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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

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15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17

18 FEDERAL TRADE COMMISSION,  
19 Plaintiff,  
20  
21 v.  
22 Phillip A. Flora,  
23 a.k.a. "Phil P.,"  
24 Defendant.  
25

SACV11-00299 AG  
Case No. \_\_\_\_\_

(JEMx)

COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF

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26 Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:  
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**DEFENDANT**

6. Defendant Phillip A. Flora, also known as “Phil P.” (“Flora”), resides in Huntington Beach, California and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

**COMMERCE**

7. At all times material to this Complaint, Defendant Flora has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

**DEFINITIONS**

8. **“Electronic mail message”** (or “email”) means a message sent to a unique electronic mail address. 15 U.S.C. § 7702(6).

9. **“Electronic mail address”** means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered. 15 U.S.C. § 7702(5).

10. **“Commercial electronic mail message”** means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including the content on an Internet website operated for commercial purposes). 15 U.S.C. § 7702(2).

11. **“Initiate,”** when used with respect to a commercial email message, means to originate or transmit such message or to procure the origination or transmission of such message. 15 U.S.C. § 7702(9).

12. **“Procure,”** when used with respect to the initiation of a commercial email message, means intentionally to pay or provide other consideration to, or

1 induce, another person to initiate such a message on one's behalf. 15 U.S.C.  
2 § 7702(12).

3 13. **"Protected Computer"** means a computer which is used in interstate  
4 or foreign commerce or communication, including a computer located outside the  
5 United States that is used in a manner that affects interstate or foreign commerce or  
6 communication of the United States. 15 U.S.C. § 7702(13).

7 14. **"Sender"** means a person who initiates a commercial email message  
8 and whose product, service, or Internet Web site is advertised or promoted by the  
9 message. 15 U.S.C. § 7702(16).

10  
11 **DEFENDANT'S BUSINESS ACTIVITIES**

12 15. Defendant Flora engages in and has engaged in the sending of  
13 unauthorized and unsolicited commercial electronic text messages ("text message  
14 spam") to the mobile telephones and other wireless devices of consumers  
15 throughout the United States. Defendant Flora also engages in and has engaged in  
16 the sending of unsolicited commercial email ("email spam") to the computers of  
17 U.S. consumers. In his email spam, Defendant Flora has advertised his service of  
18 sending text message spam on behalf of third parties.

19 **Background**

20 16. Many mobile telephone and wireless device service providers  
21 operating in the United States (hereinafter "wireless service providers") provide  
22 their subscribers with text messaging services. Text messaging services permit the  
23 transmission of text messages to wireless handsets from other wireless handsets,  
24 electronic mail accounts, and various Internet applications.

25 17. To transmit a text message to wireless handsets, a sender transmits the  
26 message electronically, either directly or indirectly, through a wireless service  
27 provider's text message router, which then transmits the message to the recipient  
28 through the wireless service provider's interstate wireless network.

1 18. Text messaging is used by consumers to stay in touch with business  
2 colleagues and associates, customers, family members, and friends. Text  
3 messaging is also used by numerous employers, schools, police departments, fire  
4 departments, and emergency medical services across the country.

5 **Defendant Flora's Text Message Spam**

6 19. Beginning on or about August 22, 2009 and continuing thereafter,  
7 Defendant Flora transmitted or arranged for the transmission of at least 5 million  
8 unsolicited commercial electronic text messages to the wireless handsets of U.S.  
9 consumers for the primary purpose of promoting products and services, including,  
10 but not limited to, loan modification programs and debt relief services.

11 20. Many of the unsolicited loan modification text messages that  
12 Defendant Flora has sent to U.S. consumers offer to help consumers obtain  
13 mortgage loan modifications and state:

14 **Homeowners, we can lower your mortgage payment**  
15 **by doing a Loan Modification. Late on payments OK.**  
16 **No equity OK. May we please give you a call?**  
17 **loanmod-gov.net.**

18 21. Consumers who read this message and then visited the web address  
19 "loanmod-gov.net" arrived at a website that touted itself as "Official Home Loan  
20 Modification and Audit Assistance Information" beneath a graphic of the U.S. flag.  
21 The site requested that consumers provide information about their mortgages  
22 through an electronic form on the site, and indicated that the operators of the site  
23 would use the information to perform a "Forensic Loan Audit" and that an advisor  
24 would then contact the submitting consumer.

