

1 DEBRA WONG YANG
United States Attorney
2 GARY PLESSMAN
Assistant United States Attorney
3 Chief, Civil Fraud Section
California State Bar No. 101233
4 Room 7516, Federal Building
300 North Los Angeles Street
5 Los Angeles, California 90012
Telephone: (213) 894-2474
6 Facsimile: (213) 894-2380
Email: gary.plessman@usdoj.gov
7 Attorneys for Plaintiff
UNITED STATES OF AMERICA

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 EXECUTIVE FINANCIAL HOME LOAN
CORP., dba Executive Home Loan, a
16 California corporation,

17 MICHAEL NIKRAVESH, individually
and as an officer of Executive
18 Financial Home Loan Corp., and

19 RON FATTAL, individually and as
an officer of Executive Financial
20 Home Loan Corp.,

21 Defendants.

Case No.

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

22 Plaintiff, the United States of America, acting upon
23 notification and authorization to the Attorney General by the
24 Federal Trade Commission ("FTC" or "Commission"), pursuant to
25 Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"),
26 15 U.S.C. § 56(a)(1), for its complaint alleges:

27 1. Plaintiff brings this action under Sections 5(a),
28 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C.

1 §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of
2 the Telemarketing and Consumer Fraud and Abuse Prevention
3 Act (the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain
4 monetary civil penalties, a permanent injunction, and other
5 equitable relief for Defendants' violation of Section 5(a)
6 of the FTC Act, 15 U.S.C. § 45(a), and the FTC's
7 Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R.
8 Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29,
9 2003).

10 **JURISDICTION AND VENUE**

- 11 2. This Court has subject matter jurisdiction over this action
12 pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and
13 15 U.S.C. §§ 45(m)(1)(A), 53(b) and 56(a). This action
14 arises under 15 U.S.C. § 45(a).
- 15 3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-
16 (c) and 1395(a), and 15 U.S.C. § 53(b).

17 **DEFENDANTS**

- 18 4. Defendant Executive Financial Home Loan Corp. ("Executive")
19 is a California corporation with its principal place of
20 business at 12501 Chandler Blvd., Suite 204, Valley Village,
21 CA 91607. Executive brokers and originates home loans for
22 consumers. Executive also is a telemarketer that initiates
23 outbound telephone calls to induce consumers to obtain home
24 loans through Executive. Executive does business as
25 Executive Home Loan. Executive transacts or has transacted
26 business in this District.
- 27 5. Defendant Michael Nikravesh is an owner and officer of
28 Executive. In connection with the matters alleged herein,

1 he resides or has transacted business in this District. At
2 all times material to this complaint, acting alone or in
3 concert with others, he has formulated, directed,
4 controlled, or participated in the acts and practices of
5 Executive, including the acts and practices set forth in
6 this complaint.

7 6. Defendant Ron Fattal is an owner and officer of Executive.
8 In connection with the matters alleged herein, he resides or
9 has transacted business in this District. At all times
10 material to this complaint, acting alone or in concert with
11 others, he has formulated, directed, controlled, or
12 participated in the acts and practices of Executive,
13 including the acts and practices set forth in this
14 complaint.

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

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

26 8. Among other things, the Amended TSR established a "do-not-
27 call" registry, maintained by the Commission (the "National
28 Do Not Call Registry" or "Registry"), of consumers who do

1 not wish to receive certain types of telemarketing calls.

2 Consumers can register their telephone numbers on the
3 Registry without charge either through a toll-free telephone
4 call or over the Internet at donotcall.gov.

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

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

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

17 12. Since October 17, 2003, sellers and telemarketers have been
18 generally prohibited from calling any telephone number
19 within a given area code unless the seller first has paid
20 the annual fee for access to the telephone numbers within
21 that area code that are included in the National Do Not Call
22 Registry. 16 C.F.R. § 310.8(a) and (b).

23 13. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.
24 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. §
25 57a(d)(3), a violation of the TSR constitutes an unfair or
26 deceptive act or practice in or affecting commerce, in
27 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
28

DEFENDANTS' BUSINESS ACTIVITIES

1
2 14. Defendants are "sellers" or "telemarketers" engaged in
3 "telemarketing," as defined by the Amended TSR, 16 C.F.R.
4 § 310.2.

5 15. Executive is both a seller and telemarketer. As a seller,
6 Executive provides or offers to provide home mortgage
7 services to consumers through telemarketing. As its own
8 telemarketer, Executive initiates outbound telephone calls
9 to consumers in the United States to induce the purchase of
10 home mortgage services.

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

15 17. On or after October 17, 2003, Defendants have called more
16 than one-hundred thousand consumers' telephone numbers that
17 are on the National Do Not Call Registry.

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

23 19. Defendants claim they relied on service providers for their
24 compliance with the do-not-call provisions of the Rule.
25 Specifically, Defendants claim Executive purchased lists of
26 phone numbers ("lead lists") from list brokers, such as
27 title companies. Defendants purportedly relied on
28 representations from these list brokers that the lead lists

1 had been properly scrubbed against the Registry and that all
2 registered numbers had been removed. Regardless of
3 Defendants' belief, they in fact called numbers protected by
4 the Registry. Moreover, although Executive purportedly paid
5 these list brokers, it did not pay the required fees to
6 subscribe to the National Do Not Call Registry.

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

12 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

13 **Count I (Violating the National Do Not Call Registry)**

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

19 **Count II (Failing to Pay National Registry Fees)**

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

28

1 **CONSUMER INJURY**

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

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

8 24. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers
9 this Court to grant injunctive and other ancillary relief
10 to prevent and remedy any violation of any provision of law
11 enforced by the FTC.

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

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, plaintiff requests that this Court, as authorized
26 by Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C.
27 §§ 45(a), 45(m)(1)(A), and 53(b), and pursuant to its own
28 equitable powers:

- 1 A. Enter judgment against Defendants and in favor of plaintiff
2 for each violation alleged in this complaint;
3 B. Award plaintiff monetary civil penalties from each defendant
4 for every violation of the TSR;
5 C. Permanently enjoin Defendants from violating the TSR and the
6 FTC Act; and
7 D. Award plaintiff such other and additional relief as the
8 Court may determine to be just and proper.
9

10 Dated: _____

Respectfully submitted,

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12

13 OF COUNSEL:

FOR THE UNITED STATES OF
AMERICA:

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15 JEFFREY A. KLURFELD
Regional Director
Western Region
16 FEDERAL TRADE COMMISSION

PETER D. KEISLER
Assistant Attorney General
Civil Division
U.S. DEPARTMENT OF JUSTICE

17

18

KERRY O'BRIEN
Attorney
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, California
PHONE: 415-848-5189
21 FAX: 415-848-5142

DEBRA WONG YANG
United States Attorney
Central District of California

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23

Assistant United States Attorney
300 North Los Angeles Street
Los Angeles, California 90012
PHONE:
25 FAX:
26 EMAIL:

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EUGENE M. THIROLF
Director
Office of Consumer Litigation

Daniel K. Crane-Hirsch
Trial Attorney
Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044-0386
PHONE: 202-616-8242
FAX: 202-514-8742
EMAIL: [daniel.crane-
hirsch@usdoj.gov](mailto:daniel.crane-hirsch@usdoj.gov)