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8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 **THE PEOPLE OF THE STATE OF CALIFORNIA,**

12 **Plaintiff,**

13 **v.**

14 **LOBEL FINANCIAL CORPORATION, A**
California Corporation, GARY DEAN LOBEL, an
15 **Individual, HARVEY LOBEL, an Individual,**
16 **MURRAY ALAN LOBEL, an Individual, and**
DAVID LOBEL, an Individual,

17 **Defendants.**

CASE NO.:

COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES AND OTHER
EQUITABLE RELIEF

18
19 Plaintiff the People of the State of California (“People” or “Plaintiff”), by and through Edmund
20 G. Brown Jr., Attorney General of the State of California, is informed and believes and thereupon
21 alleges as follows:

22 **VENUE AND JURISDICTION**

23
24 1. Defendants at all times mentioned herein have advertised and transacted business in the
25 County of San Diego and elsewhere within the State of California. The violations of law described
26 herein have been and are now being committed in the County of San Diego and elsewhere in the
27 State of California. Unless enjoined and restrained by an order of the Court, defendants will
28 continue to engage in the unlawful acts and conduct set forth in this complaint.

1 PARTIES

2 2. At all relevant times, defendant LOBEL FINANCIAL CORPORATION (“Lobel”), was
3 and is a California Corporation doing business in California, including in San Diego County.

4 3. At all relevant times, defendant GARY DEAN LOBEL, a resident of California, was and
5 is a principal of Lobel and as such operates, controls, manages, supervises, and directs the operations
6 and activities of Lobel.

7 4. At all relevant times, defendant HARVEY LOBEL, a resident of California, was and is
8 a principal of Lobel and as such operates, controls, manages, supervises, and directs the operations
9 and activities of Lobel.

10 5. At all relevant times, defendant DAVID LOBEL, a resident of California, was and is a
11 principal of Lobel and as such operates, controls, manages, supervises, and directs the operations
12 and activities of Lobel.

13 6. At all relevant times, defendant MURRAY ALAN LOBEL, a resident of California, was
14 and is a principal of Lobel and as such operates, controls, manages, supervises, and directs the
15 operations and activities of Lobel.

16 7. Whenever reference is made in this Complaint to any act of defendants, that allegation
17 shall mean that each defendant acted individually and jointly with the other defendants.

18 8. Whenever reference is made in this complaint to any act or transaction of any corporation,
19 partnership, business or other organization, that allegation shall be deemed to mean that the
20 corporation, partnership, business or other organization did or authorized the acts alleged in this
21 complaint through its principals, officers, directors, employees, members, agents and representatives
22 while they were acting within the actual or ostensible scope of their authority.

23 9. Defendants have engaged in a conspiracy, common enterprise, and common course of
24 conduct the purpose of which was to commit acts and practices of unfair competition as alleged in
25 this Complaint.

26 10. Defendants each knew or realized that others, including the other defendants, were
27 engaging in or planned to engage in the violations of law alleged in this Complaint. Knowing or
28 realizing that others, including the other defendants, were engaging in such unlawful conduct, each

1 defendant nevertheless facilitated and continued to facilitate the commission of those unlawful acts.
2 Each defendant intended to encourage and facilitate the commission of the unlawful acts, and did
3 encourage, facilitate, aid, promote or instigate the commission of unlawful acts, and thereby, aided
4 and abetted others, including the other defendants, in unlawful conduct. The unlawful acts alleged
5 in this Complaint were those acts defendants intended to and did facilitate or were the natural and
6 reasonable consequences of the acts defendants intended to and did facilitate.

7 11. All the defendants described in paragraphs 1 through 10 above shall collectively hereafter
8 be referred to as “Defendants” or “Lobel.”

9 **DEFENDANTS’ BUSINESS PRACTICES**

10 12. Lobel is engaged in the business of providing high interest rate automobile financing to
11 consumers with poor credit. The business performs its own debt collection efforts when consumers
12 fail to make the payments required under the contracts. Lobel’s collection practices have
13 consistently violated the Fair Debt Collection Practices Act as set forth in California Civil Code
14 section 1788, et seq. In pursuing its collection efforts, Lobel has also engaged in, solicited,
15 authorized, and/or permitted the use of unlawful, unfair, and deceptive practices known as
16 “pretexting” or “social engineering” to obtain the personal and confidential telecommunications
17 records of consumers without their consent.

18 **FIRST CAUSE OF ACTION**

19 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

20 **(UNFAIR COMPETITION)**

21 13. The People incorporate by reference paragraphs 1 through 12 of this Complaint as though
22 they were set forth fully in this cause of action.

