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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL PERRI, on behalf of
himself and of all others similarly
situated,

PLAINTIFFS,

vs.

RESCUE 1 FINANCIAL, LLC and
DOES 1 to 10

DEFENDANTS.

CASE NO.

CLASS ACTION

**COMPLAINT FOR DAMAGES
PURSUANT TO THE TELEPHONE
CONSUMER PROTECTION ACT, 47
U.S.C. § 227 et seq.**

JURY TRIAL DEMANDED

1 Plaintiff Michael Perri (“Plaintiff”), on behalf of himself and all others similarly
2 situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Defendant Rescue 1 Financial, LLC (“Defendant” or “Rescue 1”) is a
5 national financial services company that focuses on consumer debt management such
6 as: debt settlement, debt consolidation and other bankruptcy alternatives.

7 2. To attract customers, Defendant advertises via radio, print and online.
8 Defendant collects and stores data, including cellular telephone numbers, for the
9 purpose of sending automated blast messages promoting its products to consumers’
10 mobile phones in the form of Short Message Service (“SMS”) text messages, the text
11 messaging service component of mobile telephones.

12 3. The Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et*
13 *seq.* and its implementing regulations, 47 C.F.R. §64.1200, *et seq.* prohibit companies,
14 such as Defendant, from sending automated SMS text messages to mobile telephones
15 without first obtaining consent. Defendant has violated, and continues to violate, the
16 TCPA and its regulations by sending automated SMS text messages to cellular
17 telephone subscribers who have not expressly consented to receiving such messages.

18 4. In a Report and Order adopted on June 26, 2003, the Federal
19 Communications Commission (“FCC”) held that:

20 “[i]f the call is intended to offer property, goods, or services for sale either
21 during the call, or in the future (such as in response to a message that provides a
22 toll-free number), that call is an advertisement. Similarly, a message that seeks
23 to help sell or market a business’ products, constitutes an advertisement if the
24 individuals are encouraged to purchase, rent or invest in property, goods, or
25 services during or after the call. *In the Matter of Rules and Regulations*
26 *Implementing the Telephone Consumer Protection Act of 1991*, 2003 WL
27 21517853, 18 F.C.C.R. 14014 at ¶ 142 (FCC July 3, 2003).

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1 The FCC then went on to hold that:

2 [U]nder the TCPA, it is unlawful to make any call using an automatic telephone
3 dialing system or an artificial or prerecorded message to any wireless telephone
4 number. Both the statute and our rules prohibit these calls, with limited
5 exceptions, ‘to any telephone number assigned to a paging service, cellular
6 telephone service, specialized mobile radio service, or other common carrier
7 service, or any service for which the called party is charged.’ This encompasses
8 both voice calls and text calls to wireless numbers including, for example, short
9 message service (SMS) calls, provided the call is made to a telephone number
10 assigned to such service. Congress found that automated or prerecorded
11 telephone calls were a greater nuisance and invasion of privacy than live
12 solicitation calls. Moreover, such calls can be costly and inconvenient. The
13 Commission has long recognized, and the record in this proceeding supports the
14 same conclusion, that wireless customers are charged for incoming calls whether
15 they pay in advance or after the minutes are used. Wireless subscribers who
16 purchase a large ‘bucket’ of minutes at a fixed rate nevertheless are charged for
17 those minutes, and for any minutes that exceed the ‘bucket’ allowance. This
18 ‘bucket’ could be exceeded more quickly if consumers receive numerous
19 unwanted telemarketing calls. Moreover, as several commenters point out,
20 telemarketers have no way to determine how consumers are charged for their
21 wireless service.”

22 *In the Matter of Rules and Regulations Implementing the Telephone Consumer*
23 *Protection Act of 1991*, 2003 WL 21517853, 18 F.C.C.R. 14014 at ¶ 165.

24 5. By sending such SMS marketing text messages to consumers, Defendant
25 has caused consumers actual harm, including the aggravation and privacy invasion that
26 accompanies receiving unsolicited text messages. In particular, consumers are damaged
27 by having to pay cellular telephone service providers for the receipt of Defendant’s
28

1 unsolicited text messages and must endure the aggravation and nuisance that
2 accompanies the receipt of unwanted text messages.

