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8 Attorney for Plaintiffs

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 GISELE FOURNIER and REJEAN) CASE NO.:
12 FOURNIER, individually and on behalf of)
13 all others similarly situated,)
14 Plaintiffs,)
15 v.) CLASS ACTION COMPLAINT FOR
16 DIAMOND RESORTS) DAMAGES
17 INTERNATIONAL CLUB, INC. and)
DOES 1 through 10, inclusive,)
Defendants.)

18 Plaintiffs, by and through their attorney, Amir J. Goldstein, Esq., as and for their
19 complaint against the Defendant, DIAMOND RESORTS INTERNATIONAL CLUB, INC.,
20 allege as follows:
21

22 INTRODUCTION

- 23 1. This is an action for damages brought by individual consumers and on behalf of a
24 class for Defendant’s violations of the Truth in Lending Act or 15 U.S.C. §§1601
25 et seq., the Telephone Consumer Protection Act of 1991 or 47 U.S.C. §227 et seq.
26 (“TCPA”), the California False Advertising Act or California Business and
27 Professions Code §§17500, et seq., California Business and Professions Code
28

1 §§17200, et seq., the Consumers Legal Remedies Act (“CLRA”) or California
2 Civil Code §§1750 et seq. and California Welfare and Institutions Code
3 §15610.70(a)
4

5 **PARTIES**

- 6 2. Plaintiffs are natural persons residing in Riverside County, California and are
7 consumers as defined by Cal. Bus. & Prof. Code §17201.
8 3. Upon information and belief, Defendant Diamond Resorts International Club, Inc.
9 is a company whose state of incorporation is Nevada and whose principal place of
10 business is in the state of Nevada.
11

12 **JURISDICTION**

- 13 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and venue is proper in
14 this district pursuant to 28 U.S.C. § 1391 et seq., as the Defendant conducts
15 business, the nature of which subjects the Defendant corporation to jurisdiction in
16 this district and the transactions that give rise to this action occurred, in
17 substantial part, in this district.
18

19 **FACTUAL ALLEGATIONS**

- 20 5. Plaintiffs reallege paragraphs 1 through 4 as if fully restated herein.
21 6. That upon information and belief, Defendant sells timeshare contracts.
22 7. That at a time unknown herein, Plaintiffs obtained a “membership” with the
23 Defendant whereby Plaintiffs would acquire timeshare “points” which could then
24 be redeemed in exchange for the right to use and occupy accommodations at
25 various resorts.
26 8. That Plaintiffs believed that their monthly payments went solely toward the
27 purchase of timeshare “points.”
28

1 9. That Plaintiffs were led to believe that the timeshare resorts were made available
2 only to other timeshare members and not to the general public.

3 10. That whenever Plaintiffs would check into any of the aforementioned resorts,
4 Plaintiffs would be forced to speak with concierge personnel who would then
5 pressure the Plaintiffs to make an appointment for an owners “update” meeting.

6 11. That Plaintiffs grew dissatisfied with their membership due to the unavailability
7 of accommodations at various resorts, Plaintiffs’ inability to make reservations at
8 certain times of the year, the hard sale tactics and pressure they would encounter
9 and the subpar customer service Plaintiffs would receive whenever they would
10 stay at one of the Defendant’s resorts.

11
12 *Count One*

13 12. That on or about July 2015, Plaintiffs reached out to one of Defendant’s sales
14 associates to discuss their dissatisfaction with their membership.

15 13. That Plaintiffs informed Defendant’s agent that they were unhappy with the
16 reservation process and that Plaintiffs could not get reservations for the dates they
17 wanted at the resorts that they were interested in visiting.

18 14. That in response, Defendant’s agent advised Plaintiffs that if they upgraded their
19 membership to “platinum” level, they would get “superior” customer service.

20 15. That Defendant’s agent deceptively advised Plaintiffs to attend an “update”
21 meeting in order to have their grievances addressed and customer service issues
22 resolved.

23 16. That in reliance on the representations made by Defendant’s agent, the Plaintiffs
24 reluctantly agreed to attend the “update” meeting, in the hopes that attending the
25 meeting would resolve their grievances.

26 17. That Plaintiffs felt extremely uncomfortable at said meeting.
27
28

1 18. That after briefly speaking with some of Defendant's agents, Defendant's agents
2 immediately laughed at Plaintiff Gisele Fournier for not bringing his credit card to
3 the meeting.

