

SCOTT J. SAGARIA (BAR # 217981)
ELLIOT W. GALE (BAR #263326)
JOE B. ANGELO (BAR #268542)
SCOTT M. JOHNSON (BAR #287182)
SAGARIA LAW, P.C.
2033 Gateway Place, 5th Floor
San Jose, CA 95110
408-279-2288 ph
408-279-2299 fax

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

Leatrice Williams,

Plaintiff,

v.

Navient and DOES 1 through 100
inclusive,

Defendants.

CASE NO.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Leatrice Williams, an individual, based on information and belief, to allege as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant’s violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls to consumers.

1 2. Plaintiff brings this action against Defendant Navient (hereinafter “Navient” or
2 “Defendant”) for its abusive and outrageous conduct in connection with debt collection
3 activity.

4 3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following
5 findings and purpose in creating the Rosenthal Act:

6 (a)(1) The banking and credit system and grantors of credit to consumers are dependent
7 upon the collection of just and owing debts. Unfair or deceptive collection practices
8 undermine the public confidence which is essential to the continued functioning of the
9 banking and credit system and sound extensions of credit to consumers.

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

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

16 4. While many violations are described below with specificity, this Complaint alleges
17 violations of the statutes cited in their entirety.

18 5. The TCPA was designed to prevent calls like the ones described herein, and to protect
19 the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give
20 consumers a choice as to how corporate entities may contact them and to prevent the nuisance
21 associated with automated or prerecorded calls.

22 **JURISDICTION & VENUE**

23 6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. §
24 227.

25 7. This venue is proper pursuant to 28 U.S.C. §1391(b).

26 **GENERAL ALLEGATIONS**

27 8. Plaintiff Leatrice Williams (hereinafter “Plaintiff”) is an individual residing in the state
28 of California, and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

 9. At all relevant times herein, Defendant Navient was a company engaged, by the use of
mail, email, and telephone, in the business of collecting a debt from Plaintiff, and a “consumer
debt,” as defined by Cal. Civ. Code §1788.2(f).

1 10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.
2 Civ. Code §1788.2(c)

3 11. Plaintiff had taken out an unsecured loan with Navient on or about April of 2008.

4 12. The loan Plaintiff took from Defendant Navient was extended primarily for personal,
5 family or household purposes and is therefore a “debt” as that terms is defined by the Calif.
6 Civil Code § 1788.2(d) of the Rosenthal Act.

7 13. Defendant Navient has been attempting to collect on a debt that originated from
8 monetary credit that was extended primarily for personal, family, or household purposes, and
9 was therefore a “consumer credit transaction” within the meaning of Calif. Civil Code §
10 1788.2(3) of the Rosenthal Act.

11 14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant
12 Navient arising from what Plaintiff is informed and believes was a consumer credit transaction,
13 the money allegedly owed was a “consumer debt” within the meaning of California Civil Code
14 § 1788.2(f) of the Rosenthal Act.

15 15. Plaintiff is informed and believes that Defendant is one who regularly collects or
16 attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the
17 meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in
18 “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal
19 Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g)
20 of the Rosenthal Act.

21 16. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the
22 account.

23 17. Plaintiff began making payments on the loan before she became financially unable to
24 keep up with the monthly payments.

25 18. Defendant Navient began contacting Plaintiff since at least June of 2016 to inquire
26 about the status of the loan and to collect on the payments that were no longer being made.

27 19. Plaintiff retained counsel to assist in dealing with Navient debt and to seek some type
28 of financial relief.

 20. Counsel for Plaintiff sent Defendant Navient a letter confirming representation of
Plaintiff and that Defendant was to no longer contact Plaintiff directly and that all
calls/letters/collection efforts were to no longer be directed at Plaintiff.

1 21. Counsel for Plaintiff sent the letter of representation to Navient on or about July 1,
2 2016.

3 22. Plaintiff informed Navient that she was revoking her consent to be called on her
4 telephone on or about July 1, 2016.

5 23. She informed Navient verbally that consent was revoked and she had hired an attorney
6 on at least nine separate occasions.

7 24. Defendant Navient continued to contact Plaintiff between approximately July 1, 2016
8 – present; the type of contact was through daily phone calls to Plaintiff.

9 25. Plaintiff was contacted daily nearly every day and sometime five or more times a day
10 regarding non-payment of the debt owed to Navient despite Navient being notified that
11 Plaintiff had retained counsel to deal specifically with the debt owed to Navient.

12 26. Plaintiff was often harassed and threatened by Navient and on certain occasions
13 received more than fifteen calls from Navient in a day.

14 27. Navient's calls were frequent in nature and continued despite receiving written
15 confirmation that Plaintiff was represented by an attorney.

16 28. Plaintiff believes that the calls made by Navient were from an automatic dialing
17 machine as there was a brief pause between when Plaintiff answered the phone and when
18 contact was made with the other side.

19 **FIRST CAUSE OF ACTION**

20 (Violation of the Rosenthal Act)

21 (Cal. Civ. Code §§ 1788-1788.32)

22 (Against Defendants and Does 1-100)

23 29. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
24 above as though fully set forth herein.

25 30. Plaintiff provided written notice that she was represented by sending Defendant a letter
26 with the name, address, and contact information of her attorney and informed Defendant that she
27 was represented.

28 31. Defendant continued to call and attempt to make contact with Plaintiff despite receiving
notice of representation and being informed that Plaintiff had retained counsel in an effort to deal
with the debt that was owed to Defendant.

32. The calls and communications made by Defendant to Plaintiff were not related to
statements of Plaintiff's account and were attempts to collect a debt.

33. Plaintiff received daily calls from Navient from at least July 2016 – present.

34. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving noticed that Plaintiff had retained an attorney.

SECOND CAUSE OF ACTION

(Violation of the TCPA)

(47 USC § 227)

(Against Defendants and Does 1-100)

35. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

36. Since at least about July, 2016 Defendant started calling Plaintiff's cellular telephone requesting that payment be made on the accounts Plaintiff held with Defendant.

37. Plaintiff informed Defendant that she was revoking consent to be contacted by Navient on July 1, 2016.

38. Navient called Plaintiff at least thirty (30) separate times since Plaintiff withdrew her consent to be contacted by an automatic dialing machine.

39. Defendant would contact Plaintiff regularly regarding payment on the accounts.

40. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver the collection messages without Plaintiff's prior express consent.

41. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing system" as defined by 47 U.S.C. §227(a)(1).

42. These calls were made to Plaintiff's cellular telephone and were not calls for an emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

43. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of actual damages pursuant to California Civil Code §1788.30(a), as will be proven at trial, which are cumulative and in addition to all other remedies provided for in any other cause of action pursuant to California Civil Code §1788.32.
- b. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §1788.30(b), which are cumulative and in addition to all other remedies provided for in California Civil Code §1788.32; and

By: **SAGARIA LAW, P.C.**
/s/ Scott Johnson
Scott Sagaria, Esq.
Scott Johnson, Esq.
Attorneys for Plaintiff

Plaintiff hereby demands trial of this matter by jury.

SAGARIA LAW, P.C.
/s/ Scott Johnson
 Scott Sagaria, Esq.
 Scott Johnson, Esq.
 Attorneys for Plaintiff