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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

People of the State of California,

Plaintiff,

v.

**American Home Craft, Inc., Bradley Alan
Smith and Brent Frenchak,**

Defendants.

Case No. C-03-4948 JSW

**[PROPOSED] FINAL JUDGMENT
AND PERMANENT INJUNCTION**

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA ("Plaintiff"), having filed its complaint and appearing through its attorneys, Bill Lockyer, Attorney General, by Ian K. Sweedler, Deputy Attorney General, Defendants AMERICAN HOME CRAFT, INC. ("AHC"), and BRADLEY ALAN SMITH appearing through their attorneys, Foley & Lardner and Michael P. McCloskey, and Defendant BRENT FRENCHAK appearing in pro. per.; and Plaintiff and Defendants having stipulated that this Final Judgment and Permanent Injunction ("Judgment") may be entered without the taking of evidence, without trial or adjudication of any issue of fact or law, and good cause appearing,

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1 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS**
2 **FOLLOWS:**

3 1. The injunctive provisions of this Final Judgment and Permanent Injunction are
4 entered pursuant to 47 U.S.C. § 227(f)(1) and California Business and Professions Code section
5 17203.

6 2. Defendants AHC, SMITH and FRENCHAK are hereby permanently enjoined and
7 restrained as follows:

8 A. Defendants, and each of them, shall not initiate any telemarketing or
9 telephone solicitation that does not comply with all provisions of 47 C.F.R.
10 §§ 64.1200 & 64.1601 (as amended by *Rules and Regulations Implementing*
11 *the Telephone Consumer Protection Act (TCPA) of 1991*, 68 Fed. Reg.
12 44,144 (July 25, 2003)), including, without limitation:

- 13 i. 47 C.F.R. § 64.1200(a)(1) regarding the use of automatic telephone
14 dialing systems or artificial or prerecorded voices;
15 ii. 47 C.F.R. § 64.1200(a)(6) regarding abandonment of telemarketing
16 calls;
17 iii. 47 C.F.R. § 64.1200(c)(1) regarding restrictions on calling hours;
18 iv. 47 C.F.R. § 64.1200(c)(2) regarding calls to telephone numbers on the
19 national do-not-call registry;
20 v. 47 C.F.R. § 64.1200(d) regarding procedures for recording and
21 honoring requests not to receive telemarketing calls; and
22 vi. 47 C.F.R. § 64.1200(d)(4) regarding identification.

23 B. Defendants AHC and SMITH shall not operate any telemarketing program
24 without first implementing the following measures as part of their
25 procedures for maintaining a list of persons who request not to receive
26 telemarketing calls and for complying with rules pertaining to the national
27 do-not-call registry:

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- i. Defendants AHC and SMITH shall ensure that:
 - (1) All American Home Craft, Inc. employees who have contact with the public shall be trained in the proper handling of individual requests not to receive telemarketing calls;
 - (2) Employees who initiate telephone calls to consumers or answer American Home Craft, Inc.'s advertised telephone number(s) shall have the training and ability to record and process requests not to receive telemarketing calls; and
 - (3) Other employees who have contact with the public, including employees who meet with consumers in person, shall be trained to refer to American Home Craft, Inc.'s toll-free telephone number(s) requests not to receive telemarketing calls.
- ii. Defendants AHC and SMITH shall not allow any person to participate in or supervise telemarketing calls on their behalf unless Defendants AHC and SMITH have first obtained that person's signed acknowledgment of AHC's policies and procedures regarding unwanted telemarketing calls.
- iii. Defendants AHC and SMITH shall develop procedures for recording and investigating complaints of improper telemarketing calls, such procedures to include, at a minimum:
 - (1) Defendants shall require all persons who participate in or supervise telemarketing calls on their behalf to report any such complaint to a designated company official.
 - (2) Defendant AHC shall investigate each such complaint to determine whether the call was placed in violation of the law or company policy.
 - (3) Defendant BRADLEY ALAN SMITH shall personally be responsible for having the results of all such complaint investigations reviewed in order to evaluate the effectiveness of

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defendants' policies and practices, and to determine whether any corrective action is warranted.

(4) Defendants shall maintain records of complaints and investigations, and any resulting actions, for five years from the date of the complaint, and make such records available to Plaintiff upon request.

C. Defendants AHC, SMITH and FRENCHAK shall not engage in any action in violation Article 8 of Chapter 1 of Part 3 of Division 7 (commencing with section 17590) of the California Business and Professions Code.

3. Defendants AHC and SMITH shall jointly and severally pay to Plaintiff the sum of FORTY FIVE THOUSAND DOLLARS (\$45,000.00) in civil penalties. This amount shall be paid no later than 15 days after entry of this judgment, by check made payable to the California Department of Justice, and delivered to Plaintiff at the following address: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, Attn: Deputy Attorney General Ian K. Sweedler.

4. Defendants AHC and SMITH shall jointly and severally pay to the California Attorney General the sum of THIRTY THOUSAND DOLLARS (\$30,000.00), as costs of the investigation and prosecution of this matter. This amount shall be paid no later than 15 days after entry of this judgment, by check made payable to the California Department of Justice, and delivered to Plaintiff at the following address: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, Attn: Deputy Attorney General Ian K. Sweedler.

5. Pursuant to 47 U.S.C. § 227(f)(1), Defendants AHC and SMITH shall pay damages in the sum of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

A. Defendants AHC and SMITH shall pay this amount no later than 15 days after entry of this Judgment, by separate check made payable to the California Department of Justice, and delivered to Plaintiff at the following address: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, Attn: Deputy Attorney General Ian K. Sweedler.

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B. Funds paid by Defendants pursuant to this paragraph shall be distributed on a pro rata basis to California residents who have, prior to the date of entry of this Final Judgment and Permanent Injunction, lodged complaints with the California Attorney General, Federal Trade Commission or the Federal Communications Commission alleging that they have received telephone calls from American Home Craft in violation of 47 C.F.R. §§ 64.1200(c)(2) or (d) (as amended by *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991*, 68 Fed. Reg. 44,144 (July 25, 2003)), or 47 C.F.R. § 64.1200(e)(2) (2002), and who have not previously been compensated for the violation(s). The amount of damages paid to any individual complainant will not exceed TWO HUNDRED DOLLARS (\$200.00).

C. Plaintiff shall have the sole discretion to determine whether any individual is entitled to receive damages pursuant to this Judgment.

D. To the extent that any portion of the funds provided for in this paragraph are not distributed as damages, any remaining funds shall be treated as additional civil penalties.

6. The Court retains jurisdiction as the ends of justice may require for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate (a) for the construction or carrying out of this Final Judgment and Permanent Injunction; (b) for Plaintiff to apply at any time for enforcement of any provision of this Final Judgment and Permanent Injunction; (c) for modification of the injunctive provisions of this Final Judgment and Permanent Injunction; and (d) for punishment of any violations of this Final Judgment and Permanent Injunction.

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- 7. This judgment shall take effect immediately upon entry.
- 8. The Clerk shall enter this judgment forthwith.

DATE: June 21, 2004

/s/ Jeffrey S. White
UNITED STATES DISTRICT JUDGE