25 22. The term "gov," when used in the suffix, or "top-level" domain part,  
26 of a website address, indicates that the website is operated by a federal, state, or  
27 local governmental entity or agency or a private organization with a formal  
28 association with the U.S. federal government. *See* 41 C.F.R. §§ 102-173.5 to

1 102-173.95 (March 28, 2003). For example, the Federal Trade Commission's web  
2 address is "FTC.gov," the web address for the U.S. Federal Courts is  
3 "USCourts.gov," and the web address for the state of California is "Ca.gov."

4 23. Although the loanmod-gov.net website's domain name included the  
5 term "gov" in its address, and the text of the site stated it provided "Official Home  
6 Loan Modification and Audit Assistance Information" and included a graphic of  
7 the U.S. flag, it was not operated by or affiliated with any governmental entity.

8 24. Many of the unsolicited debt relief services text messages that  
9 Defendant Flora has sent to U.S. consumers state:

10 **If you are struggling to keep up with credit card**  
11 **payments and have more than 10k in debt, we can**  
12 **help. May we give you a call regarding this?**

13 25. Other unsolicited loan modification text messages that Defendant  
14 Flora has sent to U.S. consumers state:

15 **Is your mortgage payment too expensive? Our Loan**  
16 **Modification program can lower your payments**  
17 **immediately. May we please give you a call?**

18  
19 **The Recipients of Defendant Flora's Text Message Spam**

20 26. Many, if not all, of the consumers who received the text message  
21 spam sent by Defendant Flora never agreed to be contacted by Defendant Flora.

22 27. Many of the recipients of Defendant Flora's text message spam have  
23 wireless service plans that require them to pay a fixed fee for each text message  
24 received by their wireless handsets. Accordingly, many such recipients were  
25 required to pay a fee for the receipt of Defendant Flora's text message spam.

26 28. Other recipients of Defendant Flora's text message spam have  
27 wireless service plans that allow them a fixed, limited number of text messages per  
28 month without charge beyond their monthly service charge, with text messages that

1 exceed the monthly allowance billed on a per-message basis. Accordingly, many  
2 such recipients had their monthly allowance of text messages reduced upon receipt  
3 of each of Defendant Flora's text message spam.

4 29. Many recipients of Defendant Flora's text message spam have  
5 experienced annoyance, frustration, and a sense of harassment from receiving the  
6 spam.

7 30. Many recipients' wireless handsets audibly notify the recipient when a  
8 text message is received.

9 31. Many recipients of Defendant Flora's text message spam received that  
10 spam in the late-night or early-morning hours or while at work or school.

11 32. Many recipients of Defendant Flora's text message spam had the  
12 telephone numbers assigned to their wireless handsets registered on the National  
13 Do Not Call Registry maintained by the FTC, and thus had explicitly indicated that  
14 they did not wish to receive unsolicited marketing calls on those handsets.

15 **Defendant Flora Sells the Personal Wireless Telephone Numbers of**  
16 **Consumers Who Respond to His Text Message Spam**

17 33. Typically, wireless service providers allow their subscribers who  
18 receive a text message to send a reply text message to the number which sent the  
19 initial text message.

20 34. Defendant Flora collects and has collected the telephone numbers of  
21 the personal wireless devices of many consumers who respond to his unsolicited  
22 text messages, including many of those consumers who respond negatively to his  
23 text message spam and many of those consumers who request that he stop sending  
24 them text message spam. He then has sold these personal wireless telephone  
25 numbers to third parties.

26 35. Defendant Flora has sold the personal wireless telephone numbers of  
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1 these consumers through online advertisements that tout the consumers'  
2 information as "debt settlement leads" that are "[p]roduced via SMS (text message)  
3 campaign."

4 **Defendant Flora's Acts and Practices Have Caused**  
5 **Substantial Injury That Cannot Be Reasonably Avoided and Is Not**  
6 **Outweighed by Countervailing Benefits to Consumers or to Competition**

7 36. As detailed in Paragraphs 19 through 35, above, consumers have  
8 suffered and continue to suffer substantial injury from Defendant Flora's text  
9 message spam.