3 6. Plaintiff brings this suit under the TCPA on behalf of himself and a class
4 of similarly situated persons. Plaintiff and the class seek an award of statutory
5 damages, together with costs and reasonable attorney's fees.

6 **II. JURISDICTION AND VENUE**

7 7. This Court has jurisdiction under 28 U.S.C. §1331. This case involves a
8 question of federal law, 47 U.S.C. § 227, *et seq.* (TCPA). Damages are available under
9 47 U.S.C. § 227(b)(3).

10 8. Venue is proper in this District because Defendant engages in business in
11 this District and a substantial part of the events or omissions giving rise to this claim
12 occurred here.

13 **III. PARTIES**

14 9. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
15 the State of California and the County of Orange. Plaintiff is, and at all times
16 mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (39).

17 10. Defendant is, and at all times mentioned herein was, a California Limited
18 Liability Company whose primary business address is in California and is a "person,"
19 as defined by 47 U.S.C. § 153 (39).

20 11. Plaintiff alleges that, at all times relevant herein, Defendant conducted
21 business in the State of California and in the County of Orange, and within this judicial
22 district.

23 **IV. FACTUAL ALLEGATIONS**

24 12. In recent years, marketers, who often felt stymied by federal or state laws
25 limiting solicitations, have looked to alternative technologies through which to send
26 bulk solicitations cheaply. One of the newest types of bulk marketing is through SMS.
27 SMS allows marketers to send (and receive) short messages, usually limited to 160
28 characters, to (and from) cellular telephone subscriber's cellular telephone devices.

1 13. An SMS message is directed to a wireless device through use of the
2 device's assigned telephone number. The message sender's telephone number is
3 preserved as part of the recipient's message, so that the recipient knows, at least by
4 number, who is sending the message. When an SMS message is successful, the
5 recipient's cellular phone typically rings, alerting him or her that the phone is receiving
6 a text message. As cellular telephones are inherently mobile and are frequently carried
7 on their owner's person, calls to cellular telephones, including SMS messages, may be
8 received by the called party virtually anywhere worldwide.

9 14. The use of SMS messaging (known colloquially as "text messaging") has
10 become ever-present in the United States.

11 15. Marketers have seized on this billion-dollar industry as a vast marketing
12 and exposure opportunity. Using SMS technology, companies and individuals can now
13 extend the promotional reach of their products, brands, services and ideas to potentially
14 millions of consumers, almost instantaneously. And, with SMS technology, marketers
15 know with near certainty that their message is received.

16 16. Many companies, including Defendant, use automated computer
17 equipment to send bulk SMS text messages to cellular telephone subscribers using a
18 unique five or six digit number called "short code," as opposed to using an ordinary ten-
19 digit telephone number. U.S. companies obtain short code numbers from an
20 independent agency, Neustar, Inc. ("Neustar"), which manages and assigns U.S. short
21 code numbers in order to run automated mobile text messaging applications.

22 17. Unlike conventional solicitations, SMS text messages actually cost the
23 recipients of the marketing messages money. Cellular telephone users must pay their
24 respective wireless service providers to receive text messages, either for each individual
25 text message or as part of a specified (and often limited) messaging plan, regardless of
26 whether or not the incoming message is authorized.

27 18. By sending such SMS text messages to consumers, Defendant has caused
28 consumers actual harm, including the aggravation and privacy invasion that

1 accompanies receiving unsolicited text messages. Moreover, consumers are damaged
2 by having to pay cellular telephone service providers for the receipt of Defendant’s
3 unsolicited text messages.

4 19. Pursuant to the TCPA, a company must obtain consent before sending
5 automated SMS text messages to a cellular telephone. *See* 47 U.S.C. § 227, *et seq.* In
6 many instances, Defendant’s SMS text messages sent to consumers’ cellular telephones
7 violate the TCPA because the telephone owner did not expressly consent to receiving
8 the SMS text messages.

