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**Attorneys for Plaintiff,  
The People of the State of California**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

v.

L.M.A. MARKETING, INC. DOING  
BUSINESS UNDER THE FICTITIOUS  
BUSINESS NAME OF MORTGAGE  
CONCEPTS

Defendant.

Case No.

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

1. Plaintiff, the People of the State of California, by its attorney Bill Lockyer, Attorney General of the State of California, brings this action pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 (“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 the Telemarketing Act. Plaintiff seeks a permanent injunction, damages, civil penalties, and other relief, based upon Defendant’s violation of the TCPA and the Telemarketing 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 artificial or prerecorded telephone message without, during or after the message, stating clearly the Defendant’s name and telephone number.

2. 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.

## 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 statutes are occurring in this district.

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1 **INTRADISTRICT VENUE**

2 5. The claims are based on violations that occurred in San Joaquin  
3 County and elsewhere in the State of California.

4 **PARTIES**

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

11 7. Plaintiff, by and through its attorney, Bill Lockyer, Attorney General  
12 of the State of California, is authorized by 15 U.S.C. § 6103 to file actions in federal  
13 district court to enjoin violations and enforce compliance with the Telemarketing Act,  
14 and the regulations issued pursuant to the Telemarketing Act, on behalf of residents of  
15 the State of California and to obtain damages or other compensation on behalf of the  
16 residents of the State of California.

17 8. Plaintiff, by and through its attorney, Bill Lockyer, Attorney General  
18 of the State of California, is authorized by California Business & Professions Code  
19 section 17204 to obtain injunctive relief to halt violations of and enforce compliance with  
20 California Business & Professions Code section 17200. Section 17206 of the California  
21 Business and Professions Code further authorizes Plaintiff to seek civil penalties for  
22 violations of California Business and Professions Code section 17200.

23 9. Defendant L.M.A. Marketing, Inc. is a corporation organized under  
24 the laws of the State of Florida.

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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.

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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 &

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

3 A. Violation of 47 C.F.R. § 64.1200(c)(2) (as amended by *Rules and*  
4 *Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991*, 68  
5 Fed. Reg. 44, 144 (July 25, 2003)), as set forth in paragraphs 10, 11, and 12 of this  
6 complaint, which paragraphs are incorporated herein as though set forth in full.

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  
9 Fed. Reg. 44, 144 (July 25, 2003)), as set forth in paragraphs 13, 14, and 15 of this  
10 complaint, which paragraphs are incorporated herein as though set forth in full.

11 C. Violation of 47 C.F.R. § 64.1200(d)(4)(iv) (as amended by *Rules*  
12 *and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991*,  
13 68 Fed. Reg. 44, 144 (July 25, 2003)), as set forth in paragraphs 16, 17, and 18 of this  
14 complaint, which paragraphs are incorporated herein as though set forth in full.

15 D. Violation of 16 C.F.R. § 310.4(b)(1)(iii), as set forth in paragraphs  
16 19, 20, and 21 of this complaint, which paragraphs are incorporated herein as though set  
17 forth in full.

### 18 **REMEDIES**

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

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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;

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 Dated: January 12, 2004

8 Respectfully submitted,

9 BILL LOCKYER  
10 Attorney General of the State of California

11 HERSCHEL ELKINS  
12 Senior Assistant Attorney General

13 ALBERT NORMAN SHELDEN  
14 Supervising Deputy Attorney General

15 IAN K. SWEEDLER  
16 Deputy Attorney General

17 BETTINA C. REDWAY  
18 Deputy Attorney General

19 **Attorneys for Plaintiff,**  
20 **The People of the State of California**  
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