10 37. The consumer injury caused by Defendant Flora cannot be reasonably  
11 avoided by consumers. Defendant Flora's text message spam is routinely foisted  
12 upon consumers without their advance knowledge or permission. Many consumers  
13 who have requested that Flora stop sending them text message spam continued to  
14 receive text message spam after making the request.

15 38. Defendant Flora's text message spam does not create countervailing  
16 benefits to consumers or to competition that outweigh the harm caused by his  
17 unlawful activity.

18 **Defendant Flora's Email Spam Campaign**

19 39. Beginning on or about June 1, 2010 and continuing thereafter,  
20 Defendant Flora has sent or caused others to send commercial email messages to  
21 consumers' protected computers in order to market and sell his products and  
22 services.

23 40. Defendant Flora "initiates" a commercial email message when he has  
24 either originated or transmitted a message himself or has procured the origination  
25 or transmission of a message through payments or other consideration or  
26 inducements.

27 41. Defendant Flora is a "sender" with respect to a commercial email  
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1 message when he has initiated a message and it is his products or services that are  
2 being advertised or promoted by such message.

3 42. Using commercial email messages, Defendant Flora has advertised  
4 and promoted his text message services, offering to transmit large numbers of  
5 commercial text messages to consumers on behalf of third parties in exchange for a  
6 fee. Many of the commercial email messages that Defendant Flora sent had a  
7 “Subject” line that stated: “SMS marketing generates more leads and sales . . .”,  
8 and text that stated:

9 **Currently able to send out 200k text messages a day; I**  
10 **designed, own and operate the marketing system.**

11 **All companies on the internet charge about a penny a**  
12 **message, I charge a tiny fraction of that and I do not**  
13 **charge for cell phone data because I maintain a**  
14 **database of 100 million cell phone opt-in uses.**

15 **My campaigns produce AT LEAST 1 lead per 1000**  
16 **messages sent (1/1000), I have seen some campaigns**  
17 **that get 1 lead per 300 messages sent (1/300).**

18 **Prices:**

19 **50k messages: \$200**

20 **100k messages: \$300**

21 **Please call me for more information,**

22 **Phil Flora**

23 **714-308-[REDACTED]**

24 **Philflora1@[REDACTED].**

25  
26 43. Using commercial email messages, Defendant Flora has advertised  
27 and promoted databases of debt leads, loan modification leads, data about  
28 homeowners and their mortgages, and other marketing data.



1 **Count II**

2 **Deceptive Representations**

3 51. In numerous instances, as described in Paragraphs 19-23, Defendant  
4 Flora has represented, directly or indirectly, expressly or by implication that the  
5 website located at the web address “loanmod-gov.net” is a website operated by or  
6 affiliated with a federal, state, or local governmental entity or agency. Such  
7 representations are material to consumers seeking mortgage loan modification  
8 services.

9 52. In truth and in fact the website located at the web address “loanmod-  
10 gov.net” is not a website operated by or affiliated with a federal, state, or local  
11 governmental entity or agency.

12 53. Therefore, Defendant Flora’s representations as set forth in  
13 Paragraph 51 are false and misleading and constitute deceptive acts or practices in  
14 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15  
16 **VIOLATIONS OF THE CAN-SPAM ACT**

17 54. The CAN-SPAM Act became effective on January 1, 2004, and has  
18 since remained in full force and effect.

19 55. Section 5(a)(3) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(3) states:

20 It is unlawful for any person to initiate the transmission  
21 to a protected computer of a commercial electronic mail  
22 message that does not contain a functioning return  
23 electronic mail address or other Internet-based  
24 mechanism, clearly and conspicuously displayed, that –  
25 (i) a recipient may use to submit, in a manner specified in  
26 the message, a reply electronic mail message or other  
27 form of Internet-based communication requesting not to  
28 receive future commercial electronic mail messages from

1 that sender at the electronic mail address where the  
2 message was received; and

3 (ii) remains capable of receiving such messages or  
4 communications for no less than 30 days after the  
5 transmission of the original message.