9 **A. DEFENDANT’S WEBSITE**

10 20. Defendant’s website submission page (see attached as Exhibit “1”), which
11 also serves as Defendant’s home page, prominently advertised Defendant’s services and
12 solicited visitors to contact Defendant for the purpose of “Analyzing your needs,
13 tailoring your solution.”

14 21. Defendant’s website submission page contained exclusively marketing
15 materials and invited potential customers to contact Defendant in order to “Get your no
16 obligation process started today,” “Talk to us about your situation 24/7” and “Ask
17 About Our Money Back Guarantee.”

18 22. The purpose of Defendant’s website submission page is to solicit potential
19 clients and encourage potential clients to retain Defendant for the services described on
20 the website submission page.

21 23. Nowhere on Defendant’s website submission page,
22 www.rescueonefinancial.com, are there any customer service elements that would be
23 utilized by existing customers such as an existing client login account or customer
24 service contact information. The sole purpose of the website submission page that
25 Plaintiff visited was for the marketing of Defendant’s services and to generate sales for
26 Defendant.

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1 **B. CONTACT WITH PLAINTIFF**

2 24. On or after May, 2014, Plaintiff contacted Defendant for a consultation
3 via its online website submission page.

4 25. At no time did Plaintiff speak with any of Defendant’s representatives nor
5 did Plaintiff submit a loan application or personal financial materials of any kind to
6 Defendant. The only information Plaintiff provided to Defendant was his first and last
7 name, cellular telephone number, and email address.

8 26. On after June 11, 2014, Plaintiff received at least two text messages from
9 Defendant as follows:

10 Text No. 1: oval, please check ur spam/junk folders if u don’t see it,my
11 phone # is 949-274-8346. Thanks!

12 Text No. 2: Hello,this is Marii from Rescue 1 in regards to ur recent loan
13 app.What is the best time to speak? I also sent an email with the loan info
14 needed for appr(.)

15 27. On June 14, 2014, Plaintiff received at least one text messages from
16 Defendant as follows:

17 Text No. 3: This is David Miller with Rescue 1 Financial are you still
18 interested into following up on your online loan inquiry?

19 28. The SMS short code number for all of the unauthorized text messages that
20 Plaintiff received was 244-13.

21 29. The content of the text messages Plaintiff received was generic,
22 impersonal and commercial in nature, indicating that they were sent to a group of
23 consumers *en masse*.

24 30. The first text message received by Plaintiff in which “Marii” inquired
25 about his “recent loan application” was disingenuous due to the fact that Plaintiff had
26 not at any time submitted a loan application. Additionally, the text from “Marii” did
27 not address Plaintiff by his name, which indicates that a template was used by
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1 Defendant. The text from “Marii” was purely commercial in nature and the purpose of
2 the text message was to promote Defendant’s goods and services to Plaintiff.

3 31. Defendant did not at any time request or obtain Plaintiff’s prior express
4 consent to receive unsolicited text messages utilizing a prerecorded, artificial voice or
5 ATDS, pursuant to 47 U.S.C. § 227(b)(1)(A).

6 32. The telephone number that Defendant, or its agents, texted was assigned
7 to a cellular telephone service for which Plaintiff incurs a charge for incoming calls
8 pursuant to 47 U.S.C. § 227 (b)(1).

9 33. The last four digits of Plaintiff’s cellular telephone numbers are “9844.”

10 34. The text messages from Defendant, or its agents, constituted calls that
11 were not for emergency purposes as defined by 47 U.S.C. §227 (b)(1)(A)(i).

12 35. Defendant sent these text messages via an automatic telephone dialing
13 system (“ATDS”) as defined by 47 U.S.C. § 227(a)(1).

14 36. This ATDS utilized by Defendant has the capacity to store or produce
15 telephone numbers to be called, using a random or sequential number generator.¹

16 37. This ATDS utilized by Defendant also has the capacity to automatically
17 dial telephone numbers from a list or database of telephone numbers without human
18 intervention.²

19 38. The text messages from Defendant also constitute artificial or prerecorded
20 voice calls pursuant to 47 U.S.C. §227(a)(1).

