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11 **United States District Court**  
12 **Eastern District Of California**

13 Elizabeth Brandt,

14 Plaintiff,

15 v.

16 Ocwen Mortgage Servicing, Inc.  
17 and Ocwen Loan Servicing, LLC,

18 Defendants.

19 Case No: \_\_\_\_\_

20 **COMPLAINT FOR DAMAGES**

- 21 1. **Rosenthal Fair Debt**
- 22 **Collection Practices Act Cal.**
- 23 **Civ. Code §§ 1788-1788.32**
- 24 2. **Negligent Violations of**
- 25 **Telephone Consumer**
- 26 **Protection Act, 47 U.S.C. §227**
- 27 **ET SEQ.**
- 28 3. **Intentional Violations of**
- Telephone Consumer**
- Protection Act, 47 U.S.C. §227**
- ET SEQ.**
- 4. **Negligence**
- 5. **Negligence Per Se - RFDCPA**
- 6. **Negligence Per Se - TCPA**

**Jury Trial Demanded**



## Introduction

- 1  
2 1. The California legislature has determined that the banking and credit  
3 system and grantors of credit to consumers are dependent upon the  
4 collection of just and owing debts and that unfair or deceptive collection  
5 practices undermine the public confidence that is essential to the continued  
6 functioning of the banking and credit system and sound extensions of  
7 credit to consumers. The Legislature has further determined that there is a  
8 need to ensure that debt collectors exercise this responsibility with  
9 fairness, honesty and due regard for the debtor's rights and that debt  
10 collectors must be prohibited from engaging in unfair or deceptive acts or  
11 practices.
- 12 2. The Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227 et  
13 seq. was designed to prevent calls like the ones described within this  
14 complaint, and to protect the privacy of citizens like Plaintiff.  
15 "Voluminous consumer complaints about abuses of telephone technology  
16 – for example, computerized calls dispatched to private homes – prompted  
17 Congress to pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct.  
18 740, 744 (2012).
- 19 3. In enacting the TCPA, Congress intended to give consumers a choice as to  
20 how creditors and telemarketers may call them, and made specific findings  
21 that "[t]echnologies that might allow consumers to avoid receiving such  
22 calls are not universally available, are costly, are unlikely to be enforced,  
23 or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–  
24 243, § 11.
- 25 4. Toward this end, Congress found that:  
26 [b]anning such automated or prerecorded telephone calls to  
27 the home, except when the receiving party consents to  
28 receiving the call or when such calls are necessary in an

1 emergency situation affecting the health and safety of the  
2 consumer, is the only effective means of protecting  
3 telephone consumers from this nuisance and privacy  
invasion.

4 *Id.* at § 12; see also *Martin v. Leading Edge Recovery*  
5 *Solutions, LLC*, 2012 WL 3292838, at \*4 (N.D. Ill. Aug. 10,  
2012) (citing Congressional findings on TCPA’s purpose).

- 6 5. Congress also specifically found that “the evidence presented to Congress  
7 indicates that automated or prerecorded calls are a nuisance and an  
8 invasion of privacy, regardless of the time of call...” *Id.* at §§ 12-13. See  
9 also, *Mims*, 132 S. Ct. at 744.
- 10 6. Plaintiff Elizabeth Brandt (“Plaintiff”), by Plaintiff’s attorneys, bring this  
11 action to challenge the conduct of Ocwen Mortgage Servicing, Inc.  
12 (“OMS”), and Ocwen Loan Servicing, LLC (“OLS”) (collectively  
13 “Ocwen” or “Defendants”), with regard to attempts by defendant to  
14 unlawfully and abusively collect a debt allegedly owed by Plaintiff.  
15 Further, Plaintiff bring this action for damages and any other available  
16 legal or equitable remedies resulting from the actions of Defendants in  
17 their violations of the Rosenthal Fair Debt Collections Act and in their  
18 negligent and/or willful violations of the TCPA.
- 19 7. While many violations are described below with specificity, this  
20 Complaint alleges violations of the statutes cited in their entirety.
- 21 8. The statute of limitations is tolled due to the commencement of a class  
22 action based on same or similar allegations filed against Defendant on  
23 October 27, 2014 in the Northern District of Illinois, Case Number 1:14-  
24 cv-08461. *America Pipe & Construction Co v. State of Utah*, 414 U.S.  
25 538.
- 26 9. Plaintiff makes these allegations on information and belief, with the  
27 exception of those allegations that pertain to Plaintiff, or to Plaintiff’s  
28 counsel which Plaintiff alleges on personal knowledge

1 10. While many violations are described below with specificity, this  
2 Complaint alleges violations of the statutes cited in their entirety.

