

1 Amy L. B. Ginsburg (275805)  
2 Kimmel & Silverman, P.C.  
3 30 East Butler Pike  
4 Ambler, PA 19002  
5 Telephone: 215-540-8888  
6 Facsimile: 215-540-8817  
7 aginsburg@creditlaw.com  
8 Attorney for Plaintiff

9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 KIM BAILEY,  
13 Plaintiff,  
14 v.  
15 PROGRESSIVE MANAGEMENT  
16 SYSTEMS,  
17 Defendant.  
18 ) **Case No.:**  
19 )  
20 ) **COMPLAINT FOR DAMAGES**  
21 ) **1. VIOLATION OF THE FAIR**  
22 ) **DEBT COLLECTION PRACTICES**  
23 ) **ACT, 15 U.S.C. §1692 ET. SEQ.;**  
24 ) **2. VIOLATION OF THE**  
25 ) **TELEPHONE CONSUMER**  
26 ) **PROTECTION ACT, 47 U.S.C.**  
27 ) **§227 ET. SEQ.**  
28 ) **3. VIOLATION OF THE**  
 ) **ROSENTHAL FAIR DEBT**  
 ) **COLLECTION PRACTICES ACT,**  
 ) **CAL. CIV. CODE §1788 ET. SEQ.**  
 )  
 ) **JURY TRIAL DEMANDED**

29  
30 **COMPLAINT**

31 KIM BAILEY (“Plaintiff”), by her attorneys, KIMMEL & SILVERMAN,  
32 P.C., alleges the following against PROGRESSIVE MANAGEMENT SYSTEMS  
33 (“Defendant”):  
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**INTRODUCTION**

1  
2 1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices  
3 Act, 15 U.S.C. §1692 *et seq.* (“FDCPA”), the Telephone Consumer Protection  
4 Act, 47 U.S.C. §227 *et seq.* (“TCPA,”) and the Rosenthal Fair Debt Collection  
5 Practices Act, cal. Civ. Code §1788, *et. seq.* (“RFDCPA”) which prohibits debt  
6 collectors from engaging in abusive, deceptive, and unfair practices.  
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10 **JURISDICTION AND VENUE**

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12 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),  
13 which states that such actions may be brought and heard before “any appropriate  
14 United States district court without regard to the amount in controversy,” and 28  
15 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising  
16 under the laws of the United States.  
17

18  
19 3. Defendant conducts business in the State of California and therefore,  
20 personal jurisdiction is established.  
21

22 4. Venue is proper pursuant to 28 U.S.C. § 1391 (b)(1) and (b)(2).  
23

24 **PARTIES**

25  
26 5. Plaintiff is a natural person residing in Lancaster, California.

27 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C.  
28

1 §1692a(3) and is a “debtor” as defined by Cal. Civ. Code §1788.2(h).

2 7. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

3 8. Defendant is a corporation specializing in debt collection with its  
4 principal place of business located at 1521 West Cameron Avenue, Suite 100,  
5 West Covina, California, 91790.

6 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C.  
7 §1692a(6), and RFDCPA, Cal. Civ. Code §1788.2(c).

8 10. Defendant is a “person” as that term is defined by 47 U.S.C. §  
9 153(39).

10 11. Defendant acted through its agents, employees, officers, members,  
11 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
12 representatives, and insurers.

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19 **FACTUAL ALLEGATIONS**

20 12. Defendant was attempting to collect an alleged consumer debt from  
21 Plaintiff as the term is defined by the FDCPA at 15 U.S.C. § 1692a(5) and the  
22 RFDCPA at Cal. Civ. Code §1788.2(f).

23 13. Beginning in February 2015 and continuing through January 2016,  
24 Defendant’s representatives placed repeated harassing debt collection calls to  
25 Plaintiff’s cellular telephone for a personal debt.  
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1           14. Defendant has also placed calls to Plaintiff at times for a third party  
2 named Jennifer.

