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14  
15 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
16 **SOUTHERN DIVISION**

17 **UNITED STATES OF AMERICA,**

18 **Plaintiff,**

19 **v.**

20 **METROPOLITAN HOME**  
**MORTGAGE, INC.,**  
21 **a corporation,**  
**also d/b/a WHOLESALE HOME**  
22 **LENDERS,**  
23 **Defendant.**

CV09-05873 JSL (RZx)  
Civil Action No.

24  
25 **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION,**  
**AND OTHER EQUITABLE RELIEF**

26 Plaintiff, the United States of America, acting upon notification and  
27 authorization to the Attorney General by the Federal Trade Commission ("FTC" or  
28 "Commission"), for its Complaint alleges that:

1           1. Plaintiff brings this action under Sections 5(a), 13(b), and 16(a) of the  
2 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 56(a),  
3 and the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§1681 – 1681x, to obtain  
4 monetary civil penalties and injunctive or other relief for Defendant’s violations of  
5 the FTC Act and the FCRA.

6   JURISDICTION AND VENUE

7           2. This Court has subject matter jurisdiction over this matter under 28  
8 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a), 53(b),  
9 56(a), and 1681s.

10          3. Venue in the United States District Court for the Central District of  
11 California is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b)-(c)  
12 and 1395(a).

13   DEFENDANT

14          4. Defendant Metropolitan Home Mortgage, Inc. (“Metropolitan”) is a  
15 for-profit corporation organized, existing, and doing business under the laws of  
16 the State of California. Metropolitan does business as Wholesale Home Lenders  
17 (“Wholesale”), with its principal place of business at 4 Park Plaza, Suite 800,  
18 Irvine, California 92614. At all times relevant to this complaint, Metropolitan has  
19 transacted business in this district.

20   THE FAIR CREDIT REPORTING ACT

21          5. The FCRA was enacted in 1970, became effective on April 25, 1971,  
22 and has been in force since that date.

23          6. Section 621 of the FCRA, 15 U.S.C. § 1681s, authorizes the  
24 Commission to use all of its functions and powers under the FTC Act to enforce  
25 compliance with the FCRA by all persons subject thereto except to the extent that  
26 enforcement specifically is committed to some other governmental agency,  
27

1 irrespective of whether the person is engaged in commerce or meets any other  
2 jurisdictional tests set forth by the FTC Act.

3 7. Section 604 of the FCRA, 15 U.S.C. § 1681b, prohibits consumer  
4 reporting agencies (“CRAs”) from providing consumer reports to third parties  
5 except for certain enumerated “permissible purposes.” Section 604(c) of the  
6 FCRA, 15 U.S.C. § 1681b(c), grants a permissible purpose in connection with the  
7 making of a “firm offer of credit or insurance.” That term, also known as a  
8 “prescreened offer,” is defined in section 603(1) of the FCRA, 15 U.S.C. §  
9 1681a(1), as an offer that will be honored (subject to certain exceptions) if the  
10 consumer, based on information in his or her consumer report, is determined by  
11 the offeror to meet the specific criteria used to select the consumer for the offer.

12 8. Section 604(e) of the FCRA, 15 U.S.C § 1681b(e), allows consumers  
13 to elect to be excluded (“opt out”) from any lists of prescreened consumers  
14 provided by a CRA. Section 604(e)(5) of the FCRA, 15 U.S.C. § 1681b(e)(5),  
15 requires the nationwide CRAs to establish and maintain a joint notification system  
16 for consumers to opt out.

17 9. Section 615(d)(1) of the FCRA, 15 U.S.C. § 1681m(d)(1), imposes  
18 certain disclosure obligations on persons making firm offers of credit or insurance.  
19 Specifically, any written such offer must disclose, clearly and conspicuously, to  
20 the consumer that:

- 21 • Information contained in the consumer’s consumer report was used  
22 in connection with the transaction;
- 23 • The consumer received the offer of credit or insurance because the  
24 consumer satisfied the criteria for credit worthiness or insurability  
25 under which the consumer was selected for the offer;
- 26 • If applicable, the credit or insurance may not be extended if, after the  
27 consumer responds to the offer, the consumer does not meet the  
28 criteria used to select the consumer for the offer or any applicable  
criteria bearing on credit worthiness or insurability, or does not  
furnish any required collateral; and
- The consumer has a right to prohibit the information contained in the  
consumer’s file with any consumer reporting agency from being used

1 in connection with any credit or insurance transaction that is not  
2 initiated by the consumer (i.e., to opt out.).

3 10. Section 615(d)(2)(B) of the FCRA, 15 U.S.C. § 1681m(d)(2)(B),  
4 provides that the disclosures mandated by section 615(d)(1), among other things,  
5 “be presented in such format and in such type size and manner as to be simple and  
6 easy to understand.” This section directs the Commission to establish the format  
7 and type size of such disclosures by rule. The Commission promulgated the  
8 Prescreen Opt-Out Notice Rule (“Prescreen Rule” or “Rule”) pursuant to that  
9 directive, which became effective on August 1, 2005. 16 C.F.R. Part 642.