4 19. That Plaintiffs felt coerced to go back to their room and get a credit card because
5 they felt that no one would help them otherwise.

6 20. That upon their return to the update meeting, Plaintiffs were passed from one
7 sales associate to another for over four hours.

8 21. That Defendant's agents continued to intimidate the Plaintiffs.

9 22. That Defendant's agents proceeded to apply hard pressure sales tactics on the
10 Plaintiffs.

11 23. That Defendant's agents advised Plaintiffs that their reservation problems, the
12 unavailability of various resorts and other poor customer service issues would be
13 resolved if the Plaintiffs upgraded their membership.

14 24. That Plaintiffs felt bullied, manipulated and intimidated into signing a new
15 contract upgrading their membership with the Defendant.

16 25. That Defendant subjected the Plaintiffs to a high pressure situation which caused
17 the Plaintiffs a great amount of stress, embarrassment and humiliation.

18 26. That Plaintiffs felt that they could not leave the meeting unless they signed up for
19 an upgrade to their membership.

20 27. That Defendant's agents failed to advise Plaintiffs of their right to cancel the
21 upgrade and the process for terminating their membership.

22 28. That Defendant's agents failed to disclose to Plaintiffs the extent of the debt they
23 would incur as a result of upgrading their membership.

24 29. That upon information and belief, Defendant regularly engages in a practice of
25 subjecting consumers like the Plaintiffs to high pressure situations filled with hard
26 sell tactics in order to coerce them into entering into timeshare memberships and
27 upgrades.

1 30. That upon information and belief, Defendant uses false advertising and
2 misrepresentations to induce consumers like the Plaintiffs to enter into
3 membership contracts and sign up for upgrades that they never wanted.

4 31. That upon information and belief, Defendant regularly fails to make material
5 disclosures in order to mislead consumers like the Plaintiffs as to the status of
6 their accounts and membership benefits.

7 32. That Defendant used deceptive sales practices and made numerous oral
8 misrepresentations and false statements during timeshare sales presentations,
9 including but not limited to the “update” meetings.

10 33. That as a result of Defendant’s deceptive sales tactics and misrepresentations,
11 Plaintiffs were then charged over \$2,000.00 on their credit card to upgrade their
12 membership.

13 34. That as a result of said upgrade, Plaintiff’s monthly membership dues nearly
14 doubled.

15 35. That notwithstanding their “platinum” upgrade, Plaintiffs continued to receive
16 poor customer service and subpar accommodations and encountered the same
17 problems as they did prior to their upgrade.

18
19 *Count Two*

20 36. That as a result of Defendant’s continued failure to provide Plaintiffs with the
21 services as promised in the update meeting, Plaintiffs wanted to terminate their
22 membership.

23 37. That Plaintiffs, in one of their attempts to terminate their contract over the phone,
24 were transferred from one department to another for over an hour, only to be told
25 at the end of the phone call that they could not terminate their contract because
26 the time had already passed for terminations.

1 38. That on or about July 2016, Plaintiffs, in another attempt to terminate their
2 contract, contacted Defendant via internet chat.

3 39. That upon information and belief, Defendant instructed the Plaintiffs to contact
4 the Hospitality Management Department in order to terminate their membership.

5 40. That during said chat, Plaintiffs attempted to reach the Hospitality Management,
6 as previously instructed, but Defendant's agent told Plaintiffs that there was no
7 contact number for said department.

8 41. That Defendant's instructions to the Plaintiffs were confusing, contradictory and
9 ineffective.

10 42. That the Defendant repeatedly gave the Plaintiffs the run around, often with
11 conflicting and confusing information, and failed to connect the Plaintiffs to the
12 correct department in order for the Plaintiffs to process their request to terminate
13 their contract.

14 43. That upon information and belief, Defendant engages in a practice whereby it
15 purposely makes terminating membership contracts difficult, if not almost
16 impossible, for the average consumer.

17 44. That on or about August 2016, Plaintiffs mailed Defendant a letter advising
18 Defendant of their desire to terminate their membership and that Defendant no
19 longer had the authority to debit Plaintiffs' account.