3 11. Any violations by Defendants were knowing, willful, and intentional, and  
4 Defendant did not maintain procedures reasonably adapted to avoid any  
5 such violation.

### 6 **Jurisdiction and Venue**

7 12. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1332, and 28  
8 U.S.C. § 1367 for supplemental state claims.

9 13. This action arises out of Defendants' violations of federal law. 47 U.S.C. §  
10 227(b); *Mims v. Arrow Fin. Servs. LLC*, 132 S. Ct. 740 (2012).

11 14. Because Defendants conduct business within the State of California,  
12 personal jurisdiction is established.

13 15. Venue is proper pursuant to 28 U.S.C. § 1391 because Defendant  
14 conducted business within the State of California and Plaintiff is located  
15 within this district.

### 16 **Parties**

17 16. Plaintiff is a natural person who resides in the City of Modesto, State of  
18 California.

19 17. Defendant Ocwen Mortgage Servicing, Inc. has its principal place of  
20 business in Frederiksted, St. Croix in the U.S. Virgin Islands.

21 18. Defendant Ocwen Loan Servicing, LLC has its principal place of business  
22 in the City of West Palm Beach, in the State of Florida.

23 19. Defendant OMS is, and at all times mentioned herein was, a corporation  
24 and "person," as defined by 47 U.S.C. § 153 (39).

25 20. Defendant OLS is, and at all times mentioned herein was, a limited  
26 liability company and a "person," as defined by 47 U.S.C. § 153 (39).

27 21. Plaintiff is a natural person from whom a debt collector sought to collect a  
28 consumer debt which was due and owing or alleged to be due and owing

1 from Plaintiff, and is a “debtor” as that term is defined by California Civil  
2 Code § 1788.2(h).

3 22. This case involves money, property or their equivalent, due or owing or  
4 alleged to be due or owing from a natural person by reason of a consumer  
5 credit transaction. As such, this action arises out of a consumer debt and  
6 “consumer credit” as those terms are defined by Cal. Civ. Code §  
7 1788.2(f).

8 23. Defendants, each of them, in the ordinary course of business, regularly, on  
9 behalf of themselves, or others, engage in debt collection as that term is  
10 defined by California Civil Code § 1788.2(b), are therefore debt collectors  
11 as that term is defined by California Civil Code § 1788.2(c).

12 **Factual Allegations**

13 24. Plaintiff is alleged to have incurred certain financial obligations to  
14 Defendants related for a mortgage for Plaintiff’s primary residence.

15 25. These alleged obligations were money, property, or their equivalent, which  
16 is due or owing, or alleged to be due or owing, from a natural person to  
17 another person and are therefore a “debt” as that term is defined by  
18 California Civil Code §1788.2(d), and a “consumer debt” as that term is  
19 defined by California Civil Code §1788.2(f).

20 26. Between April 3, 2011 through July 2016, Defendant called Plaintiff on  
21 Plaintiff’s cellular telephone number ending in 7916 via an “automatic  
22 telephone dialing system” (“ATDS”), as defined by 47 U.S.C. § 227(a)(1),  
23 using an “artificial or prerecorded voice” as prohibited by 47 U.S.C. §  
24 227(b)(1)(A).

25 27. This ATDS has the capacity to store or produce telephone numbers to be  
26 called, using a random or sequential number generator.

1 28. When Plaintiff would answer the calls from Defendants, there would often  
2 be a silence, sometimes with a click or a beep-tone, before an Ocwen  
3 representative would pick up and start speaking.

4 29. Sometimes, Plaintiff would receive calls from Defendants in which the  
5 caller was a recorded voice or message, rather than a live representative.

6 30. In total, Plaintiff has received at least 2431 calls from Defendant on  
7 Plaintiff's cellular telephone.

8 31. For example, Plaintiff was called every single day between October 1,  
9 2015 and October 28, 2015, for a total of 34 calls.

10 32. Plaintiff did not provide express consent to Defendant to receive calls on  
11 Plaintiff's cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).

12 33. Further, Plaintiff clearly revoked any type of prior express consent, if prior  
13 express consent ever existed, by stating that Plaintiff no longer wished to  
14 be contacted by phone.