21
22 ¹ “The statutory definition contemplates autodialing equipment that either stores or produces
23 numbers” and the equipment need only have the “*capacity to store or produce telephone numbers.*”
24 *See In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of*
25 *1991*, 2003 WL 21517853, 18 F.C.C.R. 14115 (FCC July 3, 2003) (Italics in original) (underlining
added). The statutory phrase “using a random or sequential number generator” modifies only the last
antecedent “produce telephone numbers” and not the word “to store,” as it makes no sense to say that
one could “store” numbers using a number generator.

26 ² The FCC has emphasized that the ATDS definition covers any equipment “that has the specified
27 capacity to generate numbers and dial them without human intervention *regardless of whether the*
28 *numbers called are randomly or sequentially generated or come from calling lists.*” *In re Rules &*
Regulations Implementing the Telephone Consumer Protection Act of 1991, 27 F.C.C. Rcd 15391,
15392 n.5 (2012) (emphasis modified).

1 39. The text messages sent utilizing an ATDS and/or an artificial or
2 prerecorded voice alleged in paragraphs 26 and 27 from Defendant, or its agents, to
3 Plaintiff's cellular telephone were sent without Plaintiff's "prior express consent."

4 40. Plaintiff alleges that each text message from Defendant violated 47 U.S.C.
5 § 227(b)(1).

6 41. Upon reasonable investigation into the Defendant's calling patterns,
7 Plaintiff alleges upon information and belief that the Defendant, individually or through
8 its agents, placed or directed the mass placement of text messages to cell phones
9 nationwide four years prior to the date this complaint was filed.

10 **V. CLASS ACTION ALLEGATIONS**

11 42. Plaintiff brings this action on behalf of himself, and on behalf of all others
12 similarly situated, pursuant to Federal Rule of Civil Procedure, Rules 23(a) and 23(b).
13 The Class that Plaintiff seeks to represent is defined as follows:

14 All persons within the United States to whose cellular telephone number
15 Defendant placed a marketing telephone call via text message without that
16 person's prior express consent, at any time beginning four (4) years
17 prior to the filing of the Complaint through the date notice is mailed
18 to the Class.

19 Excluded from the Class are Defendant and any entities in which Defendant has
20 a controlling interest, Defendant's agents and employees, the Judge to whom this action
21 is assigned and any member of the Judge's staff and immediate family, and claims for
22 personal injury, wrongful death and/or emotional distress.

23 Plaintiff reserves the right to amend or otherwise alter the class definitions
24 presented to the Court at the appropriate time, or to propose or eliminate sub-Classes in
25 response to facts learned through discovery or legal arguments advanced by Defendant
26 or otherwise.

27 43. Numerosity: The Class is so numerous that the individual joinder of all
28 members thereof is impracticable under the circumstances of this case. While the exact

1 number of class members is unknown at this time, Plaintiff is informed and believes
2 that the entire Class consists of approximately tens of thousands of members.

3 44. Commonality: Common questions of law or fact are shared by class
4 members. This action is suitable for class treatment, because these common questions
5 of fact and law predominate over any individual issues. Such common questions
6 include, but are not limited to, the following:

- 7 a. Whether Defendant made text calls to the Class using an automatic
8 telephone dialing system and/or autodialer and/or an artificial or
9 prerecorded voice;
- 10 b. Whether Defendant's conduct violates 47 U.S.C. § 227(b)(1)(A);
- 11 c. Whether Defendant's conduct violates 47 C.F.R. § 64.1200(a)(1);
- 12 d. Whether Plaintiff and the Class members are entitled to damages,
13 costs and/or attorney's fees from Defendant;
- 14 e. Whether Plaintiff and the Class members are entitled to increased
15 damages (equal to not more than three times the amount of
16 damages) based on the willfulness of Defendant's conduct; and
- 17 f. Whether Defendants' affirmative defenses, if any, raise common
18 issues of fact or law as to Plaintiff and Class members as a whole.

19 45. Typicality: Plaintiff's claims are typical of the claims of absent Class
20 members. Plaintiff and the other Class members were subjected to the same kind of
21 unlawful conduct and the claims of Plaintiff and the other Class members are based on
22 the same legal theories.