6 56. Section 5(a)(5)(A) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)  
7 states:

8 It is unlawful for any person to initiate the transmission  
9 of any commercial electronic mail message to a protected  
10 computer unless the message provides:

11 (i) clear and conspicuous identification that the message  
12 is an advertisement or solicitation;

13 (ii) clear and conspicuous notice of the opportunity  
14 under [section 5(a)(3)] to decline to receive further  
15 commercial electronic mail messages from the sender;

16 and

17 (iii) a valid physical postal address of the sender.  
18

19 57. Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706(a), states:

20 [T]his Act shall be enforced by the [FTC] as if the  
21 violation of this Act were an unfair or deceptive act or  
22 practice proscribed under section 18(a)(1)(B) of the [FTC  
23 Act] (15 U.S.C. 57(a)(1)(B)).

24 **Count III**

25 **Failure to Provide Notice of Opt-Out**

26 58. In numerous instances, as described in Paragraphs 39-44, Defendant  
27 Flora has initiated the transmission, to protected computers, of commercial email  
28

1 messages that advertise or promote Defendant Flora's products or services, and do  
2 not include a clear and conspicuous notice of the recipient's opportunity to decline  
3 to receive further commercial electronic mail messages from Defendant Flora at  
4 the recipient's electronic mail address.

5 59. Defendant Flora's acts or practices, as described in Paragraph 58,  
6 violate 15 U.S.C. § 7704(a)(5)(A)(ii), or 15 U.S.C. § 7704(a)(3), or both of those  
7 provisions.

8 **Count IV**

9 **Failure to Include Valid Physical Postal Address**

10 60. In numerous instances, as described in Paragraphs 39-45, Defendant  
11 Flora has initiated the transmission, to protected computers, of commercial email  
12 messages that advertise or promote Defendant Flora's products or services and do  
13 not include the sender's valid physical postal address.

14 61. Defendant Flora's acts or practices, as described in Paragraph 60,  
15 violate 15 U.S.C. § 7704(a)(5)(A)(iii).

16  
17 **CONSUMER INJURY**

18 62. Consumers have suffered and will continue to suffer substantial injury  
19 as a result of Defendant's violations of the FTC Act and the CAN-SPAM Act. In  
20 addition, Defendant Flora has been unjustly enriched as a result of his unlawful  
21 acts or practices. Absent injunctive relief by this Court, Defendant Flora is likely  
22 to continue to injure consumers, reap unjust enrichment, and harm the public  
23 interest.

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

25 63. Sections 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this  
26 Court to grant injunctive and such other relief as the Court may deem appropriate  
27 to halt and redress violations of any provision of law enforced by the FTC. The  
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1 Court, in the exercise of its equitable jurisdiction, may award ancillary relief,  
2 including restitution, the refund of monies paid, and the disgorgement of ill-gotten  
3 monies, to prevent and remedy any violation of any provision of law enforced by  
4 the FTC.

5 64. Section 19 of the FTC Act, 15 U.S.C. § 57b, and the CAN-SPAM Act,  
6 15 U.S.C. § 7706 authorize this Court to grant such relief as the Court finds  
7 necessary to redress injury to consumers resulting from Defendant's violations of  
8 the CAN-SPAM Act, including the refund of money.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act,  
11 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) of the CAN-SPAM Act, 15 U.S.C.  
12 § 7706 and the Court's own equitable powers, requests that the Court:

13 A. Award Plaintiff such preliminary injunctive and ancillary relief as  
14 may be necessary to avert the likelihood of consumer injury during the pendency  
15 of this action and to preserve the possibility of effective final relief, including but  
16 not limited to, temporary and preliminary injunctions, including an order freezing  
17 assets;

18 B. Enter a permanent injunction to prevent future violations of the FTC  
19 Act and the CAN-SPAM Act by Defendant Flora;

20 C. Award such relief as the Court finds necessary to redress injury to  
21 consumers resulting from Defendant's violations of the FTC Act and the  
22 CAN-SPAM Act, including but not limited to, restitution, the refund of monies  
23 paid, and the disgorgement of ill-gotten monies; and

24 D. Award Plaintiff the costs of bringing this action, as well as such other  
25 and additional relief as the Court may determine to be just and proper.

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Respectfully submitted,

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General Counsel

Dated: February 22, 2011



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