15 34. Plaintiff answered several of the above mentioned autodialed telephone  
16 calls from Defendant and asked Defendant to stop calling. Despite this  
17 clear and unmistakable request, the calls continued without interruption.  
18 Each of these requests terminated any express or implied consent that  
19 Defendant may have had prior to beginning its campaign of harassment by  
20 telephone.

21 35. Each of these calls was an attempt to collect on a consumer debt allegedly  
22 due and owing by Plaintiff.

23 36. The calls by Defendant to Plaintiff's cell phone continued, even after  
24 Plaintiff's oral revocation.

25 37. These calls were made by Defendants or Defendants' agent, with  
26 Defendants' permission, knowledge, control, and for Defendants' benefit.

27 38. As a result, the telephone calls by Defendants, or its agent(s), violated 47  
28 U.S.C. § 227(b)(1).

1 39. Through Defendant's actions, Plaintiff suffered an invasion of a legally  
2 protected interest in privacy, which is specifically addressed and protected  
3 by the TCPA.

4 40. Plaintiff was personally affected, becoming frustrated and distressed that,  
5 despite telling Defendants to stop calling Plaintiff's cellular phone,  
6 Defendants continued to harass Plaintiff with collection calls using an  
7 ATDS.

8 41. The unrelenting, repetitive calls disrupted Plaintiff's daily activities and  
9 the peaceful enjoyment of Plaintiff's personal and professional life,  
10 including the ability to use Plaintiff's phone.

11 42. The calls placed by Defendant to Plaintiff were extremely intrusive,  
12 including Plaintiff's relationships with close family members. Specifically,  
13 Plaintiff began to ignore or send to voicemail many incoming calls from  
14 unknown numbers, out of frustration in dealing with Defendants'  
15 unwanted and intrusive calls. In doing so, Plaintiff missed important  
16 communications from friends and family.

17 43. Through this conduct described above, Defendants caused Plaintiff's  
18 phone to ring repeatedly or continuously to annoy the person called, in  
19 violation of California Civil Code §1788.11(d).

20 44. Through this conduct described above, Defendants communicated, by  
21 telephone or in person, with the debtor with such frequency as to be  
22 unreasonable and to constitute an harassment under the circumstances, in  
23 violation of California Civil Code §1788.11(e).

24 **STANDING**

25  
26 45. Standing is proper under Article III of the Constitution of the United States  
27 of America because Plaintiff's claims state:

28 a. a valid injury in fact;

1 b.which is traceable to the conduct of Defendant;

2 c.and is likely to be redressed by a favorable judicial decision.

3 See, *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_ (2016) at 6, and *Lujan v.*  
4 *Defenders of Wildlife*, 504 U.S. 555 at 560.

5 46. In order to meet the standard laid out in *Spokeo* and *Lujan*, Plaintiff must  
6 clearly allege facts demonstrating all three prongs above.

7  
8 A. ***The “Injury in Fact” Prong***

9 47. Plaintiff’s injury in fact must be both “concrete” and “particularized” in  
10 order to satisfy the requirements of Article III of the Constitution, as laid  
11 out in *Spokeo (Id.)*.

12 48. For an injury to be “concrete” it must be a *de facto* injury, meaning that it  
13 actually exists. In the present case, Plaintiff was called on Plaintiff’s  
14 cellular phone by Defendant. Such calls are a nuisance, an invasion of  
15 privacy, and an expense to Plaintiff. *Soppet v. Enhanced Recovery Co.,*  
16 *LLC*, 679 F.3d 637, 638 (7<sup>th</sup> Cir. 2012). All three of these injuries are  
17 concrete and *de facto*.

18 49. For an injury to be “particularized” means that the injury must “affect the  
19 plaintiff in a personal and individual way.” *Spokeo, Inc. v. Robins*, 578  
20 U.S. \_\_\_\_ (2016) at 7. It was plaintiff’s personal privacy and peace that  
21 was invaded by Defendant’s persistent phone calls using an ATDS. All of  
22 these injuries are particularized and specific to plaintiff, and will be the  
23 same injuries suffered by each member of the putative class.

24 A. ***The “Traceable to the Conduct of Defendant” Prong***

25 50. The second prong required to establish standing at the pleadings phase is  
26 that Plaintiff must allege facts to show that Plaintiff’s injury is traceable to  
27 the conduct of Defendant(s).  
28



1 51. In the instant case, this prong is met simply by the fact that the calls to  
2 plaintiff's cellular phone were placed either, by Defendant directly, or by  
3 Defendant's agent at the direction of Defendant.

