

**FILED**

Superior Court Of California  
County Of Riverside  
09/09/2014

**V.ALVARADO  
BY FAX**

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DOUGLAS & CRYSTAL YAEGER

**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE**

DOUGLAS YAEGER, an individual,  
& CRYSTAL YAEGER, an  
individual,

Plaintiffs,

vs.

WELLS FARGO HOME  
MORTGAGE, INC.; WELLS  
FARGO BANK, N.A.; and DOES 1-  
100, inclusive;

Defendants.

Case No.: MCC1400702

**FIRST AMENDED COMPLAINT  
FOR VIOLATIONS OF  
CALIFORNIA ROSENTHAL ACT**

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

Plaintiffs, DOUGLAS & CRYSTAL YAEGER, both individuals, by and through  
his attorneys of record, BABAK SEMNAR of SEMNAR LAW FIRM, INC. and

1 JARED M. HARTMAN of HARTMAN LAW OFFICE, INC., hereby complain and  
2 allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs, through their attorneys, jointly bring this action to challenge the  
5 actions of Defendants WELLS FARGO HOME MORTGAGE, INC. (hereinafter  
6 "Defendant WFHM") WELLS FARGO BANK, N.A. (hereinafter "Defendant WFB")  
7 for continuing to collect on an alleged defaulted home mortgage loan that never existed,  
8 and for reporting to the State Franchise Tax Board that Plaintiffs owed money to them  
9 on a defaulted home mortgage loan that never existed and that resulted in a garnishment  
10 of Plaintiffs' funds by the Franchise Tax Board.

11 2. This action arises out of Defendants' violations of the California Rosenthal  
12 Fair Debt Collection Practices Act (Cal. Civ. Code §§ 1788-1788.32) ("RFDCPA").

13 3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature issued the  
14 following findings and purpose in creating the Rosenthal Fair Debt Collections  
15 Practices Act:

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

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

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

5 4. Plaintiff makes the allegations below on information and belief, with the  
6 exception of those allegations that pertain to Plaintiff's personal knowledge.

#### 7 JURISDICTION & VENUE

8 5. Jurisdiction of this Court is proper concerning the subject matter addressed  
9 herein because all causes of actions arising from Defendant's violations occurred while  
10 Plaintiffs resided within the boundaries of the City of Murrieta, County of Riverside,  
11 State of California.

12 6. Defendant WFHM is registered as an active limited liability company  
13 within the State of California, located at 420 Montgomery Street in the City of San  
14 Francisco, and therefore personal jurisdiction is established.

15 7. Defendant WFB is a National Association registered in the State of South  
16 Dakota, but conducts business within the State of California by maintaining a registered  
17 agent for service of process at 2710 Gateway Oaks Drive, Suite 150N, in the City of  
18 Sacramento, and therefore personal jurisdiction is established.

19 8. Because all tortious conduct occurred while Plaintiff resided in the City of  
20 Murrieta, County of Riverside, venue properly lies in this Court.

#### 21 PARTIES & DEFINITIONS

9. Plaintiffs are natural persons whose permanent residence is in the City of

1 Murrieta, State of California.

2 10. Defendants WFHM and WFB are companies that regularly do business in  
3 the State of California.

4 11. Plaintiffs, as natural persons, are therefore "persons" as that term is defined  
5 by California Civil Code § 1788.2(g) of the Rosenthal Act.

6 12. Plaintiffs, as natural persons, are both "debtors" as that term is defined by  
7 California Civil Code § 1788.2(h) of the Rosenthal Act, because they were allegedly  
8 obligated to pay a consumer debt to Defendants for a home mortgage loan that never  
9 existed.

10 13. The alleged credit extended by Defendants constitutes a "consumer credit  
11 transaction" with Plaintiffs, as that term is defined by California Civil Code § 1788.2(e)  
12 of the Rosenthal Act, because Defendants alleged that finances were provided to  
13 Plaintiffs for a home mortgage loan.

14 14. Because Plaintiffs, natural persons, were allegedly obligated to pay money  
15 to Defendant for a home mortgage loan, the money allegedly owed was therefore a  
16 "consumer debt" as that term is defined by California Civil Code § 1788.2(f) of the  
17 Rosenthal Act and California Civil Code § 1788.2(d) of the Rosenthal Act.

18 15. Defendants, in the ordinary course of business, regularly, and on behalf of  
19 themselves, engages in the practice of collecting "consumer debts", and thereby engage  
20 in "debt collection" as that term is defined by California Civil Code section 1788.2(b)  
21 of the Rosenthal Act.

