

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2006 OCT 31 PM 1:00

UNITED STATES OF AMERICA,

Plaintiff,

v.

USA HOME LOANS, INC.,
also d/b/a **USA HOME LENDING, INC.,**
a Maryland corporation,
8725 Loch Raven Boulevard, Suite 205,
Towson, Maryland 21286,
Baltimore County,

USA FIRST INVESTMENT GROUP, INC.,
a Maryland corporation,
8725 Loch Raven Boulevard, Suite 203,
Towson, Maryland 21286,
Baltimore County,

DAVID VACH,
individually and as an officer of
USA HOME LOANS, INC.,
11 McGregor Way,
Bel Air, Maryland 21014,
Harford County,

RICHARD BURNHAM,
individually and as an officer of
USA FIRST INVESTMENT GROUP, INC.,
1101 Megg Court,
Joppa, Maryland 21085,
Harford County, and

VINCENT PICCIONE,
individually and as an officer of
USA FIRST INVESTMENT GROUP, INC.,
34 Meadow Lands Court,
Forest Hill, Maryland 21050,
Harford County,

Defendants.

Case 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 ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

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

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b) and 56(a). This action arises under 15 U.S.C. § 45(a).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant USA Home Loans, Inc., also d/b/a USA Home Lending, Inc. ("Home Loans"), is a Maryland corporation with its principal place of business at 8725 Loch Raven Boulevard, Suite 205, Towson, Maryland 21286. Home Loans is both a telemarketer and a seller of goods or services, including home mortgage goods or services, to consumers. Home Loans has also caused telemarketers, such as Defendant USA First Investment Group, Inc., to call consumers

to induce the purchase of home mortgage goods or services from Home Loans. Home Loans transacts or has transacted business in this District.

5. Defendant USA First Investment Group, Inc. ("First Investment"), is a Maryland corporation with its principal place of business at 8725 Loch Raven Boulevard, Suite 203, Towson, Maryland 21286. First Investment is a telemarketer that initiates or has initiated outbound telephone calls to induce consumers to purchase home mortgage goods or services from Home Loans. First Investment transacts or has transacted business in this District.

6. Defendant David Vach ("Vach") is the owner and an officer of Home Loans. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Home Loans, including the acts and practices set forth in this complaint.

7. Defendant Richard Burnham ("Burnham") is an owner and an officer of First Investment. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of First Investment, including the acts and practices set forth in this complaint.

8. Defendant Vincent Piccione ("Piccione") is an owner and an officer of First Investment. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of First Investment, including the acts and practices set forth in this complaint.

**THE TELEMARKETING SALES RULE
AND THE NATIONAL DO NOT CALL REGISTRY**

9. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose ("SBP") and the final amended TSR (the "Amended TSR"). 68 Fed. Reg. 4580, 4669.

10. Among other things, the Amended TSR established a "do-not-call" registry, maintained by the Commission (the "National Do Not Call Registry" or "Registry"), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at donotcall.gov.

11. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at donotcall.gov, or by otherwise contacting law enforcement authorities.

12. Since October 17, 2003, sellers and telemarketers have been prohibited from calling numbers on the Registry in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

13. Since September 2, 2003, sellers, telemarketers, and other permitted organizations have been able to access the Registry over the Internet at telemarketing.donotcall.gov to download the registered numbers.

14. Since October 17, 2003, sellers and telemarketers have been generally prohibited from calling any telephone number within a given area code unless the seller first has paid the annual fee

for access to the telephone numbers within that area code that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b).

15. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANTS' BUSINESS ACTIVITIES

16. Defendants are "seller[s]" or "telemarketer[s]" engaged in "telemarketing," as defined by the Amended TSR, 16 C.F.R. § 310.2.

17. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call.

18. Home Loans is a seller and a telemarketer. As a seller, Home Loans provides or offers to provide home mortgage goods or services, including originating and refinancing home loans, to consumers through telemarketing. As its own telemarketer, Home Loans has initiated outbound telephone calls to consumers to induce the purchase of its home mortgage goods or services. Home Loans has also caused telemarketers, such as First Investment, to call consumers to induce the purchase of home mortgage goods or services from Home Loans.

19. First Investment is a telemarketer that has initiated outbound telephone calls to consumers in the United States to induce the purchase of home mortgage goods or services from Home Loans. On behalf of Home Loans, First Investment purchased consumer lead lists ("lead lists") from third parties. First Investment placed telephone calls to consumers on the lead lists to determine if they were interested in and qualified for the mortgage goods or services of Home Loans.

First Investment then provided the lead lists to Home Loans, and Home Loans called those consumers to offer its mortgage goods or services.

20. On or after October 17, 2003, Defendants have called consumers' telephone numbers that are on the National Do Not Call Registry.

21. On or after October 17, 2003, Home Loans has called, or caused telemarketers such as First Investment to call, telephone numbers in various area codes without first paying the annual fee for access to the telephone numbers within such area codes that are included in the National Do Not Call Registry.

22. On or after October 17, 2003, First Investment, on behalf of Home Loans, has called telephone numbers in various area codes without Home Loans first paying the annual fee for access to the telephone numbers within such area codes that are included in the National Do Not Call Registry.

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

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count I (Violating the National Do Not Call Registry)

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

Count II (Failing to Pay National Registry Fees)

25. In numerous instances, in connection with telemarketing, Defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area

code without Home Loans, either directly or through another person, first paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

26. Consumers in the United States have suffered and will suffer injury as a result of Defendants' violations of the TSR. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violation of any provision of law enforced by the FTC.

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

29. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the Rule and the FTC Act.

PRAYER FOR RELIEF

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

A. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this complaint;

B. Award plaintiff monetary civil penalties from each Defendant for every violation of the TSR;

C. Permanently enjoin Defendants from violating the TSR and the FTC Act; and

D. Award plaintiff such other and additional relief as the Court may determine to be just and proper.

DATED _____

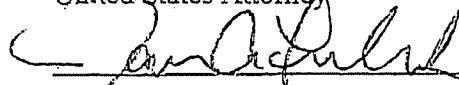
Respectfully submitted,

OF COUNSEL:
JOHN M. MENDENHALL
Director
East Central Region
Federal Trade Commission

FOR THE UNITED STATES OF AMERICA
PETER D. KEISLER
Assistant Attorney General
Civil Division
U.S. DEPARTMENT OF JUSTICE

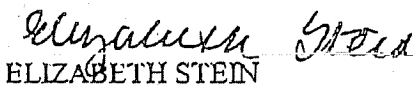
DANA C. BARRAGATE
Attorney
Federal Trade Commission
East Central Region
1111 Superior Ave., Suite 200
Cleveland, OH 44114
Phone (216) 263-3402
Fax (216) 263-2426

ROD J. ROSENSTEIN
United States Attorney



James A. Frederick
Assistant U.S. Attorney for the
District of Maryland
36 S. Charles Street, 4th Floor
Baltimore, MD 21201
Phone (410) 209-4800
Fax (410) 962-0693

EUGENE M. THIROLF
Director
Office of Consumer Litigation



ELIZABETH STEIN
Trial Attorney
Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044
Phone (202) 307-0066
Fax (202) 514-8742
elizabeth.stein2@usdoj.gov