

1 Plaintiff OCM, Inc., a California Corporation, dba Helpufinance.com alleges as follows;

2 **GENERAL ALLEGATIONS**

3 1. Plaintiff is informed and believes that, defendant Mark Klien is a resident of the City of Los
4 Altos, County of Santa Clara, California (hereafter, "Klien").

5 2. Plaintiff OCM, Inc., is a duly organized Corporation validly existing under the laws of
6 California and doing business as, Helpufinance.com with its principal business located in the
7 City of Santa Ana, County of Orange, State of California (hereinafter "OCM").

8 3. The true names or capacities whether individual, corporate or associate or otherwise of
9 Defendant, Does 1-25 inclusive, are unknown to Plaintiff, at this time, who therefore sues
10 said Defendants by such fictitious names. Plaintiffs are informed and believes, and
11 thereupon alleges that Defendants sued herein as Does 1-25, inclusive, are in some manner
12 tortiously responsible for the events and happenings to and referred to in the Compliant, and
13 are liable to Plaintiff as hereinafter alleged. Plaintiff request leave to amend this Complaint
14 when the same are ascertained.

15 4. On September 9, 2004, Klien filed a small claims case against OCM citing violation of a
16 federal act known as, TCPA pursuant to 47 U.S.C.§227 and seeks damages for sending
17 unsolicited fax advertisement in March 2004 and April 2004 in the amount of \$2,500.00.

18 5. Plaintiff OCM seeks by this action to remove the small claims action to Superior Court
19 (limited jurisdiction) pursuant to CCP§ 116.231 wherein, OCM has filed a cross-claim by
20 virtue of this complaint and seeks damages in excess of \$5,000.00, but less then \$10,000.00.

21 6. The venue and jurisdiction of Orange County is appropriate as Plaintiff OCM, is the true
22 defendant and venue and jurisdiction are proper in Orange County as OCM has its principal
23 place of business in Orange County.

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FIRST CAUSE OF ACTION
(Declaratory Relief)

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7. Plaintiff incorporates by reference, as though fully set forth, paragraphs 1 through 6, of this complaint.

8. An actual controversy has arisen and now exists between Plaintiff OCM and defendant Klien concerning their respective rights and duties in that, defendant Klien contends that OCM is a "Facsimile Broadcaster" as defined in 47 C.F.R§227, and has violated the above-referenced federal statute by sending unsolicited facsimile transmissions to defendant Klien and by such conduct Klien is damaged in the amount of \$2,500.00. Whereas, Plaintiff OCM contends that it is not a "Facsimile Broadcaster" within the meaning of 47C.F.R§227; and is not initiator of the facsimile transmission sent and, correct law to be applied to any claims in state court arising, under 47 U.S.C.§ 227 is Business & Professions Code§ 17538.45.

9. Additionally, Plaintiff desires a judicial determination of its rights and duties and a declaration that the state court has no jurisdiction to adjudicate the rights under the federal statutes as the statute provide that exclusive jurisdiction of the enforcement of the TCPA is in federal court. The Federal statute provides for state enforcement pursuant to each respective state's its own state law. California has enacted Business & Professions Code §7538.45 under which violations of the TCPA and 47 U.S.C.§227 are to be adjudicated by the state court. The California statute limits liquidated damages to \$50.00/violation. Plaintiff OCM contends that it did not "initiate" any transmission within the meaning of Business & Professions Code§ 17538.45 and has not violated any provision of Business and Professions Code§17538.45 as it was not the initiator of the facsimile transmission complained of.

10. A judicial determination is necessary and appropriate at this time under the circumstances in order that Plaintiff may ascertain its rights and duties when purchasing mortgage leads from a third party in conducting its business.

Wherefore, Plaintiff prays for judgment is set forth in the prayer herein below.

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SECOND CAUSE OF ACTION
(Violation of Business and Professions Code§ 17200)

- 11. Plaintiff incorporates by reference, as though fully set forth, paragraphs 1 through 10, of this complaint.
- 12. California Business and Professions Code§17200 prohibits any unlawful, unfair and fraudulent business act or practice.
- 13. Plaintiff is informed and believes and alleges that Defendant Klien is engaged in the business practice of filing frivolous lawsuits against defendants who did not “Initiate” a facsimile transmission within meaning of Business & Professions Code§ 71538.45, and, has made it a business practice of filing suits under the federal law in state court in an attempt to make a profit.
- 14. Additionally, Defendant Klien waived his rights by providing pertinent personal information to a third party so as to allow the third party to sell the mortgage lead to Plaintiff herein.
- 15. Plaintiff is informed and believes and thereon alleges that, the sole and only business purpose for Klien in filing this case and other lawsuit is to extort money from mortgage lenders for profit and such conduct is immoral, unethical, oppressive, and unscrupulous and in violation of Business and Professions Code§17200.

Wherefore, Plaintiff prays for judgment as set forth in the prayer.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows;

FIRST CAUSE OF ACTION

- 1. For a declaration that,
 - (a) The applicable state law under which the TCPA is enforceable by state courts is Business & Professions Code§ 17538.45 and not 47 U.S.C.§ 227.
 - (b) OCM, Inc., is not an “Initiator” of a transmission within the meaning of Business & Professions Code§ 17538.45.
 - (c) OCM, Inc., has not violated any provision of Business and Professions Code§17538.45;

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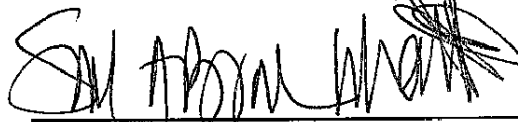
- 1 2. For damages in a sum greater than \$5,000.00 but less than \$10,000.00 to be determined
- 2 according to proof at trial;
- 3 3. For costs of suit, incurred herein; and
- 4 4. For such other and further relief as the court may deem proper.

SECOND CAUSE OF ACTION
(Violation of Business and Professions Code§17200)

- 5 1. For judgment declaring Defendant Klien is engaged in an unfair business practice in
- 6 violation of Business and Professions Code§ 17200 and damages in an amount greater than
- 7 \$5,000.00 but less than \$10,000.00.
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- 9 2. For Costs of suits incurred; and
- 10 3. For such other and further relief as the court may deem proper.

11 Dated: January 14, 2005

LAW OFFICE OF
SUNIL A. BRAHMBHATT, PLC.



Sunil A. Brahmhatt, Esq.
Attorney for Plaintiff OCM, Inc.

16 04-402 ca/complaint