23 46. Adequacy: Plaintiff is an adequate representative of the Class because his
24 interests do not conflict with the interests of the other members of the Class Plaintiff
25 seeks to represent. Plaintiff has retained counsel competent and experienced in
26 complex class action litigation and Plaintiff intends on prosecuting this action
27 vigorously. The interests of members of the Class will be fairly and adequately
28 protected by Plaintiff and her counsel.

1 47. Ascertainable Class: The proposed class is ascertainable in that the
2 members can be identified and located using information contained in Defendant's
3 records.

4 48. This case is brought and can be maintained as a class action under Rule
5 23(b)(1) and 23(b)(3):

6 a. Prosecuting Separate Actions Would Create Risk Of:

- 7 i. Inconsistent or varying adjudications with respect to
8 individual Class members which would establish
9 incompatible standards of conduct for Defendant; or
10 ii. Adjudications with respect to individual Class members,
11 which would, as a practical matter, be dispositive of the
12 interests of the other Class members not parties to the
13 adjudications, or substantially impair or impede their ability
14 to protect their interests;

15 b. Predominant Questions of Law or Fact: Questions of law or
16 fact common to all Class members, including those identified
17 above, predominate over questions affecting only individual
18 Class members (if any), and a class action is superior to other
19 available methods for the fair and efficient adjudication of the
20 controversy. Class action treatment will allow a large number
21 of similarly situated consumers to prosecute their common
22 claims in a single forum, simultaneously, efficiently, and
23 without the unnecessary duplication of effort and expense that
24 numerous individual actions would require. Moreover, absent
25 class treatment of this controversy, the amount of individual
26 Class members' losses in comparison to the enormous cost of
27 litigation makes it almost certain that few Class members would
28

1 ever be able to even seek, let alone obtain, redress for their
2 injuries.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A)**
5 **and Implementing Regulations, 47 C.F.R. § 64.1200(a)(1),**
6 **On Behalf of Plaintiff and the Class)**

7 49. Plaintiffs incorporate by reference all of the above paragraphs of this
8 Complaint as though fully stated herein.

9 50. The TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), makes it “unlawful for any
10 person within the United States . . . to make any call (other than a call made for
11 emergency purposes or made with the prior express consent of the called party) using
12 any automatic telephone dialing system or an artificial or prerecorded voice... to any
13 telephone number assigned to a . . . cellular telephone.”

14 51. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(a)(1), further
15 provides that “[n]o person or entity may . . . initiate any telephone call (other than a call
16 made for emergency purposes or is made with the prior express consent of the called
17 party) using an automatic telephone dialing system or an artificial or prerecorded voice .
18 . . [t]o any telephone number assigned to a . . . cellular telephone.” A text message is a
19 “call” within the meaning of the TCPA. See *Satterfield v. Simon & Schuster, Inc.*, 569
20 F.3d 946, 952 (9th Cir.2009).

21 52. Defendant violated both 47 U.S.C. § 227(b)(1)(A)(iii) and its
22 implementing regulation, 47 C.F.R. § 64.1200(a)(1). Defendant made or initiated, or
23 caused to be made or initiated, unauthorized text calls to Plaintiff and members of the
24 Class using an automatic telephone dialing system (“ATDS”) and/or autodialer, within
25 the meaning of 47 U.S.C. § 227(a) and 47 C.F.R. § 64.1200(f)(2). An ATDS includes
26 equipment that has “the capacity to store or produce numbers and dial those numbers at
27 random, in sequential order, or **from a database of numbers.**” See *In the Matter of*
28 *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991,*

1 2003 WL 21517853, 18 F.C.C.R. 14014 ¶ 131 (FCC July 3, 2003) (emphasis added)
2 (noting that the basic function of an ATDS is “the capacity to dial numbers without
3 human intervention” and that excluding from the definition of an ATDS various
4 autodialing equipment “simply because it relies on a given set of numbers would lead to
5 an unintended result,” and that “the purpose of the requirement that equipment have
6 ‘the capacity to store or produce telephone numbers to be called’ is to ensure that the
7 prohibition on autodialed calls not be circumvented”); *In the Matter of Rules &*
8 *Regulations Implementing the Telephone Consumer Protection Act of 1991*, 2008 WL
9 65485, 23 F.C.C.R. 559 ¶ 12 (FCC Jan 4, 2008) (rejecting argument that “[equipment]
10 meets the definition of autodialer only when it randomly or sequentially generates
11 telephone numbers, not when it dials numbers from customer telephone lists”); *In re*
12 *Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 27
13 F.C.C. Rcd 15391, 15392 n.5 (FCC 2012) (ATDS includes any equipment “that has the
14 specified capacity to generate numbers and dial them without human intervention
15 regardless of whether the numbers called are randomly or sequentially generated or
16 come from calling lists”).

