

1 SEMNAR & HARTMAN, LLP
Babak Semnar (SBN 224890)
2 bob@semnarlawfirm.com
Jared M. Hartman, Esq. (SBN 254860)
3 jaredhartman@jmhattorney.com

4 Attorneys for Plaintiffs
KARLA SALAZAR & DANIEL SALAZAR

5
6 **U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

7 KARLA SALAZAR, an individual,
8 and DANIEL SALAZAR, an
9 individual

Plaintiff,

10 vs.

11 WELLS FARGO BANK, a National
12 Association; and DOES 1-10,
13 Defendants.

Case No.:

**COMPLAINT FOR VIOLATIONS
OF:**

- 1. CALIFORNIA ROSENTHAL ACT,
- 2. NEGLIGENCE,
- 3. TELEPHONE CONSUMER PROTECTION ACT

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

16 Plaintiffs, both individuals, by and through their attorneys of record, BABAK
17 SEMNAR and JARED M. HARTMAN of SEMNAR & HARTMAN, LLP, hereby
18 complain and allege as follows:

19 **INTRODUCTION**

20 1. Plaintiffs, through their attorneys, brings this action to challenge the
21 actions of Defendant WELLS FARGO BANK, N.A. (hereinafter “Defendant WF”) for

1 unlawful harassment in connection with alleged debt collection activity, and for calling
2 Plaintiff DANIEL’s wireless cellular telephone multiple times—without prior express
3 consent—by utilizing an automatic telephone dialing system (ATDS).

4 2. The Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”)
5 was designed to prevent calls like the ones described within this complaint, and to
6 protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about
7 abuses of telephone technology – for example, computerized calls dispatched to private
8 homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132
9 S. Ct. 740, 744 (2012).

10 3. In enacting the TCPA, Congress intended to give consumers a choice as to
11 how creditors and telemarketers may call them, and made specific findings that
12 “[t]echnologies that might allow consumers to avoid receiving such calls are not
13 universally available, are costly, are unlikely to be enforced, or place an inordinate
14 burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress
15 found that:

16 [b]anning such *automated* or prerecorded telephone calls to
17 the home, except when the receiving party consents to
18 receiving the call or when such calls are necessary in an
19 emergency situation affecting the health and safety of the
20 consumer, is the only effective means of protecting telephone
21 consumers from this nuisance and privacy invasion.

20 *Id.* at § 12 (emphasis added); *see also Martin v. Leading Edge Recovery Solutions, LLC*,
21 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on

1 TCPA’s purpose).

2 4. Congress also specifically found that “the evidence presented to the
3 Congress indicates that *automated* or prerecorded calls are a nuisance and an invasion
4 of privacy, regardless of the type of call....” Id. at §§ 12-13. *See also, Mims*, 132 S. Ct.
5 at 744 (emphasis added.)

6 5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
7 case regarding calls similar to this one:

8 The Telephone Consumer Protection Act ... is well known for
9 its provisions limiting junk-fax transmissions. A less-litigated
10 part of the Act curtails the use of automated dialers and
11 prerecorded messages to cell phones, whose subscribers often
12 are billed by the minute as soon as the call is answered—and
routing a call to voicemail counts as answering the call. An
automated call to a landline phone can be an annoyance; an
automated call to a cell phone adds expense to annoyance.

13 6. 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 (“RFDCPA”):

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 7. Plaintiffs make 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 8. This action partially arises out of Defendant's violations of the Telephone
9 Consumer Protection Act (TCPA), over which the U.S. District Court has original
10 subject matter jurisdiction pursuant to 28 U.S.C. § 1331, (*Mims v. Arrow Fin. Servs.,*
11 *LLC*, 132 S. Ct. 740 (2012)); and the State of California RFDCPA, and California Tort
12 for Negligence, over which the U.S. District Court has supplemental jurisdiction 28
13 U.S.C. § 1367(a).

14 5. Because Defendant conducts business within the State of California by
15 maintaining a registered agent for service of process at 2710 Gateway Oaks Drive, Suite
16 150N, in the City of Sacramento, personal jurisdiction is established.

17 6. Because all tortious conduct occurred while Plaintiff KARLA resided in
18 the City of Norco, County of Riverside, and Plaintiff DANIELA resided in the City of
19 Santa Ana, County of Orange, and witnesses are located within those locations, venue
20 properly lies in this court.

