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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15
16 v.
17 AMERIQUEST MORTGAGE
COMPANY, a Delaware corporation,
18 Defendant.

CV-

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

19
20 Plaintiff, the United States of America, acting upon notification and
21 authorization to the Attorney General by the Federal Trade Commission ("FTC" or
22 "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission
23 Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

24 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a)
25 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and
26 Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention
27 Act (the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain monetary civil

28 Complaint

1 penalties, a permanent injunction, and other equitable relief for defendant's
2 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's
3 Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R. Part 310, as
4 amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

5 **JURISDICTION AND VENUE**

- 6 2. This Court has subject matter jurisdiction over this action pursuant to 28
7 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A),
8 53(b), 56(a) and 57b. This action arises under 15 U.S.C. § 45(a).
- 9 3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a),
10 and 15 U.S.C. § 53(b).

11 **DEFENDANT**

- 12 4. Defendant Ameriquest Mortgage Company ("Ameriquest") is a Delaware
13 corporation with its principal place of business at 1100 Town and Country
14 Road, Orange, California 92868. Ameriquest is a mortgage lender that
15 initiates outbound telephone calls to induce consumers to refinance their
16 mortgages. Ameriquest transacts or has transacted business in this District.

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

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

- 1 6. Among other things, the Amended TSR established a “do-not-call” registry,
2 maintained by the Commission (the “National Do Not Call Registry” or
3 “Registry”), of consumers who do not wish to receive certain types of
4 telemarketing calls. Consumers can register their telephone numbers on the
5 Registry without charge either through a toll-free telephone call or over the
6 Internet at donotcall.gov.
- 7 7. Consumers who receive telemarketing calls to their registered numbers can
8 complain of Registry violations the same way they registered, through a
9 toll-free telephone call or over the Internet at donotcall.gov, or by otherwise
10 contacting law enforcement authorities.
- 11 8. Since October 17, 2003, sellers and telemarketers have been prohibited from
12 calling numbers on the Registry in violation of the Amended TSR, 16
13 C.F.R. § 310.4(b)(1)(iii)(B).
- 14 9. Since December 31, 1995, sellers and telemarketers have been prohibited
15 from initiating an outbound telephone call to any person when that person
16 previously has stated that he or she does not wish to receive an outbound
17 telephone call made by or on behalf of the seller whose goods or services
18 are being offered. 16 C.F.R. § 310.4(b)(1)(iii)(A).
- 19 10. Since September 2, 2003, sellers, telemarketers, and other permitted
20 organizations have been able to access the Registry over the Internet at
21 telemarketing.donotcall.gov to download the registered numbers.
- 22 11. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and
23 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the
24 TSR constitutes an unfair or deceptive act or practice in or affecting
25 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

1 or on behalf of the seller whose goods or services are being offered, in
2 violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

3 **CONSUMER INJURY**

4 19. Consumers in the United States have suffered and will suffer injury as a
5 result of Defendant's violations of the TSR. Absent injunctive relief by this
6 Court, Defendant is likely to continue to injure consumers and harm the
7 public interest.

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

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

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

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

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff requests that this Court, as authorized by Sections
24 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), and
25 53(b), and pursuant to its own equitable powers:

- 1 1. Enter judgment against Defendant and in favor of Plaintiff for each
2 violation alleged in this Complaint;
- 3 2. Award Plaintiff monetary civil penalties from Defendant for every violation
4 of the TSR;
- 5 3. Permanently enjoin Defendant from violating the TSR and the FTC Act;
- 6 4. Award such relief as the Court finds necessary to redress injury to
7 consumers resulting from Defendant's violations of the Rule, including but
8 not limited to, rescission of contracts, refund of monies paid, and
9 disgorgement of ill-gotten gains;
- 10 5. Order Defendant to pay the costs of this action; and
- 11 6. Award Plaintiff such other and additional relief as the Court may determine
12 to be just and proper.

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1 Dated: _____, 2007

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Respectfully submitted,

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