3           15. Defendant's harassing debt collection calls derived from number 866-  
4 767-9317. The undersigned has confirmed that this number belong to Defendant.

5           16. Defendant's calls each began with a pre-recorded message.

6           17. When the calls first began in February 2015, Plaintiff told Defendant  
7 to stop calling.  
8

9           18. However, Defendant ignored Plaintiff's request and continued to call  
10 her through January 2016.  
11

12           19. Once Defendant was aware that its calls were unwanted any further  
13 calls could only have been for the purpose of harassment.  
14

15           20. Upon information and belief, many calls were placed to Plaintiff's  
16 cellular phone by a computer autodialer, and the use of a pre-recorded or artificial  
17 voice was often employed.  
18

19           21. Defendant's telephone calls were not for "emergency purposes," as  
20 that terms is referenced in 47 U.S.C. §227(b)(1)(A).  
21

22           22. Plaintiff ultimately had to download an app to her telephone to block  
23 Defendant's calls.  
24

25           23. Finally, Defendant never sent anything in writing to Plaintiff setting  
26 forth her rights pursuant to the FDCPA.  
27  
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1           24. Defendant's actions as described herein were made with the intent to  
2 harass, deceive and coerce payment from Plaintiff.  
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5   **COUNT I**  
6   **DEFENDANT VIOLATED § 1692d OF THE**  
7   **FAIR DEBT COLLECTION PRACTICES ACT**

8           25. Section 1692d of the FDCPA prohibits debt collectors from engaging  
9 in any conduct the natural consequence of which is to harass, oppress or abuse any  
10 person, in connection with the collection of a debt.  
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12           26. Defendant violated § 1692d of the FDCPA when it called Plaintiff  
13 repeatedly and continuously, when it continued to call Plaintiff even after she  
14 informed Defendant that she wanted the calls to stop.  
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17   **COUNT II**  
18   **DEFENDANT VIOLATED § 1692d(5) OF THE**  
19   **FAIR DEBT COLLECTION PRACTICES ACT**

20           27. Section 1692d(5) of the FDCPA prohibits debt collectors from  
21 causing a telephone to ring or engaging any person in telephone conversation  
22 repeatedly or continuously with intent to annoy, abuse, or harass any person at the  
23 called number..  
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25           28. Defendant violated § 1692d(5) of the FDCPA when it caused  
26 Plaintiff's telephone to ring repeatedly and continuously with the intent to harass  
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1 or annoy Plaintiff.  
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4 **COUNT III**  
5 **DEFENDANT VIOLATED § 1692f OF THE**  
6 **FAIR DEBT COLLECTION PRACTICES ACT**

7 29. Section 1692f of the FDCPA prohibits debt collectors from using  
8 unfair or unconscionable means to collect a debt.

9 30. Defendant violated § 1692f of the FDCPA when it called Plaintiff  
10 repeatedly and continuously, when it continued to call Plaintiff even after she  
11 informed Defendant that she wanted the calls to stop.  
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15 **COUNT IV**  
16 **DEFENDANT VIOLATED § 1692g(a) OF THE**  
17 **FAIR DEBT COLLECTION PRACTICES ACT**

18 31. A debt collector violates § 1692g(a) if within five days after the initial  
19 communication with a consumer, the debt collector fails to send the consumer a  
20 written notice containing (1) the amount of the debt; (2) the name of the creditor to  
21 whom the debt is owed; (3) a statement that unless the consumer, within thirty days  
22 after receipt of the notice, disputes the validity of the debt, or any portion thereof,  
23 the debt will be assumed to be valid by the debt collector; (4) a statement that if the  
24 consumer notifies the debt collector in writing within the thirty-day period that the  
25 debt, or any portion thereof, is disputed, the debt collector will obtain verification  
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1 of the debt or a copy of a judgment against the consumer and a copy of such  
2 verification or judgment will be mailed to the consumer by the debt collector; and  
3 (5) a statement that, upon the consumer's written request within the thirty-day  
4 period, the debt collector will provide the consumer with the name and address of  
5 the original creditor, if different from the current creditor.  
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7  
8 32. Defendant violated section 1692g(a) of the FDCPA when it failed to  
9 send written notification, within five (5) days after its initial communication with  
10 Plaintiff, advising her of her rights to dispute the debt or request verification of the  
11 debt, as well as the name of the original creditor and the amount of the debt.  
12