4  
5 A. ***The "Injury is Likely to be Redressed by a Favorable Judicial  
6 Opinion" Prong***

7 52. The third prong to establish standing at the pleadings phase requires  
8 Plaintiff to allege facts to show that the injury is likely to be redressed by a  
9 favorable judicial opinion.

10 53. In the present case, Plaintiff's Prayers for Relief include a request for  
11 damages for each call made by Defendant, as authorized by statute in 47  
12 U.S.C. § 227. The statutory damages were set by Congress and  
13 specifically redress the financial damages suffered by Plaintiff.

14 54. Furthermore, Plaintiff's Prayers for Relief request injunctive relief to  
15 restrain Defendant from the alleged abusive practices in the future. The  
16 award of monetary damages and the order for injunctive relief redress the  
17 injuries of the past, and prevent further injury in the future.

18 55. Because all standing requirements of Article III of the U.S. Constitution  
19 have been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. \_\_\_\_ (2016),  
20 Plaintiff has standing to sue Defendant on the stated claims.

21  
22 **Causes of Action**

23 **Count I**

24 **Rosenthal Fair Debt Collection Practices Act (Rosenthal Act)**

25 **Cal. Civ. Code §§ 1788-1788.32**

26 56. Plaintiff repeats, re-alleges, and incorporates by reference, all other  
27 paragraphs.  
28



1 57. The foregoing acts and omissions constitute numerous and multiple  
2 violations of the Rosenthal Act, including but not limited to each and  
3 every one of the above-cited provisions of the Rosenthal Act, Cal. Civ.  
4 Code §§ 1788-1788.32, specifically, the voluminous calls made to each  
5 Plaintiff in the time periods described.

6 58. As a result of each and every violation of the Rosenthal Act, Plaintiff is  
7 entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a);  
8 statutory damages for a knowing or willful violation in the amount up to  
9 \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable  
10 attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from  
11 Defendant.

12  
13  
14 **Count II**  
15 **Negligent Violations Of The**  
16 **Telephone Consumer Protection Act (TCPA)**  
17 **47 U.S.C. 227**

18 59. Plaintiff repeats, re-alleges, and incorporates by reference, all other  
19 paragraphs.

20 60. The foregoing acts and omissions constitute numerous and multiple  
21 violations of the TCPA, including but not limited to each and every one of  
22 the above-cited provisions of the TCPA, 47 U.S.C. 227 et. seq.

23 61. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,  
24 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each  
25 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

26 **Count III**  
27 **Knowing and/or Willful Of The**  
28 **Telephone Consumer Protection Act (TCPA)**



**47 U.S.C. 227**

1  
2 62. Plaintiff repeats, re-alleges, and incorporates by reference, all other  
3 paragraphs.

4 63. The foregoing acts and omissions of Defendant constitute numerous and  
5 multiple knowing and/or willful violations of the TCPA, including but not  
6 limited to each and every one of the above-cited provisions of 47 U.S.C. §  
7 227 et seq.

8 64. As a result of Defendant's knowing and/or willful violations of 47 U.S.C.  
9 § 227 et seq., Plaintiff is entitled to treble damages, as provided by statute,  
10 up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. §  
11 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

12  
13  
14 **Count IV**  
15 **Negligence**

16 65. Plaintiff incorporates by reference all of the above paragraphs of this  
17 Complaint as though fully stated herein.

18 66. Defendants had a duty to use care to not infringe on consumers' privacy  
19 rights when collecting on alleged debts and not calling Plaintiffs hundreds  
20 and/or thousands of times to harass and/or abuse Plaintiffs.

21 67. Defendants breached that duty by calling Plaintiff on Plaintiff' cellular  
22 telephones a voluminous number of times, as discussed above, and  
23 continued to call despite Plaintiff's request that the calls stop.

24 68. Plaintiff was harmed and suffered injury as described above.

25 69. The negligence of Defendants was a substantial and proximate factor in  
26 causing Plaintiff this harm and injury described above.

27 70. As said conduct was carried out by Defendants in an oppressive,  
28 malicious, despicable, gross and wontonly negligent manner, said conduct

1 demonstrates Defendants' conscious disregard for the rights and safety of  
2 Plaintiff or their family. As such Plaintiff is entitled to recover punitive  
3 damages from Defendants in an amount according to proof at trial.  
4

5  
6 **Count V**

7 **Negligence Per Se - Rosenthal Fair Debt Collection Practices Act**

8 71. Plaintiff repeats, re-alleges, and incorporates by reference, all other  
9 paragraphs.