17 53. Defendant’s equipment has the capacity to, and did in fact, store and dial
18 Plaintiff’s and the Class members’ telephone numbers from its database without human
19 intervention.

20 54. In addition to autodialing phone numbers from its database, the equipment
21 Defendant used also has the capacity to produce telephone numbers to be called, using a
22 random or sequential number generator, and to dial such numbers.

23 55. By using such equipment, Defendant was able to make thousands upon
24 thousands of text calls to consumers automatically without human intervention. These
25 calls were made *en masse* and without the prior consent of Plaintiff and members of the
26 Class.

27 56. In addition, and alternatively, Defendant’s unauthorized text calls to
28 Plaintiff and members of the Class were made using “an artificial or prerecorded voice”

1 within the meaning of 47 U.S.C. § 227(b)(1)(A) and 47 C.F.R. § 64.1200(a)(1). The
2 term “voice” is not limited to verbal communications, and includes written expressions.
3 *See, e.g., Dictionary.com*, <http://dictionary.reference.com/browse/voice> (last visited
4 June 22, 2014) (defining “voice” as, among other things, “expression in spoken or
5 written words, or by other means”); Collins English Dictionary,
6 <http://www.collinsdictionary.com/dictionary/english/voice> (defining “voice” to include
7 “written or spoken expression”) (last visited June 22, 2014). The adjective “artificial”
8 includes communications “produced by man” that are “not occurring naturally.” Collins
9 English Dictionary, <http://www.collinsdictionary.com/dictionary/english/artificial> (last
10 visited June 12, 2014). The adjective “prerecorded” includes communications
11 “containing previously recorded information.” *Dictionary.com*,
12 <http://dictionary.reference.com/browse/voice> (last visited June 22, 2014). Text
13 messages, such as the text messages here, that are not sent contemporaneously at the
14 time they are drafted, constitute an “artificial or prerecorded voice” since they are
15 written expressions, not naturally occurring that contain previously recorded
16 information. On information and belief, all of Defendant’s messages, after they are
17 created, are first stored in a “message queue” before being delivered via SMS.

18 57. As a result of Defendant’s unlawful conduct, Plaintiff and members of the
19 Class have suffered actual damages and, under section 227(b)(3)(B), are each entitled,
20 inter alia, to receive a minimum of \$500.00 in damages for each such violation of the
21 TCPA and its implementing regulation.

22 58. To the extent that Defendant’s misconduct is determined to be willful and
23 knowing, the Court should, pursuant to section 227(b)(3), increase the amount of
24 damages recoverable by the Class members in accordance with the said statutory
25 provisions.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class, request the following relief:

- A. That the Court enter an order certifying the Class and appointing Plaintiff as the representative of the Class and appointing counsel for Plaintiff as lead counsel for the Class;
- B. That the Court enter an order declaring that Defendant’s actions, as set forth above, violated the TCPA, 47 U.S.C. §227(b) and its implementing regulations;
- C. That the Court enter judgment against Defendant for statutory damages and, if its conduct is proved willful, award Plaintiff and the Class increased damages equal to no more than three times their damages;
- D. That the Court award Plaintiff and the Class their costs and expenses, as well as reasonable attorneys’ fees, in prosecuting this action;
- E. That the Court award Plaintiff and the Class post-judgment interest; and
- F. That the Court award such other and further relief as may be necessary or appropriate.

DATED: February 18, 2015

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TRIAL BY JURY

Plaintiffs are entitled to and hereby demand a trial by jury.

DATED: February 18, 2015

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