20 45. That in said letter, Plaintiffs also informed Defendant that they had cancelled all
21 future reservations and requested reimbursement for any and all proper credits
22 associated with their timely cancellations along with the 2016 HOA fees that had
23 already been paid by Plaintiffs.

Count Three

1
2 46. That shortly after the Plaintiffs mailed their request to terminate their
3 membership, Defendant mailed Plaintiffs a “Monthly Loan Statement”
4 referencing “Account #0023724547” with an invoice date of “08/22/2016” and a
5 balance due of \$813.77.

6 47. That the Due Date listed on the “08/22/2016” statement was “08/12/2016.”

7 48. That according to the Defendant’s “Monthly Loan Statement” dated 08/22/2016,
8 any payments received after that date would result in additional fees, thereby
9 increasing the balance due to \$844.77.

10 49. That contrary to Plaintiffs’ understanding that their payments were going toward
11 the purchase of “points,” Defendant’s “Monthly Loan Statement” indicated that
12 Plaintiffs owed a “Principal Balance” of over \$45,000 and that at least \$6,000 had
13 already been paid by Plaintiffs toward interest fees alone.

14 50. That the Defendant’s statements to the Plaintiffs contained confusing and
15 conflicting information.

16 51. That as a result of Defendant’s correspondence, Plaintiffs were misled, deceived,
17 and misinformed as to the status of their account and the nature of their
18 membership.

19
20 *Count Four*

21 52. That on or about August 2016, notwithstanding Plaintiffs’ notice requesting
22 termination of their membership, Defendant mailed Plaintiffs a letter dated
23 August 22, 2016, referencing “Loan Number 0023724547” advising Plaintiffs that
24 they had not received a payment on said loan.

25 53. That in response, Plaintiffs immediately mailed Defendant a letter dated August
26 28, 2016 reiterating their request to terminate their membership due to health
27
28

1 reasons, request for reimbursement of 2016 HOA fees and credits for timely
2 cancellation of reservations.

3 54. That Plaintiffs mailed Defendants yet another letter dated September 7, 2016
4 informing Defendant of their need to terminate their membership due to health
5 reasons.

6 55. That on or about September 2016, more than approximately three months after
7 Plaintiffs expressed their desire to terminate their membership, Defendant mailed
8 Plaintiffs three letters all dated September 12, 2016.

9 56. That said letters made no reference to Plaintiff's account number or loan number,
10 but instead listed "Contract No. 2594250, 17188852, 16680988" respectively.

11 57. That each form letter contained the following language: "After review and
12 consideration, we are unable to grant your request as neither the management
13 company, nor the developer, are able to allow a surrender of ownership within the
14 Association at this time."

15 58. That Defendant did not cite any reasons for refusing to terminate Plaintiffs'
16 membership as requested in any of the form letters.

17 59. That in each form letter, Defendant advised Plaintiffs that they would "**remain**
18 **contractually obligated** for payment of fees." (emphasis in the original)

19 60. That upon information and belief, Defendant engages in the regular practice of
20 delaying requests to terminate membership contracts in order for additional fees
21 and costs to accrue and to force members like the Plaintiffs through a downward
22 spiral of increasing debt.

23
24 *Count Five*

25 61. That shortly after sending Plaintiffs the form letters dated September 12, 2016,
26 Defendant mailed Plaintiffs a letter dated September 15, 2016 referencing "Loan
27 Account Number 707968" (an account number completely different than any of
28

1 the account numbers or contract numbers referenced in its prior correspondence to
2 the Plaintiffs) informing Plaintiffs that it had agreed to “accept a Mutual Release”
3 on Account 707968.

4 62. That notwithstanding Defendant’s “release,” Defendant mailed Plaintiffs another
5 letter dated September 16, 2016 demanding payment on their account.

6 63. That on or about September 23, 2016, Defendant’s agent advised Plaintiffs via
7 email that the Defendant would not release Plaintiffs on the following contracts:
8 1247990, 1487920, 1565109 and 2014524.

9 64. That the September 23, 2016 email from the Defendant contained yet another set
10 of account numbers that had not previously been referenced in any of Defendant’s
11 prior statements or correspondence to the Plaintiffs.

12 65. That on or about October 2016, Defendant mailed Plaintiffs another set of three
13 form letters referencing “Contract No. 2594250, 17188852, 16680988”
14 respectively.

