S.C. § 1692d of the Federal FDCPA, and engaged in unfair and
10 unconscionable means in an attempt to collect a debt in violation of 15 U.S.C. § 1692f
11 of the Federal FDCPA. Both of these violations of the FDCPA are incorporated into
12 the Rosenthal Act via Calif. Civil Code § 1788.17. This conduct also violates Calif.
13 Civil Code §§1788.11(d)-(e) of the Rosenthal Act.

14 56. By repeatedly claiming to Plaintiffs that they were in past due status during
15 a time that they should have been in deferment, by reporting to the VA that Plaintiffs
16 were in past due status, and by falsely claiming in May of 2014 that Plaintiffs accepted
17 a home loan modification that was never actually accepted by Plaintiffs, Defendant has
18 uttered false, deceptive, and misleading representations in connection with their attempt
19 to collect a debt in violation of 15 U.S.C. § 1692e of the Federal FDCPA; and engaged
20 in unfair and unconscionable means in an attempt to collect a debt in violation of 15
21 U.S.C. § 1692f of the Federal FDCPA. Each of these violations of the FDCPA are

1 incorporated into the Rosenthal Act via Calif. Civil Code § 1788.17.

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

13 58. As a result of these violations, Plaintiffs suffered severe emotional distress
14 as described in the factual allegations above.

15 **THIRD CAUSE OF ACTION**
16 **(ON BEHALF OF BOTH PLAINTIFFS THOMAS AND MARCELA**
17 **INDIVIDUALLY)**
18 **(INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS)**

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

21 60. “A cause of action for intentional infliction of emotional distress exists
when there is ‘(1) extreme and outrageous conduct by the defendant with the intention

1 of causing, or reckless disregard of the probability of causing, emotional distress; (2)
2 the plaintiff's suffering severe or extreme emotional distress; and (3) actual and
3 proximate causation of the emotional distress by the defendant's outrageous conduct.'
4 A defendant's conduct is 'outrageous' when it is so 'extreme as to exceed all bounds
5 of that usually tolerated in a civilized community.' And the defendant's conduct must
6 be 'intended to inflict injury or engaged in with the realization that injury will result.'
7 '' (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050—1051 [95 Cal.Rptr.3d 636, 209 P.3d
8 963]).

9 61. Plaintiffs are informed and believe, and on that basis allege, Defendant's
10 conduct as heretofore described was intended to cause Plaintiffs severe emotional
11 distress in order to force them to give up their rights for protection under the laws,
12 and/or was in reckless disregard of the probability of causing such emotional distress.

13 62. Defendant's conduct as heretofore described exceeded all bounds tolerated
14 by a decent society, as a reasonable person could not possibly claim that Defendants'
15 conduct in attempting to threaten and force Plaintiffs into waiving their statutory rights
16 would be accepted and tolerated by a decent society.

17 63. Plaintiffs further allege that Defendant's conduct in fact caused them
18 severe emotional distress in that they each had struggled with bouts of anxiety,
19 humiliation, fear, nervousness, loss of sleep, feelings of hopelessness and despair, and
20 stress as a result of the egregiously offensive conduct.

21 64. Plaintiff MARCELA—not American by birth and not familiar with legal

1 proceedings in our country—was so emotionally distraught over the harassing conduct
2 that she cried on an almost daily basis; lived her daily life with fear, nervousness, and
3 anxiety due to her fear that she would be evicted from the home while her husband was
4 deployed overseas; and caused her to not trust the claims from Plaintiff THOMAS that
5 he was taking care of the problem.

6 65. Plaintiff THOMAS was so emotionally distraught over Defendants’
7 conduct that he felt hopeless and distraught about the fact that he was deployed
8 overseas and was not home to help his wife in this ordeal, and he grew to be very bitter,
9 angry, frustrated, and depressed on a daily basis to the point where it has severely
10 affected his ability to perform his military duties overseas.

11 66. Plaintiffs were also afraid that Plaintiff THOMAS might be deprived of his
12 top security clearance, and thereafter be stripped of rank or discharge less than
13 honorably, as a result of Defendant’s reporting of delinquencies to the Veterans’
14 Affairs, which further caused Plaintiffs significant emotional distress by way of anxiety,
15 stress, and loss of sleep.

16 67. Plaintiffs are further informed and believe that the aforesaid conduct was
17 malicious and oppressive, as those terms are defined by California Civil Code sections
18 3294(c)(1) and 3294(c)(2), entitling Plaintiffs to punitive damages.

19 ///

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21 ///

1 Plaintiffs individually be awarded damages as follows:

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

3 1. An award of actual damages pursuant to Calif. Military and Vets.’ Code §
4 812, as will be proven at trial;

5 2. An award of costs of litigation and reasonable attorney’s fees pursuant to
6 Calif. Military and Vets.’ Code § 812;

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

10 4. Such further relief as this Court may deem just and proper.

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

12 1. An award of actual damages pursuant to California Civil Code section
13 1788.30(a), as will be proven at trial;

14 2. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §
15 1788.30(b) for all willful and knowing violations, which is cumulative and in addition
16 to all other remedies pursuant to California Civil Code § 1788.32;

17 3. An additional award of statutory damages of \$1,000.00 pursuant to 15
18 U.S.C. § 1692k(a)(2)(A), as incorporated into the Rosenthal Act via Calif. Civ. Code
19 §1788.17, which is cumulative and in addition to all other remedies pursuant to
20 California Civil Code § 1788.32;

21 4. An award of costs of litigation and reasonable attorney’s fees, pursuant to

1 Cal. Civ. Code section 1788.30(c);

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

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

4 1. For compensatory damages as will be proven at trial, pursuant to
5 California Civil Code § 3333;

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

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

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

11 **As to the Fourth Cause of Action (Federal RICO):**

12 1. Treble of all damages, as will be proven at trial, pursuant to 18 U.S.C. §
13 1962(c);

14 2. Any reasonable attorney's fees and costs to maintain the instant action,
15 pursuant to 18 U.S.C. § 1962(c);

16 3. For other and further relief as the court may deem proper pursuant to 18
17 U.S.C. § 1962(a).

18 DATED: 11/5/2014

SEMNR & HARTMAN, LLP

19
20 /S/ Jared M. Hartman
JARED M. HARTMAN, Esq.
21 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: 11/5/2014

SEMNR & HARTMAN, LLP

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