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14 **COUNT V**  
15 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**  
16 **PROTECTION ACT**

17 33. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action  
18 for a person or entity to bring in an appropriate court of that state “an action based  
19 on a violation of this subsection or the regulations prescribed under this subsection  
20 to enjoin such violation.”  
21

22 34. Section 227(b)(3)(B), of the Act authorizes a private cause of action  
23 for a person or entity to bring in an appropriate court of that state “an action to  
24 recover for actual monetary loss from such a violation, or to receive \$500 in  
25 damages for each such violation, whichever is greater.”  
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1 35. Defendant repeatedly placed non-emergency calls to Plaintiff without  
2 Plaintiff's consent.

3 36. The Act also authorizes the Court, in its discretion, to award up to  
4 three (3) times the actual damages sustained for violations.

5 37. Here, Defendant repeatedly and regularly placed non-emergency,  
6 automated calls to Plaintiff using a pre-recorded or artificial voice.  
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8 38. Defendant did not have Plaintiff's express consent prior to contacting  
9 her using an automatic telephone dialing system or pre-recorded or artificial voice.  
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11 39. Defendant's conduct violated §227(b)(1)(A)(iii) of the TCPA by  
12 making any call using any automatic telephone dialing system or an artificial  
13 prerecorded voice to a telephone number assigned to a cellular telephone service.  
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18 **COUNT VI**  
19 **DEFENDANT VIOLATED THE**  
20 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

21 40. Section 1788.17 of the California Civil Code mandates that every debt  
22 collector attempting to collect a consumer debt shall comply with § 1692b through  
23 § 1692j of the FDCPA.

24 41. Defendant violated Cal. Civ. Code § 1788.17, when it violated the  
25 FDCPA for the reasons set forth in this Complaint.  
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1           WHEREFORE, Plaintiff, KIM BAILEY, respectfully prays for a judgment  
2 as follows:

- 3           a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
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5           b. Statutory damages of \$1,000.00 for the violation of the FDCPA  
6 pursuant to 15 U.S.C. § 1692k(a)(2)(A);  
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8           c. All reasonable attorneys' fees, witness fees, court costs and other  
9 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. §  
10 1693k(a)(3);  
11  
12           d. All actual damages, statutory damages, reasonable attorney's fees and  
13 costs, and any other litigation costs incurred by Plaintiff pursuant to  
14 the RFDCPA at Cal. Civ. Code § 1788.17;  
15  
16           e. Statutory damages of \$500.00 per telephone call in violation of the  
17 TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);  
18  
19           f. Statutory damages of up to \$1,500 for each call in violation of the  
20 TCPA, pursuant to 47 U.S.C. §§ 227(c)(5)(B) and 227(c)(5)(C),  
21 which permits the Court in its discretion to award such damages if it  
22 finds that Defendant willfully or knowingly violated the TCPA; and  
23  
24           g. Any other relief deemed appropriate by this Honorable Court.  
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**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, KIM BAILEY, demands a jury trial  
in this case.

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C..

DATED: 4/4/16

By: /s/ Amy L. B. Ginsburg, Esq.  
Amy L. B. Ginsburg, Esq. (275805)  
Kimmel & Silverman, P.C  
30 East Butler Pike  
Ambler, PA 19002  
Telephone: (215) 540-8888  
Facsimile (215) 540-8817  
Email: abennecoff@creditlaw.com  
Attorney for Plaintiff