15 66. That Defendant’s form letters, dated October 4, 2016, advised Plaintiffs that
16 Defendant would be unable to grant their request to terminate their membership
17 without providing Plaintiffs any explanation for their refusal to do so.

18 67. That Defendant continued to mail Plaintiffs letters demanding payment without
19 addressing Plaintiffs’ request to terminate their membership contact.

20 68. That Defendant’s correspondence to Plaintiffs contain confusing, conflicting and
21 misleading information regarding Plaintiff’s membership.

22 69. That Defendant continued to send Plaintiffs additional form letters containing the
23 same, conflicting and confusing information regarding Plaintiff’s membership.

24 70. That upon information and belief, Defendant engages in the practice of mailing
25 statements to members with multiple account numbers in order to confuse and
26 mislead members as to the status of their accounts.

Count Six

1
2 71. That on or about December 2016, Plaintiffs mailed Defendant a letter dated
3 December 28, 2016 advising Defendant to cease their “harassing phone calls to
4 [their] home and [their] cell phones.”

5 72. That notwithstanding Plaintiffs’ request that Defendant cease their telephonic
6 communications to Plaintiffs, Defendant continued to call Plaintiffs on their
7 telephone land lines as well as on their cell phones.

8
9 **AS AND FOR A FIRST CAUSE OF ACTION**

10 73. Plaintiffs reallege paragraphs 1 through 72 as if fully restated herein.

11 74. That Plaintiffs revoked their consent to Defendant’s placement of telephone calls
12 to Plaintiffs’ cellular telephones by the use of an automatic telephone dialing
13 system or a pre-recorded or artificial voice.

14 75. That Defendant continued to place several dunning telephone calls to Plaintiff’s
15 cellular phones using an automated telephone dialing system and/or a pre-
16 recorded or artificial voice.

17 76. That none of Defendant’s telephone calls placed to Plaintiffs were for “emergency
18 purposes” as specified in 47 U.S.C. §227(b)(1)(A).

19 77. That Plaintiffs were charged for the phone calls made by Defendant to their
20 cellular phones.

21 78. That Defendant willfully or knowingly violated the TCPA, by placing non-
22 emergency telephone calls to Plaintiffs’ cellular telephones using an automatic
23 telephone dialing system or pre-recorded or artificial voice notwithstanding
24 Plaintiffs’ previously revoked consent.

25 79. That as a result of Defendant’s violations of the TCPA, Plaintiffs suffered stress,
26 sleepless nights, aggravation and emotional distress.

1 80. That as a result of Defendant's violations of the TCPA, Plaintiffs are entitled to
2 \$500.00 for each artificial and/or prerecorded telephone call pursuant to 47 U.S.C.
3 §227(b)(3)(B).

4 81. That as a result of Defendant's violations of the TCPA, Plaintiffs are entitled to a
5 maximum of treble damages pursuant to 47 U.S.C. §227(b)(3).

6 82. That as per 47 U.S.C. §227 et seq. and as a result of the above violations, the
7 Defendant is liable to the Plaintiffs for actual damages and statutory damages in
8 an amount to be determined at the time of trial.

9
10 **AS AND FOR A SECOND CAUSE OF ACTION**

11 83. Plaintiffs reallege paragraphs 1 through 82 as if fully restated herein.

12 84. The Rosenthal Fair Debt Collection Practices Act (Rosenthal Act), California
13 Civil Code § 1788, et seq., prohibits unfair and deceptive acts and practices in the
14 collection of consumer debts.

15 85. That upon information and belief, Defendant has attempted to collect on amounts
16 that are falsely inflated, not authorized by agreement and/or not permitted by law.

17 86. By its acts and practices as hereinabove described, the Defendant has violated the
18 Rosenthal Act as follows, without limitation:

19 i. By making the false representation that the consumer debt may be
20 increased by the addition of attorney's fees, investigation fees, service
21 fees, finance charges, or other charges if, in fact, such fees or charges may
22 not legally be added to the existing obligation, Defendants have violated
23 §1788.13(e);

24 ii. By making the false representation that a legal proceeding has been, is
25 about to be, or will be instituted unless payment of a consumer debt is
26 made, Defendants have violated §1788.13(j);

- 1 iii. By failing to include certain debt collection notices and disclosures
- 2 required by law;
- 3 iv. By sending multiple dunning notices, (many of which contained
- 4 confusing, conflicting and misleading information) and by incessantly
- 5 placing collection calls to Plaintiffs' phones, Defendant unlawfully
- 6 continued its attempts to collect on a debt in dispute and in light of
- 7 Plaintiffs' request to terminate their contract.

