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2	of the State of California HERSCHEL ELKINS	
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8 9	Attorneys for Plaintiff, The People of the State of California	
10	-	
10	IN THE UNITED STAT	ES DISTRICT COURT
12	FOR THE EASTERN DIS	TRICT OF CALIFORNIA
13		
14	PEOPLE OF THE STATE OF	Case No.
15	CALIFORNIA, Plaintiff,	COMPLAINT FOR INJUNCTION, CIVIL PENALTIES AND
16	V.	DAMAGES
17	L.M.A. MARKETING, INC. DOING	
18 19	BUSINESS UNDER THE FICTITIOUS BUSINESS NAME OF MORTGAGE CONCEPTS	
20	Defendant.	
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	COMPLAINT FOR INJUNCTION, C	IVIL PENALTIES AND DAMAGES

I

1. Plaintiff, the People of the State of California, by its attorney Bill 1 Lockyer, Attorney General of the State of California, brings this action pursuant to the 2 Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), and the Telemarketing 3 and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 4 5 ("Telemarketing Act"), alleging that L.M.A. Marketing, Inc. doing business under the fictitious business name of Mortgage Concepts ("Defendant") is violating the TCPA and 6 7 the Telemarketing Act. Plaintiff seeks a permanent injunction, damages, civil penalties, 8 and other relief, based upon Defendant's violation of the TCPA and the Telemarketing 9 Act by placing telemarketing calls to telephone numbers listed on the Do Not Call Registry ("Registry") maintained by the Federal Trade Commission and using an 10 artificial or prerecorded telephone message without, during or after the message, stating 11 clearly the Defendant's name and telephone number. 12

Plaintiff, as part of the same case or controversy, also brings this
 action pursuant to California Business & Professions Code section 17200, alleging that
 Defendant has violated such state law. Plaintiff seeks a permanent injunction, civil
 penalties, and other relief, based upon Defendant's violation of California Business &
 Professions Code section 17200 by placing telemarketing calls to telephone numbers
 listed on the Registry.

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## JURISDICTION AND VENUE

3. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§
1331 and 1337(a) and 47 U.S.C. § 227(f)(2), and it also has supplemental jurisdiction
over the state law claim pursuant to 28 U.S.C. § 1367.

4. Venue in this matter is proper in this judicial district pursuant to 28
U.S.C. § 1391(b), in that a substantial part of the events or omissions giving rise to the
claim occurred in this judicial district. Venue is proper in this judicial district pursuant to
47 U.S.C. § 227(f)(4), in that the defendant transacts business in this district and
violations of the TCPA and the California statues are occurring in this district.
///

INTRADISTRICT VENUE	
5. The claims are based on violations that occurred in San Joaquin	
County and elsewhere in the State of California.	
PARTIES	
6. Plaintiff, by and through its attorney, Bill Lockyer, Attorney General	
of the State of California, is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal	
district court to enjoin violations and enforce compliance with the TCPA, and the	
regulations issued pursuant to the TCPA, on behalf of residents of the State of California	
and to obtain actual damages or damages of \$500 for each violation and up to treble that	
amount for each violation committed willfully or knowingly.	
7. Plaintiff, by and through its attorney, Bill Lockyer, Attorney General	
of the State of California, is authorized by 15 U.S.C. § 6103 to file actions in federal	
district court to enjoin violations and enforce compliance with the Telemarketing Act,	
and the regulations issued pursuant to the Telemarketing Act, on behalf of residents of	
the State of California and to obtain damages or other compensation on behalf of the	
residents of the State of California.	
8. Plaintiff, by and through its attorney, Bill Lockyer, Attorney General	
of the State of California, is authorized by California Business & Professions Code	
section 17204 to obtain injunctive relief to halt violations of and enforce compliance with	
California Business & Professions Code section 17200. Section 17206 of the California	
Business and Professions Code further authorizes Plaintiff to seek civil penalties for	
violations of California Business and Professions Code section 17200.	
9. Defendant L.M.A. Marketing, Inc. is a corporation organized under	
the laws of the State of Florida.	
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2.	
COMPLAINT FOR INJUNCTION, CIVIL PENALTIES AND DAMAGES	