10 72. The Rosenthal Fair Debt Collection Practices Act ensures that debt  
11 collectors exercise this responsibility with fairness, honesty and due regard  
12 for the debtor's rights and that debt collectors must be prohibited from  
13 engaging in unfair or deceptive acts or practices. This act is codified under  
14 California Civil Code § 1788-1788.32.

15 73. Defendants called Plaintiff with regard to alleged obligations related to  
16 money, property, or their equivalent, which is due or owing, or alleged to  
17 be due or owing, from a natural person to another person and are therefore  
18 a "debt" as that term is defined by California Civil Code § 1788.2(d), and  
19 a "consumer debt" as that term is defined by California Civil Code  
20 §1788.2(f).

21 74. Plaintiff is a natural person from whom a debt collector sought to collect a  
22 consumer debt which was due and owing or alleged to be due and owing  
23 from Plaintiff, and is a "debtor" as that term is defined by California Civil  
24 Code § 1788.2(h).

25 75. Thus, Plaintiff is within the protective class which the Rosenthal Fair Debt  
26 Collection Practices Act is designed to protect.  
27  
28

1 76. Through this conduct described above, Defendants caused Plaintiff's  
2 phone to ring repeatedly or continuously to annoy the person called, in  
3 violation of California Civil Code §1788.11(d).

4 77. Through this conduct described above, Defendants communicated, by  
5 telephone or in person, with the debtor with such frequency as to be  
6 unreasonable and to constitute an harassment under the circumstances, in  
7 violation of California Civil Code §1788.11(e).

8 78. Defendants breached its duty through their violations of the RFDCPA by  
9 calling Plaintiff on Plaintiff' cellular telephones a voluminous number of  
10 times, as discussed above, and continued to call despite Plaintiff's request  
11 that the calls stop.

12 79. Plaintiff was harmed and suffered injury as described above.

13 80. The negligence of Defendants was a substantial and proximate factor in  
14 causing Plaintiff this harm and injury described above.

15 81. As said conduct was carried out by Defendants in an oppressive,  
16 malicious, despicable, gross and wontonly negligent manner, said conduct  
17 demonstrates Defendants' conscious disregard for the rights and safety of  
18 Plaintiff or their family. As such Plaintiff is entitled to recover punitive  
19 damages from Defendants in an amount according to proof at trial.

## 20 **Count VI**

### 21 **Negligence Per Se - Telephone Consumer Protection Act**

22 82. Plaintiff incorporates by reference all of the above paragraphs of this  
23 Complaint as though fully stated herein.

24 83. The Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227 et  
25 seq. was designed to prevent calls like the ones described within this  
26 complaint, and to protect the privacy of citizens like Plaintiff.

27 84. Thus, Plaintiff is within the protective class which the TCPA is designed to  
28 protect.

1 85. As described above, Defendants breached their duty when they violated  
2 the TCPA.

3 86. Defendants' violation of the TCPA was a substantial and proximate factor  
4 in causing Plaintiff this harm and injury described above.

5 87. As said conduct was carried out by Defendants in an oppressive,  
6 malicious, despicable, gross and wontonly negligent manner, said conduct  
7 demonstrates Defendants' conscious disregard for the rights and safety of  
8 Plaintiff or their family. As such Plaintiff is entitled to recover punitive  
9 damages from Defendants in an amount according to proof at trial.

### 10 **Prayer For Relief**

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

- 13 • An award of actual damages pursuant to California Civil Code §  
14 1788.30(a);
- 15 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ.  
16 Code § 1788.30(b);
- 17 • An award of costs of litigation and reasonable attorney's fees,  
18 pursuant to Cal. Civ. Code § 1788.30(c);
- 19 • Statutory damages of \$500.00 for each negligent violation of the  
20 TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
- 21 • Statutory damages of \$1,500.00 for each knowing and/or willful  
22 violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47  
23 U.S.C. § 227(b)(3)(C);
- 24 • Pursuant to 47 U.S.C § 227(b)(3)(A), injunctive relief prohibiting  
25 such conduct in the future;
- 26 • Special, general, compensatory, and punitive damages; and
- 27 • Any and all other relief that this Court deems just and proper.  
28

1 88. Pursuant to the seventh amendment to the Constitution of the United  
2 States of America, Plaintiff is entitled to, and demands, a trial by jury.

3  
4 Respectfully submitted,

**Hyde & Swigart**

5  
6 Date: May 5, 2017

By: /s/ Joshua B. Swigart

Joshua Swigart

Attorneys for Plaintiff

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