23 14. Beginning at an exact date unknown to plaintiff and continuing to the present, Defendants
24 have engaged in and continue to engage in unfair competition as defined in Business and Professions
25 Code section 17200. Defendants’ acts of unfair competition include, but are not limited to, the
26 following:

- 27 a. Defendants, in the course of debt collection activities, have placed calls without
28 disclosure of the caller’s identity in violation of Civil Code section 1788.11(b).

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- b. Defendants, in the course of debt collection activities, have caused a telephone to ring repeatedly or continuously to annoy the person called in violation of Civil Code section 1788.11(d).
- c. Defendants, in the course of debt collection activities, have communicated, by telephone or in person, with such frequency as to be unreasonable and to constitute harassment in violation of Civil Code section 1788.11(e).
- d. Defendants, in the course of debt collection activities, have communicated with debtors’ employers in violation of Civil Code section 1788.12(a).
- e. Defendants, in the course of debt collection activities, have communicated with members of debtors’ families in violation of Civil Code section 1788.12(b).
- f. Defendants, in the course of debt collection activities, have communicated with debtors in a name other than that of the debt collector or the person on whose behalf the debt collector is acting in violation of Civil Code section 1788.13(a).
- g. Defendants, in the course of debt collection activities, have represented government affiliations, connections or ties in violation of Civil Code section 1788.13(d).
- h. Defendants, in the course of debt collection activities, have falsely represented the true nature of the business or services being rendered by the debt collector in violation of Civil Code section 1788.13(i).
- i. Defendants deceptively obtained telecommunications consumer account information by various means, sometimes termed “pretexting” and/or “social engineering,” which includes misrepresenting themselves as the consumer, or an agent of the consumer, in calls to the consumer’s telecommunications carrier’s customer service representatives or on the telecommunications carrier’s website. Defendants thus obtained the consumer’s private and confidential information without the consent or authorization of the consumer.
- j. Defendants deceptively obtained telecommunications consumer account information by various means, sometimes termed “pretexting” and/or “social engineering,” which includes misrepresenting themselves to consumers as an entity unrelated to Lobel,

1 and providing consumers with calling cards for the consumer's use which allowed
2 Defendants to monitor consumers' telecommunications calling information without
3 the knowledge of the consumers. Defendants thus obtained consumers' private and
4 confidential information without the consent or authorization of the consumer.

5 k. Defendants, by means of false pretenses, induced telecommunications carriers to
6 provide confidential information regarding the consumers to Defendants, in violation
7 of California Penal Code section 538.5.

8 l. Defendants, knowingly accessed and without permission used data, computers,
9 computer systems or computer networks in order to devise or execute a scheme to
10 deceive telecommunications companies to provide Defendants with confidential
11 personal information about the company's customers and/or to wrongfully obtain
12 data regarding customers, in violation of Penal Code section 502(c)(1).

13 m. Defendants, knowingly accessed and without permission took, copied, or made use
14 of data from a computer, a computer system, or computer network and/or took or
15 copied supporting documentation, in order to obtain confidential personal
16 information about consumers, in violation of California Penal Code section
17 502(c)(2).

18 n. Consumers have an expectation of privacy in their telephone records and other
19 personal information. This expectation of privacy is guaranteed by Article I, Section
20 I of the California Constitution, as well as by Section 2891 of the California Public
21 Utility Code and the federal Telecommunications Act of 1996 (42 U.S.C. Section
22 222.), which prohibit telecommunications carriers from providing the telephone call
23 records of a consumer without the consumer's consent. Defendants violated the right
24 to privacy of consumers by obtaining confidential telephone records and other
25 personal information about them without their knowledge or consent.

26 o. Defendants purchased, offered to purchase, or conspired to purchase telephone
27 calling pattern records of consumers without their consent and/or through deceit,
28 procured and attempted to procure or obtain the telephone calling pattern records of

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consumers.

p. Defendants willfully obtained personal identifying information about consumers and used that information in violation of California Penal Code section 530.5.

15. Unless enjoined and restrained by order of the Court, defendants will continue to engage in such violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

1. Pursuant to Business and Professions Code section 17203, that all Defendants, their successors, agents, representatives, employees, and all persons who act in concert with them be permanently enjoined from committing any acts of unfair competition, including the violations alleged in the First Cause of Action.

2. Pursuant to Business and Professions Code section 17206, that Defendants, and each of them, be ordered to pay a civil penalty in the amount of \$2,500 for each violation of Business and Professions Code section 17200 by Defendants, according to proof.

3. For such other and further relief as the Court may deem just and proper.

Dated: February ____, 2009

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