21 **PARTIES & DEFINITIONS**

7. Plaintiffs are both natural persons.

1 8. Defendant WF regularly does business in the State of California and
2 maintains an agent for service of process within the State of California.

3 9. Plaintiffs are both natural persons, and are therefore both a “person” as that
4 term is defined by California Civil Code § 1788.2(g) of the Rosenthal Act.

5 10. Plaintiff DANIEL, a natural person, is a “debtor” as that term is defined by
6 California Civil Code § 1788.2(h) of the Rosenthal Act, because he was allegedly
7 obligated to pay a consumer debt to Defendant that arose out of a loan for financing
8 Plaintiff’s education.

9 11. Although Plaintiff KARLA was not obligated to pay a consumer debt to
10 Defendant, she is considered an aggrieved party by Defendant’s unlawful conduct and
11 therefore has standing to bring suit despite not being a “debtor” as that term is defined
12 by California Civil Code § 1788.2(h) of the Rosenthal Act. *See Wright v Finance*
13 *Service* (6th Cir. 1994) 22 F3d 647; *Hoffman v GC services* (East. Dist. Tenn. 2010)
14 2010 US Dist LEXIS 139509; *Isaac v RMB* (No. Dist. Alabama 2014) 2014 US Dist
15 LEXIS 97543; *Davis v Midland* (East. Dist. Calif. 2014) 2014 US Dist LEXIS 109309.

16 12. The credit extended by Defendant constitutes a “consumer credit
17 transaction” with Plaintiff DANIEL, as that term is defined by California Civil Code §
18 1788.2(e) of the Rosenthal Act, because finances were provided to him as a home
19 mortgage loan in exchange for him to re-pay Defendant the principal plus interest in the
20 future.

21 13. Because Plaintiff DANIEL, a natural person, was allegedly obligated to

1 pay money to Defendant for home loan financing, the money allegedly owed was
2 therefore both a “consumer debt” as that term is defined by California Civil Code §
3 1788.2(f) of the Rosenthal Act and a “debt” as that term is defined by California Civil
4 Code § 1788.2(d) of the Rosenthal Act.

5 14. Defendant, in the ordinary course of business, regularly, and on behalf of
6 themselves, engages in the practice of collecting “consumer debts”, and thereby
7 engages in “debt collection” as that term is defined by California Civil Code section
8 1788.2(b) of the Rosenthal Act.

9 15. 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 Rosenthal Act.

12 16. With regards to the TCPA cause of action, Plaintiff DANJIEL is, and at all
13 times mentioned herein was, a citizen and resident of the State of California, and
14 therefore is and was a “person” as defined by 47 U.S.C. § 153(39).

15 17. Defendant, is and at all times mentioned herein was, a corporation and is a
16 “person,” as defined by 47 U.S.C. § 153(39).

17 **FACTUAL ALLEGATIONS**

18 18. In January of 2013, Plaintiff DANIEL refinanced his home mortgage laon
19 at the address, 1318 N. Spurgeon Street, Santa Ana, California 92701 with Defendant,
20 Wells Fargo.

21 19. Plaintiff DANIEL and Defendant were previously been involved in a civil

1 action filed in June of 2013 in the Superior Court for the County of Orange under case
2 number 30-2013-00654791, which alleged various violations of RFDCPA and TCPA in
3 connection with debt collection methods exacted upon Plaintiff DANIEL.

4 20. The lawsuit above was dismissed upon confidential settlement terms,
5 without Defendant admitting any liability.

6 21. Plaintiff DANIEL's due date for his home mortgage loan is not until the
7 15th of every month.

8 22. Ever since Plaintiff DANIEL has owed this home mortgage loan to
9 Defendant, he has always paid the monthly payments late and has always paid the late
10 fee in addition to his monthly amount.

11 23. Defendant did not start initiating collection activity upon Plaintiff
12 DANIEL for these late payments until March of 2013, although his habit for making
13 these payments late every month was readily identifiable from his payment history.

14 24. Plaintiff DANIEL has never once actually gone into default on his home
15 mortgage loan with Defendant, as he has always made his monthly payments by the end
16 of every month.