8 87. Pursuant to § 1788.30 of the Rosenthal Act, Plaintiffs are entitled to recover their
9 actual damages sustained as a result of the Defendant's violations of the
10 Rosenthal Act. Such damages include, without limitation, statutory damages, any
11 actual damages sustained, other resulting monetary losses and damages, and
12 emotional distress suffered by Plaintiffs, which damages are in an amount to be
13 proven at trial.

14 88. In addition, because the Defendant's violations of the Rosenthal Act were
15 committed willingly and knowingly, Plaintiffs are entitled to recover, in addition
16 to their actual damages, penalties of at least \$1,000 per violation as provided for
17 in the Act.

18 89. Pursuant to § 1788.30(c) Rosenthal Act, Plaintiffs are entitled to recover all
19 attorneys' fees, costs and expenses incurred in the bringing of this action.

20
21 **AS AND FOR A THIRD CAUSE OF ACTION**

22 90. Plaintiffs reallege paragraphs 1 through 89 as if fully restated herein.

23 91. The California Business and Professions Code section 17500, et seq., or the
24 California False Advertising Act, prohibits advertising "which is untrue or
25 misleading, and which is known, or which by the exercise of reasonable care
26 should be known, to be untrue or misleading."

1 92. That upon information and belief, Defendant misled the Plaintiffs by making
2 misrepresentations and untrue statements about the nature of “Owners Updates”
3 events.

4 93. That upon information and belief, Defendant knew that its representations and
5 omissions were untrue and misleading, and deliberately made the aforementioned
6 representations and omissions in order to deceive reasonable consumers like
7 Plaintiffs into entering contracts that they would not have assented to but for
8 Defendant’s high pressure sales tactics.

9 94. That Plaintiffs reasonably relied upon Defendant’s representations regarding the
10 nature of the “Owners Update” and in reasonable reliance on Defendant’s
11 misrepresentations, Plaintiffs attended what they thought were mere “Owners
12 Updates” when they were in fact sales presentations where they were pressured
13 into making purchases.

14 95. That although the Plaintiffs were led to believe that their grievances would be
15 addressed at the” update” meeting, they were coerced into signing up for an
16 upgrade that they had no interest in, but for Defendant’s false representations and
17 high pressure sales tactics.

18 96. That as a result of Defendant’s misleading and false advertising, Plaintiffs have
19 suffered injury in fact and have lost money or property.

20
21 **AS AND FOR A FOURTH CAUSE OF ACTION**

22 97. Plaintiffs reallege paragraphs 1 through 96 as if fully restated herein.

23 98. California Civil Code § 1750 et seq., or The Consumers Legal Remedies Act,
24 prohibits various deceptive practices in connection with the conduct of a business
25 providing goods, property, or services to consumers primarily for personal, family
26 or household purposes.

1 99. That the Plaintiffs have suffered injury in fact and have lost money as a result of
2 the Defendant engaging in the acts hereinabove described.

3
4 **AS AND FOR A FIFTH CAUSE OF ACTION**

5 100. Plaintiffs reallege paragraphs 1 through 99 as if fully restated herein.

6 101. The California Business and Professions Code §17200, et seq., prohibits
7 unfair competition, which includes any unlawful, unfair or fraudulent business
8 act.

9 102. That Defendant, by engaging the acts hereinabove described, has
10 committed violations under the TCPA, the California False Advertising Act and
11 the Consumers Legal Remedies Act; that said acts are therefore per se violations
12 of the California Business and Professions Code Section 17200 et seq.

13 103. That the harm caused by Defendant's conduct outweighs any benefits that
14 Defendant's conduct may have.

15 104. That consumers like the Plaintiffs are likely to be deceived, and that the
16 Plaintiffs were in fact deceived, by Defendant's conduct.

17 105. That the Defendant has been unjustly enriched by committing said acts.

18 106. That as a result of Defendant's conduct, Plaintiffs have been harmed and
19 has suffered damages in the form of monetary losses, extreme embarrassment,
20 humiliation, shame, stress, anxiety, aggravation and sleepless nights.

