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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA

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12
 13 **UNITED STATES DISTRICT COURT**
 14
 15 **CENTRAL DISTRICT OF CALIFORNIA**

16 UNITED STATES OF AMERICA,
 17 Plaintiff,
 18
 19 v.
 20
 21 GLOBAL MORTGAGE FUNDING,
 22 INC., a California corporation, also
 23 f/d/b/a Global Realty, Inforte
 24 Financial, and U.S. Escrow;
 25
 26 and
 27
 28 DAMIAN ROBERT KUTZNER,
 individually and as an officer or
 director of Global Mortgage Funding,
 Inc.,
 Defendants.

SACV 07-1275 DOC PJWx
 Civil No. _____

**COMPLAINT FOR CIVIL
 PENALTIES, PERMANENT
 INJUNCTION, AND OTHER
 RELIEF**

Plaintiff, the United States of America, acting upon notification and
 authorization to the Attorney General by the Federal Trade Commission ("FTC" or
 "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act

1 (“FTC Act”), 15 U.S.C. § 56(a)(1), for its complaint alleges:
2
3

4 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and
5 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b,
6 and Section 6 of the Telemarketing and Consumer Fraud and Abuse
7 Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain
8 monetary civil penalties, consumer redress, a permanent injunction, and other
9 equitable relief for Defendants’ violation of Section 5(a) of the FTC Act, 15
10 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or
11 “Rule”), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January
12 29, 2003).
13
14

15 JURISDICTION AND VENUE

16 2. This Court has subject matter jurisdiction over this action pursuant to 28
17 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A),
18 53(b), 56(a) and 57b. This action arises under 15 U.S.C. § 45(a).
19
20 3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a),
21 and 15 U.S.C. § 53(b).
22

23 DEFENDANTS

24 4. Defendant Global Mortgage Funding, Inc., is a California Corporation with its
25 principal place of business at 660 Newport Center Drive, Suite 200, Newport
26 Beach, CA 92660. Global Mortgage Funding, Inc., is both a telemarketer and
27 a seller of mortgage and related financing services. Global Mortgage
28

1 Funding, Inc., has formerly done business under the names: Global Realty,
2 Inforte Financial, and U.S. Escrow. Global Mortgage Funding, Inc., transacts
3 or has transacted business in this District.
4

5 5. Defendant Damian Robert Kutzner is an officer, director, or manager of
6 Global Mortgage Funding., Inc. At all times material to this Complaint,
7 acting alone or in concert with others, he has formulated, directed, controlled,
8 or participated in the acts and practices of Global Mortgage Funding, Inc.,
9 including the acts and practices set forth in this Complaint. He resides or has
10 transacted business in the Central District of California.
11

12 6. On November 7, 2006, Global Mortgage Funding, Inc., filed a voluntary
13 petition for relief under the liquidation provisions of Chapter 7 of the
14 Bankruptcy Code, 11 U.S.C. § 101 et seq., in the United States Bankruptcy
15 Court for the Central District of California, Case. No. 8:06-12039JR.
16 Subsequently, James J. Joseph was appointed Chapter 7 Trustee.
17

18 7. The instant action against the defendants is not stayed by 11 U.S.C.
19 § 362(a)(1), (2), (3) or (6) because it is an action brought by the United States,
20 pursuant to referral by the Commission, to enforce the Commission's police
21 and regulatory power as a governmental unit pursuant to 11 U.S.C.
22 § 362(b)(4) and thus falls within an exemption to the automatic stay.
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THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY

- 1
2
3
4 8. Congress directed the FTC to prescribe rules prohibiting abusive and
5 deceptive telemarketing acts or practices pursuant to the Telemarketing Act,
6 15 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the
7 Telemarketing Sales Rule (the “Original TSR”), 16 C.F.R. Part 310, which
8 became effective on December 31, 1995. On January 29, 2003, the FTC
9 amended the TSR by issuing a Statement of Basis and Purpose (“SBP”) and a
10 final amended TSR (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.
11
12 9. Among other things, the Amended TSR established a “do-not-call” registry,
13 maintained by the Commission (the “National Do Not Call Registry” or
14 “Registry”), of consumers who do not wish to receive certain types of
15 telemarketing calls. Consumers can register their telephone numbers on the
16 Registry without charge either through a toll-free telephone call or over the
17 Internet at donotcall.gov.
18
19
20 10. Consumers who receive telemarketing calls to their registered numbers can
21 complain of Registry violations the same ways they registered, through a toll-
22 free telephone call or over the Internet at donotcall.gov, or by otherwise
23 contacting law enforcement authorities.
24
25 11. Since September 2, 2003, sellers, telemarketers, and other permitted
26 organizations have been able to access the Registry over the Internet at
27 telemarketing.donotcall.gov to download the registered numbers.
28

- 1 12. Since October 17, 2003, sellers and telemarketers have been prohibited from
2 calling numbers on the Registry in violation of the Amended TSR. 16 C.F.R.
3 § 310.4(b)(1)(iii)(B).
4
- 5 13. Since October 1, 2003, sellers and telemarketers have been prohibited from
6 abandoning any outbound telephone call by not connecting the call to a
7 representative within two (2) seconds of the consumer's completed greeting.
8 16 C.F.R. § 310.4(b)(1)(iv).
9
- 10 14. Since October 17, 2003, sellers and telemarketers have been generally
11 prohibited from calling any telephone number within a given area code unless
12 the seller first has paid the annual fee for access to the telephone numbers
13 within that area code that are included in the National Do Not Call Registry.
14 16 C.F.R. § 310.8(a) and (b).
15
- 16 15. Since January 29, 2004, sellers and telemarketers have been prohibited from
17 failing to transmit or failing to cause to be transmitted the telephone number,
18 and, when made available by the telemarketer's carrier, the name of the
19 telemarketer or the seller, to any caller identification service in use by a
20 recipient of a telemarketing call. 16 C.F.R. § 310.4(a)(7).
21
- 22 16. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and
23 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the
24 TSR constitutes an unfair or deceptive act or practice in or affecting
25 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
26
27
28