I

1	VIOLATIONS	
2	COUNT I	
3	10. Paragraphs 1 through 9 are incorporated by reference herein as	
4	though set forth in full.	
5	11. Beginning on or after October 17, 2003, and continuing to the	
6	present, Defendant has violated 47 C.F.R. § 64.1200(c)(2) (as amended by Rules and	
7	Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 68	
8	Fed. Reg. 44, 144 (July 25, 2003)), by engaging in a pattern or practice of initiating	
9	telephone solicitations to residential telephone subscribers, including subscribers in San	
10	Joaquin and elsewhere in the State of California, whose telephone numbers were listed on	
11	the Registry.	
12	12. Defendant's violations are willful and knowing.	
13	COUNT II	
14	13. Paragraphs 1 through 12 are incorporated by reference herein as	
15	though set forth in full.	
16	14. Beginning at a date unknown to Plaintiff, and continuing to the	
17	present, Defendant has violated 47 C.F.R. § 64.1200(b)(2)(as amended by Rules and	
18	Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 68	
19	Fed. Reg. 44, 144 (July 25, 2003)), by engaging in a pattern or practice of initiating	
20	telephone calls to residential telephone lines, including subscribers in San Joaquin	
21	County and elsewhere in the State of California, using an artificial or prerecorded	
22	telephone message delivered by an automatic telephone dialing system without, during or	
23	after the message, stating clearly the identity of the business, the name under which the	
24	entity is registered to conduct business with the State Corporations Commission (or	
25	comparable regulatory authority), and the telephone number of such business, other	
26	entity, or individual.	
27	15. Defendant's violations are willful and knowing.	
28	///	
	3.	

1	COUNT III	
2	16. Paragraphs 1 through 15 are incorporated by reference herein as	
3	though set forth in full.	
4	17. Beginning at a date unknown to Plaintiff, and continuing to the	
5	present, Defendant has violated 47 C.F.R. § 64.1200(d)(4)(iv) (as amended by Rules and	
6	Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 68	
7	Fed. Reg.44,144 (July 25, 2003)), by engaging in a pattern or practice of initiating calls	
8	for telemarketing purposes to residential telephone lines, including subscribers in San	
9	Joaquin County and elsewhere in the State of California, without, during or after the	
10	message, providing the caller's name, the Defendant's name and a telephone number at	
11	which the caller could be reached, thereby failing to institute the minimal required	
12	procedures for maintaining a list of persons who request not to receive telemarketing	
13	calls made by or on behalf of the Defendant.	
14	18. Defendant's violations are willful and knowing.	
15	COUNT IV	
16	19. Paragraphs 1 through 18 are incorporated by reference herein as	
17	though set forth in full.	
18	20. Beginning on or after October 17, 2003, and continuing to the	
19	present, Defendant has violated the 16 C.F.R. § 310.4(b)(1)(iii) by engaging in a pattern	
20	or practice of initiating interstate telephone solicitations to residential telephone	
21	subscribers, including subscribers in San Joaquin County and elsewhere in the State of	
22	California, whose telephone numbers were listed on the Registry.	
23	21. Defendant's violations are willful and knowing	
24	COUNT V	
25	22. Paragraphs 1 through 21 are incorporated by reference herein as	
26	though set forth in full.	
27	23. Beginning at a date unknown to Plaintiff and continuing to the	
28	present, Defendant has engaged in unfair competition as defined in California Business &	
	4.	
	COMPLAINT FOR INJUNCTION, CIVIL PENALTIES AND DAMAGES	
	1	

Professions Code section 17200. Such acts of unfair competition include, but are not
 limited to,