21 107. That as a direct and proximate result of Defendant's unlawful, unfair and
22 fraudulent business practices as alleged herein, Plaintiffs have suffered substantial
23 injury in fact and lost money and/or property.

24 108. That pursuant to California Business and Professions Code § 17200, et
25 seq., Plaintiffs are entitled to recover their actual damages and restitution.

AS AND FOR A SIXTH CAUSE OF ACTION

109. Plaintiffs reallege paragraphs 1 through 108 as if fully restated herein.

110. California Welfare and Institutions Code §15610.70(a) defines undue influence generally as “excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity.”

111. That the Plaintiffs were particularly vulnerable due to their age, emotional distress and impaired health. That upon information and belief, Defendant knew or should have known of the Plaintiffs’ vulnerability.

112. That the Defendant exercised apparent authority over the Plaintiffs.

113. That the Defendant used intimidation and/or coercion to initiate changes in Plaintiff’s personal and/or property rights, effected changes at inappropriate times and places, and claimed of expertise in effecting changes.

114. That as a result of Defendant’s conduct, the Plaintiffs suffered dire economic consequences and were forced to forgo their prior intent or course of conduct or dealing.

115. That pursuant to California Welfare & Institutions Code § 15657.5, Plaintiffs are entitled to attorneys fees and costs in addition to compensatory damages and all other remedies otherwise provided by law.

AS AND FOR A SEVENTH CAUSE OF ACTION

116. Plaintiffs reallege paragraphs 1 through 115 as if fully restated herein.

117. That Defendant breached its contract with the Plaintiffs by the following acts which include, but are not limited to: failing to provide Plaintiffs with adequate accommodations as requested, failing to provide Plaintiffs with satisfactory customer service, failing to resolve Plaintiffs’ issues through the “update” meeting, and engaging in further collection activity on a disputed account.

1 **AS AND FOR AN EIGHTH CAUSE OF ACTION**

2 118. Plaintiffs reallege paragraphs 1 through 117 as if fully restated herein.

3 119. That Defendant committed fraud in the inducement through the following
4 acts, which include but are not limited to:

- 5 i. Defendant represented that by attending the “update” meeting and signing
6 up for a membership upgrade, Plaintiffs issues with Defendant’s
7 reservation process, accommodation availability and poor customer
8 service would be resolved;
- 9 ii. That Defendant knew its representations to the Plaintiffs were not in fact
10 true;
- 11 iii. The Defendant used said representations to persuade the Plaintiffs into
12 signing up for a membership upgrade;
- 13 iv. That the Plaintiffs were persuaded to and reasonably relied upon
14 Defendant’s representations to signing up for a membership upgrade; and
- 15 v. Plaintiffs would not have signed up for the membership upgrade if they
16 had known Defendant’s representations were false.

17
18 **CLASS ALLEGATIONS**

19
20 120. Plaintiffs repeat and reallege each and every allegation set forth above as
21 if reasserted and realleged herein.

22 121. The first cause of action is brought on behalf of Plaintiff and the members
23 of a class.

24 122. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and
25 23(b)(3) on behalf of a class (the “Class”) defined as follows:

26
27 All persons in the United States whose cell phone number, at any time
28 between the date that is four years prior to the filing of this action and the present,

1 Defendant or some person on Defendant's behalf caused to be called using an
2 artificial or prerecorded voice and/or equipment with the capacity to dial numbers
3 without human intervention.

4 123. Plaintiffs are members of the Class. Plaintiffs received autodialed and/or
5 artificial or prerecorded voice calls to their cell phones from or on behalf of
6 Defendant.

7 124. The Class is so numerous that joinder of all members is impracticable. On
8 information and belief, Defendant caused more than 100 cell phone numbers to be
9 called in the four years prior to the filing of this action using an autodialer and/or
10 artificial or prerecorded voice. While the total number and identity of the Class
11 members is at this point unknown, such information is, on information and belief,
12 readily obtainable through the records of Defendant or its carrier(s), and could
13 number in the thousands.