1 **DEFENDANTS' BUSINESS ACTIVITIES**

2 17. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as
3 defined by the Amended TSR, 16 C.F.R. § 310.2.
4

5 18. Global Mortgage Funding., Inc., is both a seller and telemarketer. As a seller,
6 Global Mortgage Funding, Inc., provides or offers to provide mortgage and
7 related financing services to consumers through telemarketing. As its own
8 telemarketer, Global Mortgage Funding., Inc., initiates outbound
9 telemarketing calls to consumers to provide mortgage and related financing
10 services.
11

12 19. Defendants have engaged in telemarketing by a plan, program, or campaign
13 conducted to induce the purchase of mortgage and related financing services
14 by use of one or more telephones and which involves more than one interstate
15 telephone call.
16

17 20. On or after October 17, 2003, Defendants have made hundreds of thousands
18 of calls to telephone numbers that are on the National Do Not Call Registry.
19

20 21. On or after October 17, 2003, Defendants have called hundreds of thousands
21 of telephone numbers in various area codes without first paying the annual fee
22 for access to the telephone numbers within such area codes that are included
23 in the National Do Not Call Registry.
24

25 22. On or after October 17, 2003, Defendants have abandoned outbound
26 telephone calls to consumers by failing to connect the call to a representative
27 within two (2) seconds of the consumer’s completed greeting.
28

1 23. On or after January 29, 2004, Defendants have failed to transmit Defendants'
2 actual telephone number and, when made available by Defendants' carrier,
3 Defendants' name, to consumers' caller identification service.
4

5 24. At all times relevant to this complaint, Defendants have maintained a
6 substantial course of trade or business in the offering for sale and sale of
7 goods or services via the telephone, in or affecting commerce, as "commerce"
8 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
9

10 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

11 **Count I**

12 **Violating the National Do Not Call Registry**

13
14 25. In numerous instances, in connection with telemarketing, Defendants engaged
15 in or caused others to engage in initiating an outbound telephone call to a
16 person's telephone number on the National Do Not Call Registry in violation
17 of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).
18

19 **Count II**

20 **Failing to Pay National Registry Fees**

21 26. In numerous instances, in connection with telemarketing, Defendants have
22 initiated, or caused others to initiate, an outbound telephone call to a
23 telephone number within a given area code without Defendants, either directly
24 or through another person, first paying the required annual fee for access to
25 the telephone numbers within that area code that are included in the National
26 Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.
27
28

1 **Count III**

2 **Abandoning Calls**

3
4 27. In numerous instances, in connection with telemarketing, defendants have
5 abandoned, or caused others to abandon, an outbound telephone call by
6 failing to connect the call to a sales representative within two (2) seconds of
7 the completed greeting of the person answering the call, in violation of the
8 TSR, 16 C.F.R. § 310.4(b)(1)(iv).
9

10 **Count IV**

11 **Failing to Transmit Caller ID**

12
13 28. In numerous instances, in connection with telemarketing, defendants have
14 failed to transmit or caused to be transmitted the telephone number, and, when
15 made available by the telemarketer's carrier, the name of the telemarketer or
16 seller, to any caller identification service in use by a recipient of a
17 telemarketing call in violation of the TSR, 16 C.F.R. § 310.4(a)(7).
18

19 **CONSUMER INJURY**

20 29. Consumers in the United States have suffered and will suffer injury as a result
21 of these violations of the TSR. Absent injunctive relief by this Court,
22 consumers are likely to continue to be injured and harm inflicted on the public
23 interest.
24

25 **THIS COURT'S POWER TO GRANT RELIEF**

26 30. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
27 grant injunctive and other ancillary relief, including consumer redress,
28

1 disgorgement and restitution, to prevent and remedy any violation of any
2 provision of law enforced by the FTC.

3
4 31. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by
5 Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28
6 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d)
7 (1997), authorizes this Court to award monetary civil penalties of not more
8 than \$11,000 for each violation of the TSR. Defendants' violations of the
9 TSR were committed with the knowledge required by Section 5(m)(1)(A) of
10 the FTC Act, 15 U.S.C. § 45(m)(1)(A).

11
12 32. This Court, in the exercise of its equitable jurisdiction, may award ancillary
13 relief to remedy injury caused by Defendants' violations of the Rule and the
14 FTC Act.
15

16 **PRAYER FOR RELIEF**

17
18 WHEREFORE, Plaintiff requests that this Court, as authorized by Sections
19 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A),
20 53(b) and 57b, and pursuant to its own equitable powers:

- 21 A. Enter judgment against Defendants and in favor of Plaintiff for each violation
22 alleged in this complaint;
23
24 B. Award Plaintiff monetary civil penalties from each Defendant for every
25 violation of the TSR;
26
27 C. Enter a permanent injunction to prevent future violations of the TSR and the
28 FTC Act by Defendants;

- 1 D. Order Defendants to pay the costs of this action; and
- 2 E. Award Plaintiff such other and additional relief as the Court may determine
- 3 to be just and proper.
- 4

5
6 Dated: October 29, 2007

Respectfully submitted,

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8 FOR THE UNITED STATES OF
AMERICA:


9
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13
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