Violation of 47 C.F.R. § 64.1200(c)(2) (as amended by Rules and 3 A. Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 68 4 5 Fed. Reg.44, 144 (July 25, 2003)), as set forth in paragraphs 10, 11, and 12 of this complaint, which paragraphs are incorporated herein as though set forth in full. 6 7 B. Violation of 47 C.F.R. § 64.1200(b)(2) (as amended by Rules and 8 Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 68 Fed. Reg. 44, 144 (July 25, 2003)), as set forth in paragraphs 13, 14, and 15 of this 9 complaint, which paragraphs are incorporated herein as though set forth in full. 10 С. Violation of 47 C.F.R. § 64.1200(d)(4)(iv) (as amended by *Rules* 11 and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, 12 68 Fed. Reg. 44, 144 (July 25, 2003)), as set forth in paragraphs 16, 17, and 18 of this 13 14 complaint, which paragraphs are incorporated herein as though set forth in full. Violation of 16 C.F.R. § 310.4(b)(1)(iii), as set forth in paragraphs D. 15 19, 20, and 21 of this complaint, which paragraphs are incorporated herein as though set 16 forth in full. 17 18 REMEDIES 19 24. The TCPA empowers this Court to grant to Plaintiff, in an action brought by the Attorney General of the State California, injunctive and other relief, and 20 to award \$500 for each violation. Furthermore, if this Court finds that a Defendant 21 willfully or knowingly violated the TCPA or regulations promulgated pursuant to the 22 TCPA, the Court may, in its discretion, increase the monetary award by up to three times 23 24 the amount. 25. 25 The Telemarketing Act authorizes the Attorney General to obtain 26 damages, restitution, or other compensation on behalf of residents of California, or to 27 obtain such further and other relief a the court may deem appropriate. 28 ///

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1	26. California Business & Professions Code section 17203 provides that
2	the Attorney General may seek and the Court may make such orders or judgments
3	permanently restraining and enjoining Defendant, its successors, agents, representatives,
4	employees, and all other persons who act under, by, through, or on behalf of any of them,
5	or any of them, from engaging in any acts of unfair competition in violation of California
6	Business & Professions Code section 17200, relating to telephone solicitations.
7	27. Pursuant to California Business & Professions Code section 17206,
8	the Court may assess against Defendant a civil penalty of up to \$2,500.00 for each
9	violation of California Business & Professions Code section 17200.
10	PRAYER FOR RELIEF
11	WHEREFORE, Plaintiff requests that this honorable Court:
12	A. Permanently enjoin Defendant from violating the TCPA and 47
13	C.F.R. § 64.1200;
14	B. Permanently enjoin Defendant from violating the Telemarketing Act
15	and 16 C.F.R., Part 310;
16	C. Pursuant to California Business & Professions Code section 17203,
17	permanently restrain and enjoin Defendant, its successors, agents, representatives,
18	employees, and all other persons who act under, by, through, or on behalf of any of them,
19	or any of them, from engaging in any of the acts of unfair competition set forth in
20	paragraph 23 of this complaint and any other act of unfair competition in violation of
21	California Business & Professions Code section 17200, relating to telephone
22	solicitations;
23	D. Award \$500 for each of Defendant's violations of the TCPA, and
24	find that Defendant's actions were committed willfully and knowingly so as to justify an
25	award equal to three times this amount, pursuant to 47 U.S.C. § 227, as proven at trial,
26	but in an amount of not less than \$100,000;
27	E. Pursuant to the Telemarketing Act 16 U.S.C. § 6103(a) award
28	damages or other compensation on behalf of the residents of the State of California;
	6.
	COMPLAINT FOR INJUNCTION, CIVIL PENALTIES AND DAMAGES

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1	F. Pursuant to California Business & Professions Code section 17206,
2	assess against Defendant a civil penalty of up to \$2,500.00 for each violation of
3	California Business & Professions Code section 17200, as proven at trial, but in an
4	amount of not less than \$100,000;
5	G. Assess against Defendant all costs incurred by Plaintiff, as well as
6	such other and additional relief as the Court may determine to be just and proper.
7	
8	Dated: January 12, 2004 Respectfully submitted,
9	BILL LOCKYER Attorney Conversion of Colifornia
10	Attorney General of the State of California HERSCHEL ELKINS
11	Senior Assistant Attorney General ALBERT NORMAN SHELDEN
12	Supervising Deputy Attorney General
13	IAN K. SWEEDLER Deputy Attorney General
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15	BETTINA C. REDWAY
16	Deputy Attorney General
17	Attorneys for Plaintiff,
18	The People of the State of California
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	COMPLAINT FOR INJUNCTION, CIVIL PENALTIES AND DAMAGES