14 125. Common questions of law or fact exist as to all members of the Class and
15 predominate over any questions solely affecting any individual members. Such
16 questions common to the Class include but are not limited to:

17 a. Whether Defendant used an "automatic telephone dialing system" or
18 "artificial or prerecorded voice" as such terms are defined or understood under the
19 TCPA and applicable Federal Communications Commission ("FCC") regulations
20 and orders;

21 b. Whether Defendant's conduct and policy of calling the cell phones of
22 Plaintiff and the other members of the Class using equipment with the capacity to
23 dial numbers without human intervention and/or an artificial or prerecorded voice
24 constitutes unfair, unconscionable, and/or harassing conduct in connection with
25 the attempted collection of a debt;

26 c. Damages, which can be calculated by a mechanical formula, as well as
27 whether Defendant's violations were performed willfully or knowingly such as to
28 warrant treble damages under Section 227(b)(3) of the TCPA.

1
2 126. Plaintiffs' claims are typical of the claims of the other members of the
3 Class. The factual and legal bases of Defendant's liability to Plaintiffs and the
4 other members of the Class are the same: Defendant violated the TCPA by
5 causing the cellular telephone number of each member of the Class, including
6 Plaintiffs, to be called using an automatic telephone dialing system and/or
7 artificial or prerecorded voice, in connection with the attempted collection of
8 debts.

9 127. Plaintiffs and their attorney will fairly and adequately protect the interests
10 of the Class. Plaintiffs have no interests that might conflict with the interests of
11 the Class. Plaintiffs will vigorously pursue their claims, and they have retained
12 counsel competent and experienced in class and complex litigation, including
13 cases under the Telephone Consumer Protection Act

14 128. A class action is superior to other available methods for fairly and
15 efficiently adjudicating the controversy alleged herein. Class treatment will permit
16 a large number of similarly situated persons to prosecute their common claims in
17 a single forum simultaneously, efficiently, and without the duplication of effort
18 and expense that numerous individual lawsuits would entail. Absent a class
19 action, many members of the Class will likely not even obtain relief, whether
20 because they are unaware of their right to relief from the harm caused by
21 Defendant's illegal practices, due to the prohibitive time and monetary cost
22 inherent in individual litigation, or otherwise. Courts nationwide frequently grant
23 class certification in cases brought under the TCPA; no difficulties are likely to be
24 encountered in the management of this case as a class action. If the class is
25 certified under Rule 23(b)(3), Plaintiff anticipates the distribution of mail notice
26 to each class member at their last-known address, or by such other practicable
27 means as circumstances permit.

1 129. That Defendant—in making prerecorded autodialer calls to the cell phones
2 of Plaintiffs and the other members of the Class—has acted and failed to act on
3 grounds generally applicable to Plaintiffs and the other members of the Class,
4 warranting injunctive or corresponding declaratory relief for the Class as a whole.
5 Prosecution of separate, piecemeal actions by individual members of the Class,
6 should they even realize that their rights have been violated, would create the risk
7 of inconsistent results for the same unlawful conduct and practices.

8
9 **WHEREFORE**, Plaintiffs respectfully pray that judgment be entered against Defendant in the
10 amount of:

- 11 (a) An order certifying the Class defined above, appointing Plaintiffs as class
12 representatives, and appointing their attorney as class counsel;
- 13 (b) Statutory damages and actual damages pursuant to 47 U.S.C. §227 in an amount
14 to be determined at the time of trial on behalf of the class on the first cause of action.
- 15 (c) Statutory damages and actual damages provided by statute, including, but not
16 limited to: 47 U.S.C. §227et seq., 15 U.S.C. §§1601 et seq., California Business and
17 Professions Code §§17500, et seq., California Business and Professions Code
18 §§17200, et seq., California Civil Code §§1750 et seq.
- 19 (d) Treble damages pursuant to 47 U.S.C. §227.
- 20 (e) Treble damages pursuant to California Civil Code § 3345.
- 21 (f) Equitable and injunctive relief.
- 22 (g) Restitution.
- 23 (h) Costs and reasonable attorney's fees provided by statute, (including California
24 Welfare & Institutions Code § 15657.5), common law and/or the Court's inherent power.
- 25 (i) For such other and further relief as may be just and proper.

26
27 Plaintiffs request trial by jury on all issues so triable.

1 Dated: May 10, 2017

AMIR J. GOLDSTEIN, ESQ.

2 /S/ Amir J. Goldstein

3 Amir J. Goldstein, Esq.

4 **Attorney for Plaintiffs**

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