1 16. Because Defendants engage in "debt collection", Defendants are therefore  
2 "debt collectors" as that term is defined by California Civil Code section 1788.2(c) of  
3 the Rosenthal Act.

#### 4 FACTUAL ALLEGATIONS

5 17. Sometime in November of 2011, Plaintiffs suffered a foreclosure on a  
6 home in the City of Derby, State of Kansas that they had previously purchased with a  
7 home mortgage loan funded by Defendants with a home mortgage loan.

8 18. The foreclosure sale of the home in December of 2011 awarded  
9 Defendants approximately \$9,000.00 more than the amount that Plaintiffs owed on the  
10 defaulted home mortgage loan.

11 19. As a result, Defendants were not owed any more money from Plaintiffs on  
12 the defaulted home mortgage loan.

13 20. On or about March 28, 2014, Plaintiffs received a letter from Defendants  
14 that claimed that Defendants were collecting a debt from Plaintiffs for a defaulted home  
15 mortgage loan.

16 21. In April of 2014, Plaintiffs were told by Defendants during telephone calls  
17 that Plaintiffs still owe them \$111,780.35 on the home mortgage loan that should have  
18 been wiped out when Defendants received in December of 2011 approximately  
19 \$9,000.00 more than what Plaintiffs actually owed to Defendants.

20 22. Plaintiff CRYSTAL tried to inform Defendants' agents over the phone that  
21 she was informed by Defendants' own attorneys that Defendants' efforts to collect from

1 them was illegal and tried to explain why Plaintiffs do not owe any money to  
2 Defendants, which resulted in Defendants' agents arguing with Plaintiff CRYSTAL  
3 about how she is wrong and Plaintiffs owe them \$111,780.35.

4 23. In June of 2014, Plaintiffs received notices from the State of California  
5 Franchise Tax Board that Plaintiff DOUGLAS' wages are being withheld.

6 24. Through conversations with agents of the State of California Franchise Tax  
7 Board, Plaintiffs discovered that Defendants had reported to the Tax Board sometime in  
8 the year 2014 that Plaintiffs owed taxes on a home mortgage loan with Defendants for a  
9 home that Defendants claimed Plaintiffs owned in 2010 on Derby Drive in the City of  
10 Murrieta, State of California.

11 25. Plaintiffs' residence on Derby Drive in the City of Murrieta, State of  
12 California is a rental unit, Plaintiffs resided in the City of Derby, State of Kansas in the  
13 year 2010, and Plaintiffs have never once owned a residence within the State of  
14 California and have never once had a home mortgage loan with Defendants within the  
15 State of California.

16 26. In June of 2014, Plaintiff DOUGLAS was told by his employer that the  
17 company was not pleased with him over the fact that they were forced to deal with  
18 wage garnishments from the Franchise Tax Board.

19 27. Plaintiffs have both suffered mental anguish over the unlawful conduct by  
20 Defendants described above, in that they have both suffered stress, frustration, feelings  
21 of despair and hopelessness, loss of sleep, arguments within the marriage, fear of losing

1 wages that they desperately need for living expenses, and fear of DOUGLAS being  
2 terminated from his employment or being looked upon with disfavor due to the wage  
3 garnishments.

4 28. Upon information and belief, Defendant WFHM was always acting on  
5 behalf of, at the direction of, and in association with Defendant WFB during all of the  
6 aforementioned conduct.

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

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

12 30. By falsely informing Plaintiffs that Plaintiffs still owe Defendants  
13 \$111,780.35 on the home mortgage loan that should have been wiped out in December  
14 of 2011 when Defendants received approximately \$9,000.00 more than what Plaintiffs  
15 actually owed to Defendants on the defaulted home mortgage loan, and by refusing to  
16 listen to Plaintiff CRYSTAL when she tried to inform Defendants' agents that the debt  
17 is no longer owed, Defendants have committed the following violations of the Federal  
18 FDCPA:

19 a. Uttered false, deceptive, and misleading representations in connection with  
20 their attempt to collect a debt in violation of 15 U.S.C. § 1692e;

21 b. Falsely represented the character and legal status of any debt in violation of  
22 15 U.S.C. § 1692e(2);

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c. Attempted an action that cannot be legally taken in violation of 15 U.S.C.

§ 1692e(5);

d. Used false representation or deceptive means to collect or attempt to collect any debt in violation of 15 U.S.C. § 1692e(10);

e. Used unfair and unconscionable means to collect or attempt to collect any debt in violation of 15 U.S.C. § 1692f;

f. Collecting an amount that is not authorized by agreement in violation of 15 U.S.C. § 1692f(1).