### 10 THE PRESCREEN RULE

11 11. The Prescreen Rule requires that each written prescreened solicitation  
12 contain both a short and a long notice. Section 642.3(a) of the Rule sets forth the  
13 required content, form, and location of the short notice. It requires that the short  
14 notice appear on the front side of the first page of the principal promotional  
15 document in the solicitation, in a type style that is distinct from the principal type  
16 style used on the same page, and in a type size that is larger than the type size of  
17 the principal text on the same page, but in no event smaller than 12-point type.  
18 Section 642.3(a) also requires that the short notice contain a specific statement  
19 that consumers may opt out of receiving prescreened solicitations, how consumers  
20 can exercise their opt-out right, and where consumers can find the long notice.

21 12. Section 642.3(b) of the Rule sets forth the content, form, and location  
22 of the long notice. Specifically, section 642.3(b)(ii)(C) requires that the long  
23 notice begin with a heading identifying it as the “PRESCREEN & OPT-OUT  
24 NOTICE” and contain all information required by section 615(d) of the FCRA.  
25 Section 642.3(b) also specifies that the type size of the notice be no smaller than  
26 the type size of the principal text on the same page, and in no event smaller than 8-  
27 point type; that the type style of the notice be distinct from the principal type style  
28 used on the same page, such as bolded, italicized, underlined, and/or in a color that

1 contrasts with the other color of the principal text; and that the notice be set apart  
2 from other text on the page, such as by including a blank line above and below the  
3 statement or by indenting both the left and right margins of the text. In addition,  
4 section 642.3(b) prohibits inclusion of any other information with the notice that  
5 interferes with, detracts from, contradicts, or otherwise undermines the purpose of  
6 the notice.

7 COUNT I – Violations of Section 615(d)(2) of the FCRA and  
8 the Prescreen Rule

9 13. Defendant markets mortgage products by making firm offers of credit  
10 through solicitations sent to consumers who have been prescreened.

11 14. From at least January 2006 to January 2008, the prescreened  
12 solicitations sent by Defendant to consumers did not comply with the Rule in one  
13 or more of the following respects:

- 14 a. the solicitations did not contain a short notice on the front page  
15 of the solicitation, in violation of section 642.3(a)(2)(ii) of the  
16 Rule;
- 17 b. the solicitations contained information on the front page of the  
18 solicitation about how a consumer can opt-out from receiving  
19 prescreened solicitations, but that information was not in a type  
20 style distinct from the principal type style used on the same  
21 page, or in a type size that is larger than the type size of the  
22 principal text on the same page in violation of section  
23 642.3(a)(2)(i) of the Rule;
- 24 c. the solicitations contained a long notice that (a) was in a type  
25 size smaller than the type size of the principal text on the same  
26 page, (b) was in a type style that was not distinct from the  
27 principal type style used on the same page, (c) was not set apart  
28 from other text on the page, and/or (d) did not include the

1 prescribed heading, in violation of section 642.3(b)(2)(iii) of  
2 the Rule.

3 15. By and through the acts and practices described in paragraph 14  
4 above, Defendant has violated section 615(d)(2) of the FCRA, 15 U.S.C.  
5 §1681m(d)(2), and section 642.3 of the Prescreen Rule, 16 C.F.R. Part 642.3.

6 16. Pursuant to section 621(a)(1) of the FCRA, 15 U.S.C. §1681s(a)(1),  
7 the acts and practices alleged herein also constitute unfair or deceptive acts or  
8 practices in violation of section 5(a) of the FTC Act, 15 U.S.C. §45(a).

9 THIS COURT'S POWER TO GRANT RELIEF

10 17. Section 621(a)(2)(A) of the FCRA, 15 U.S.C. § 1681s(a)(2)(A),  
11 authorizes the Court to award monetary civil penalties of not more than \$2,500 per  
12 violation of the FCRA in the event of a knowing violation, which constitutes a  
13 pattern or practice of violations. Defendant's violations of the FCRA and the  
14 Prescreen Rule, as alleged in this Complaint, were knowing and constituted a  
15 pattern or practice of violations.

16 18. Each instance in which Defendant has failed to comply with the  
17 FCRA or the Prescreen Rule constitutes a separate violation of the FCRA for the  
18 purposes of assessing monetary civil penalties under section 621 of the FCRA, 15  
19 U.S.C. § 1681s. Plaintiff seeks monetary civil penalties for every separate  
20 violation of the FCRA.

21 19. Under section 621(a) of the FCRA, 15 U.S.C. § 1681(a), and section  
22 13(b) of the FTC Act, 15 U.S.C. §53(b), this Court is authorized to issue a  
23 permanent injunction prohibiting Defendant from violating the FTC Act and the  
24 FCRA.

25 PRAYER FOR RELIEF

26 WHEREFORE, Plaintiff respectfully requests that this Court, pursuant to 15  
27 U.S.C. §§ 45(a), 53(b), 1681s, and 1691c, and pursuant to this Court's own  
28 equitable powers:

- 1 (1) Enter judgment against Defendant and in favor of Plaintiff for each
- 2 law violation alleged in this Complaint;
- 3 (2) Enter a permanent injunction to prevent future violations of the
- 4 FCRA, the Prescreen Rule; and the FTC Act by Defendant;
- 5 (3) Award Plaintiff monetary civil penalties from Defendant for each
- 6 violation of the FCRA or the Prescreen Rule as alleged in this
- 7 Complaint;
- 8 (4) Order Defendant to pay the costs of this action; and
- 9 (5) Award Plaintiff such additional relief as the Court deems just and
- 10 proper.

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