17 25. Plaintiff DANIEL has even had telephonic conversations with Defendant's
18 collection agents and has repeatedly informed them that he always pays his mortgage
19 loan at the end of every month and he will continue to do so as that is when his finances
20 allow him to make the payments.

21 26. Once the lawsuit identified above was served upon Defendant, the

1 collection activity ceased.

2 27. For some unknown reason, however, starting November 4, 2014,
3 Defendant began calling Plaintiff DANIEL's mother—Plaintiff KARLA—upon her
4 residential landline and informed her that they are looking for Plaintiff DANIEL.

5 28. Plaintiff KARLA has repeatedly told Defendant's collection agents that
6 Plaintiff DANIEL does not live with her and she is not involved in any manner with
7 Plaintiff DANIEL's loan with Defendant, and on multiple occasions she has insisted
8 that Defendant not call her any more.

9 29. However, Defendant has called Plaintiff KARLA at least 35 times between
10 November 4, 2014 and November 21, 2014, and the calls continue to occur to this day.

11 30. Starting November 15, 2014, Defendant began calling Plaintiff DANIEL's
12 wireless cellular telephone with an automatic telephone dialing system ("ATDS").

13 31. Every call placed to Plaintiff DANIEL's cellular telephone resulted in him
14 having to wait a few seconds upon answering the call and saying hello multiple times
15 until a live agent connected, which has given DANIEL information and belief that
16 Defendant's calls to his cellular telephone were placed with an ATDS.

17 32. An ATDS is equipment that has the capacity to store or produce telephone
18 numbers to be called, using a random or sequential number generator, and utilizes such
19 equipment to dial such numbers, as defined in 47 U.S.C. § 227(a)(1)(A)-(B).
20 Automatic telephone dialing systems place calls without human intervention until a
21 connection is made with a person on the receiving end of the call, at which time the

1 dialers attempt to connect the recipient with a live agent of the debt collector.

2 33. The calls to Plaintiff DANIEL's cellular telephone were not for emergency
3 purposes, as they were intended solely for debt collection activity.

4 34. On November 18, 2014, Plaintiff DANIEL faxed a letter to Defendant
5 insisting that they not call him or his mother any more, and only communicate with him
6 in writing.

7 35. As such, starting November 18, 2014, Defendant had express written
8 instructions to not call either Plaintiff, which effectively revoked any prior express
9 consent that Defendant could claim it had received from Plaintiff DANIEL.

10 36. However, Defendant has still placed at least 10 calls to Plaintiff KARLA's
11 residential landline and at least 4 calls to Plaintiff DANIEL's cellular telephone with an
12 ATDS since DANIEL faxed his written letter.

13 37. The calls to both Plaintiff KARLA and to Plaintiff DANIEL continue to
14 this very day.

15 38. Defendant's unlawful harassment in connection with unnecessary debt
16 collection activity has caused significant emotional harm to both Plaintiffs.

17 39. Plaintiff KARLA underwent a cardiac procedure on October 30, 2014 and
18 was advised by her doctor to avoid incurring any stress during her on-going recovery
19 over the next 4 weeks, and she is also grieving over her mother-in-law's passing on
20 November 8, 2014.

21 40. Given the timing of Defendant's harassment by repeatedly calling Plaintiff

1 KARLA at least 35 times between the dates of November 4th and November 21st, during
2 a time when she is grieving over her mother-in-law's passing on November 8th and also
3 recovering from a cardiac procedure on October 30th, Plaintiff KARLA has suffered
4 mental and emotional distress by way of anxiety, anger, heart fluttering, shakiness, loss
5 of sleep, and feelings of despair.

6 41. Given that Defendant has been repeatedly harassing his elderly mother
7 during this unfortunate time for her, and has been doing so unnecessarily because of
8 Defendant being readily aware that Plaintiff DANIEL always pays his monthly
9 mortgage payments at the end of the month, Plaintiff DANIEL has suffered mental and
10 emotional distress by way of anxiety, anger, loss of sleep, and feelings of despair.

