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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11
12 **People of the State of California,**

13 Plaintiff,

14 v.

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

16 Defendants.
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Case No. C-03-4948 JSW

**FIRST AMENDED COMPLAINT
FOR INJUNCTION, CIVIL
PENALTIES AND DAMAGES**

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19 1. Plaintiff, the People of the State of California, by its attorney Bill Lockyer, Attorney
20 General of the State of California, brings this action pursuant to the Telephone Consumer Protection
21 Act, 47 U.S.C. § 227 (“TCPA”), alleging that American Home Craft, Inc. (“AHC”), Bradley Alan
22 Smith (“Smith”) and Brent Frenchak (“Frenchak”) (collectively, “Defendants”) are violating the
23 TCPA. Plaintiff seeks a permanent injunction, damages, and other relief, based upon Defendants’
24 violation of the TCPA by causing telemarketing calls to be placed to telephone numbers listed on
25 the Do Not Call Registry (“Registry”) maintained by the Federal Trade Commission, and by failing
26 to record and comply with consumers’ requests not to be called by AHC.

27 2. Plaintiff, as part of the same case or controversy, also brings this action pursuant to
28 California Business & Professions Code § 17200, alleging that Defendants have violated such state

1 law. Plaintiff seeks a permanent injunction, civil penalties, and other relief, based upon Defendants’
2 violation of Section 17200 by placing telemarketing calls to telephone numbers listed on the
3 Registry, and by failing to record and comply with consumers’ requests not to be called by AHC.

4 JURISDICTION AND VENUE

5 3. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and
6 1337(a) and 47 U.S.C. § 227(f)(2), and it also has supplemental jurisdiction over the state law
7 claim pursuant to 28 U.S.C. § 1367.

8 4. Venue in this matter is proper in this judicial district pursuant to 28 U.S.C.
9 § 1391(b), in that defendant AHC has its principal place of business in this judicial district, all
10 defendants reside in California, and a substantial part of the events or omissions giving rise to
11 the claim occurred in this judicial district. Venue is proper in this judicial district pursuant to 47
12 U.S.C. § 227(f)(4), in that all defendants transact business in this district and violations of the
13 TCPA and the California statutes are occurring in this district.

14 INTRADISTRICT ASSIGNMENT

15 5. The claims are based on violations that occurred in San Mateo County and
16 elsewhere in the State of California.

17 PARTIES

18 6. Plaintiff, by and through its attorney, Bill Lockyer, Attorney General of the State
19 of California, is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal district court to
20 enjoin violations and enforce compliance with the TCPA, and the regulations issued pursuant to
21 the TCPA, on behalf of residents of the State of California and to obtain actual damages or
22 damages of \$500 for each violation and up to treble that amount for each violation committed
23 willfully or knowingly.

24 7. Plaintiff, by and through its attorney Bill Lockyer, Attorney General of the State
25 of California, is authorized by California Business & Professions Code § 17204 to obtain
26 injunctive relief to halt violations of and enforce compliance with California Business &
27 Professions Code § 17200. Section 17206 of the California Business & Professions Code further
28 authorizes Plaintiff to seek civil penalties for violations of Section 17200.

1 8. Defendant American Home Craft, Inc. is a corporation organized under the laws
2 of the State of California.

3 9. Defendant Bradley Alan Smith is a resident of California, and an officer of AHC.

4 10. Defendant Brent Frenchak is a resident of California, and an officer and/or
5 manager of AHC.

6 11. Whenever reference is made in this complaint to any act or transaction of a
7 defendant such allegation shall be deemed to mean that said defendant and its/his agents,
8 employees, owners, officers, directors or representatives did or authorized such acts while
9 engaged in the management, direction, or control of the affairs of that defendant and while acting
10 within the scope and course of their duties.

11 12. Whenever in this complaint reference is made to any act of any defendant, such
12 allegation shall be deemed to mean that said defendant was acting (a) as a principal, (b) under
13 express or implied agency, and/or (c) with actual or ostensible authority to perform the acts so
14 alleged.

15 VIOLATIONS

16 COUNT I

17 13. Paragraphs 1 through 12 are incorporated by reference herein as though set forth
18 in full.

19 14. Beginning on or after October 17, 2003, and continuing to the present,
20 Defendants have violated 47 C.F.R. § 64.1200(c)(2) (as amended by *Rules and Regulations*
21 *Implementing the Telephone Consumer Protection Act (TCPA) of 1991*, 68 Fed. Reg. 44,144
22 (July 15, 2003)), by engaging in a pattern or practice of initiating telephone solicitations to
23 residential telephone subscribers, including subscribers in San Mateo County and elsewhere in
24 the State of California, whose telephone numbers were listed on the Registry.