11 **FIRST CAUSE OF ACTION**
12 **(ON BEHALF OF BOTH PLAINTIFFS)**
13 **CALIF. ROSENTHAL ACT**
14 **CALIF. CIV. CODE §§ 1788-1788.32**

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

17 43. By repeatedly calling Plaintiff KARLA despite her clear insistence that
18 Plaintiff DANIEL does not live with her and she has nothing to do with his home loan
19 with Defendant and also insisting that Defendant stop calling her, Defendant has
20 engaged in engaged in unfair and unconscionable means in an attempt to collect a debt
21 in violation of 15 U.S.C. § 1692f of the Federal FDCPA; has communicated with her
more than once in violation of 15 U.S.C. § 1692b(3) of the Federal FDCPA; and has

1 engaged in conduct the natural consequence of which is to harass, oppress, or abuse any
2 person in connection with the collection of a debt in violation of 15 U.S.C. § 1692d of
3 the FDCPA; and these violations of the FDCPA constitute violations of the RFDCPA as
4 they have been incorporated therein by Calif. Civ. Code § 1788.17.

5 44. By repeatedly calling Plaintiff DANIEL’s mother KARLA despite both his
6 and her clear insistence that Defendant stop calling her, and they have also continued to
7 call Plaintiff DANIEL despite his clear insistence that they stop calling him, Defendant
8 has engaged in 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; has engaged in conduct
10 the natural consequence of which is to harass, oppress, or abuse any person in
11 connection with the collection of a debt in violation of 15 U.S.C. § 1692d of the
12 FDCPA; and these violations of the FDCPA constitute violations of the RFDCPA as
13 they have been incorporated therein by Calif. Civ. Code § 1788.17.

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

16 **SECOND CAUSE OF ACTION**
17 **(ON BEHALF OF PLAINTIFF KARLA)**
18 **(NEGLIGENCE)**
19 **CALIF. CIVIL CODE § 1714**

20 46. Plaintiff KARLA repeats, re-alleges, and incorporates by reference all
21 other paragraphs, as if fully set forth herein.

47. As Plaintiff KARLA is a natural person who was the subject of multiple

1 deliberate efforts by Defendant to contact her to obtain location information of her
2 son—Plaintiff DANIEL—Defendant consequently owed Plaintiff KARLA a duty of
3 care to not harm her with their want of ordinary care or skill.

4 48. Defendant’s persistent and unrelenting acts of harassment by placing an
5 obscene and unreasonable amount of phone calls to Plaintiff KARLA despite her
6 repeated insistence that such phone calls cease, Defendant breached their duty of care
7 owed to her, and thereby caused her severe emotional distress by way of anxiety,,
8 worry, stress, heart fluttering, shakiness, and loss of sleep.

9 49. Defendants are therefore liable for Plaintiff’s harm as a result of their want
10 of ordinary care or skill in the management of their property or person.

11 50. Plaintiff is informed and believes that the aforesaid conduct was malicious
12 and oppressive, as those terms are defined by California Civil Code §§ 3294(c)(1) and
13 3294(c)(2), as Defendant’s conduct was done in complete conscious disregard of
14 Plaintiff KARLA’s rights to not be called by Defendant for something that she has
15 absolutely no involvement with and despite her and Plaintiff DANIEL’s insistence that
16 Defendant not call Plaintiff KARLA.

17 **THIRD CAUSE OF ACTION**
18 **(ON BEHALF OF PLAINTIFF DANIEL)**
19 **(TCPA)**
20 **47 U.S.C. § 227(b)**

21 51. Plaintiff DANIEL repeats, re-alleges, and incorporates by reference all
other paragraphs, as if fully set forth herein.

1 Act via Calif. Civ. Code §1788.17, which is cumulative and in addition to all other
2 remedies pursuant to California Civil Code § 1788.32; plus

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

5 **As to the Second Cause of Action for Plaintiff KARLA (Negligence):**

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

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

9 3. Punitive damages to be determined at trial, for the sake of example and
10 punishing Defendant for their malicious conduct, pursuant to Calif. Civ. Code §
11 3294(a);

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

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1 **As to the Third Cause of Action for Plaintiff DANIEL (TCPA):**

2 1. As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1),
3 Plaintiff seeks \$500.00 in statutory damages for each and every violation, pursuant to
4 47 U.S.C. § 227(b)(3)(B);

5 2. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. §
6 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in statutory
7 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B);

8 3. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
9 conduct in the future.

10 DATED: 11/21/2014

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

12 **TRIAL BY JURY**

13 Pursuant to the Seventh Amendment to the Constitution of the United States of
14 America, Plaintiff is entitled to, and demands, a trial by jury.
15

16 DATED: 11/21/2014

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