25 15. Defendants' violations are willful and knowing.

26 COUNT II

27 16. Paragraphs 1 through 15 are incorporated by reference herein as though set forth
28 in full.

1 17. Defendants have had a practice of violating 47 C.F.R. § 64.1200(d) (as amended
2 by *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of*
3 *1991*, 68 Fed. Reg. 44,144 (July 15, 2003)), and its predecessor, 47 C.F.R. § 64.1200(e)(2)
4 (2002), by causing telephone solicitation calls to be made to residential telephone subscribers in
5 California without first instituting procedures for maintaining a list of persons who do not wish
6 to receive telephone solicitations made by or on behalf of that AHC. Defendants also caused
7 telephone solicitation calls to be made to residential telephone subscribers in California after
8 those subscribers had requested not to receive future telephone solicitations from AHC.

9 18. Defendants' violations are willful and knowing.

10 COUNT III

11 19. Paragraphs 1 through 18 are incorporated by reference herein as though set forth
12 in full.

13 20. Defendants have engaged in unfair competition as defined in California Business
14 & Professions Code § 17200. Such acts of unfair competition include, but are not limited to,
15 violation of 47 C.F.R. § 64.1200(c)(2) & (d) (as amended by *Rules and Regulations*
16 *Implementing the Telephone Consumer Protection Act (TCPA) of 1991*, 68 Fed. Reg. 44,144
17 (July 15, 2003)) and 47 C.F.R. § 64.1200(e)(2) (2002), as set forth in paragraphs 14 and 17 of
18 this complaint, which paragraphs are incorporated herein as though set forth in full.

19 REMEDIES

20 21. The TCPA empowers this Court to grant to Plaintiff, in an action brought by the
21 Attorney General of the State California, injunctive and other relief, and to award \$500 for each
22 violation. Furthermore, if this Court finds that a defendant willfully or knowingly violated the
23 TCPA or regulations promulgated pursuant to the TCPA, the Court may, in its discretion,
24 increase the monetary award by up to three times the amount.

25 22. California Business & Professions Code § 17203 provides that the Attorney
26 General may seek and the Court may make such orders or judgments permanently restraining
27 and enjoining Defendants, their successors, agents, representatives, employees, and all other
28 persons who act under, by, through, or on behalf of any of them, or any of them, from engaging

1 in any acts of unfair competition in violation of California Business & Professions Code §
2 17200.

3 23. Pursuant to California Business & Professions Code § 17206, the Court may
4 assess against Defendants a civil penalty of up to \$2,500.00 for each violation of California
5 Business & Professions Code § 17200.

6 PRAYER FOR RELIEF

7 WHEREFORE, Plaintiff requests that this honorable Court:

- 8 A. Permanently enjoin Defendants from violating the TCPA and 47 C.F.R.
9 § 64.1200;
- 10 B. Pursuant to California Business & Professions Code § 17203, permanently
11 restrain and enjoin Defendants, their successors, agents, representatives,
12 employees, and all other persons who act under, by, through, or on behalf of
13 any of them, or any of them, from engaging in any of the acts of unfair
14 competition set forth in paragraph 20 of this complaint and any other act of
15 unfair competition in violation of California Business & Professions Code
16 § 17200, relating to telephone solicitations;
- 17 C. Assess against Defendants, jointly and severally, damages of \$500 for each
18 of Defendants' violations of the TCPA, and find that Defendants' actions
19 were committed willfully and knowingly so as to justify an award equal to
20 three times this amount, pursuant to 47 U.S.C. § 227, as proven at trial, but
21 in an amount of not less than \$50,000;
- 22 D. Pursuant to California Business & Professions Code § 17206, assess against
23 Defendants, jointly and severally, a civil penalty of up to \$2,500.00 for each
24 violation of California Business & Professions Code § 17200, as proven at
25 trial, but in an amount of not less than \$50,000;

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E. Assess against Defendants, jointly and severally, all costs incurred by Plaintiff, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: December 18, 2003

Respectfully submitted,
BILL LOCKYER
Attorney General of the State of California
HERSCHEL ELKINS
Senior Assistant Attorney General
ALBERT NORMAN SHELDEN
Supervising Deputy Attorney General

/s/ Ian K. Sweedler

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