

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	CASE NO. 1:09CV02712
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
vs.)	
)	STIPULATED FINAL JUDGMENT
THE DEBT ADVOCACY CENTER,)	AND ORDER FOR PERMANENT
LLC, et al.,)	INJUNCTION AND SETTLEMENT
)	OF CLAIMS AS TO DEFENDANT
Defendants.)	KEVIN MCCORMICK
)	

Plaintiff Federal Trade Commission (FTC or Commission) commenced this civil action on November 19, 2009, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), to obtain temporary, preliminary and permanent injunctive and other equitable relief for Defendants' alleged violations of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the marketing and sale of mortgage loan modification and foreclosure relief services. The FTC filed an Amended Complaint on May 17, 2010 adding Bradford R. Geisen, Maurice Jackson, Patrick Butler and Credit Services Alliance, Inc., as additional defendants and adding counts relating to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.* (Telemarketing Act). The FTC and Defendant Kevin McCormick hereby stipulate to this Final Judgment and Order for Permanent Injunction and Settlement of Claims ("Order").

FINDINGS

By stipulation of the parties and being advised of the premises, the Court finds:

1. This is an action instituted by the FTC under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Amended Complaint seeks both permanent injunctive relief and consumer redress for Defendant Kevin McCormick's alleged deceptive acts or practices in

connection with the marketing and sale of mortgage loan modification and foreclosure relief services.

2. The FTC has the authority under Section 13(b) of the FTC Act to seek the relief it has requested, and the Amended Complaint states a claim upon which relief can be granted against Defendant Kevin McCormick.

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendant Kevin McCormick. Venue in the Northern District of Ohio is proper.

4. The activities of Defendant Kevin McCormick, as alleged in the Amended Complaint, are “in or affecting commerce,” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. The parties stipulate and agree to entry of this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Amended Complaint to the date of entry of this Order. This settlement does not settle and resolve any matters not alleged in the Amended Complaint. Defendant Kevin McCormick does not admit any of the allegations set forth in the Amended Complaint, other than the jurisdictional facts, merely by stipulating and agreeing to the entry of this Order.

6. Defendant Kevin McCormick waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant Kevin McCormick also waives any claim that he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorneys’ fees.

7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

8. Defendant Kevin McCormick waives any claim that he may hold against the Temporary Receiver, his employees, representatives, or agents.

9. Entry of this Order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. **“Assisting others”** includes, but is not limited to, providing any of the following goods or services to another person:

- A. performing customer service functions, including but not limited to, receiving or responding to consumer complaints;
- B. formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including but not limited to, any telephone sales script, direct mail solicitation, or the design, text, or use of images of any Internet website, email, or other electronic communication;
- C. formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including but not limited to, web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;
- D. providing names of, or assisting in the generation of, potential customers;
- E. performing marketing, billing, or payment services of any kind;
- F. acting or serving as an owner, officer, director, manager, or principal of any entity.

2. **“Competent and reliable evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been

conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. **“Consumer”** means any natural person.

4. **“Customer”** means any person who has paid, or may be required to pay, for products, services, plans, or programs offered for sale or sold by any other person.

5. **“Credit”** means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

6. **“Debt relief product or service”** means any product, service, plan, or program represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt or obligation, including but not limited to a tax debt or obligation, between a person and one or more unsecured creditors or debt collectors, including but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

7. **“Defendants”** means all of the Defendants, individually, collectively, or in any combination. **“DAC Defendants”** means The Debt Advocacy Center, LLC; Edward J.

Davidson, individually and as Chief Executive Officer of The Debt Advocacy Center, LLC and as an owner of Smith, Gromann & Davidson, P.A.; and Smith, Gromann & Davidson, P.A.

“Non-Stipulating Defendants” means The Debt Advocacy Center, LLC; Smith, Gromann & Davidson, P.A.; CreditLawGroup, formerly known as Smith & Gromann, and doing business as Smith & Gromann, P.A.; Credit Services Alliance, Inc.; Edward J. Davidson, individually and as Chief Executive Officer of The Debt Advocacy Center, LLC and as an owner of Smith, Gromann & Davidson, P.A.; John W. Smith, individually and as an owner of Smith, Gromann & Davidson, P.A.; Glenn E. Gromann, individually and as an owner of Smith, Gromann & Davidson, P.A.; Bradford R. Geisen, individually and as the owner and an officer of Credit

Services Alliance, Inc.; Maurice Jackson, individually and as an officer of Credit Services Alliance, Inc.; and Patrick Butler.

8. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, electronic email, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate “document” within the meaning of the term.

9. **“Federal homeowner relief or financial stability program”** means any program (including its sponsoring agencies, telephone numbers, and Internet websites) operated or endorsed by the United States government to provide relief to homeowners or stabilize the economy, including but not limited to:

- A. the Making Home Affordable Program;
- B. the Financial Stability Plan;
- C. the Troubled Asset Relief Program and any other program sponsored or operated by the United States Department of the Treasury;
- D. the HOPE for Homeowners program, any program operated or created pursuant to the Helping Families Save Their Homes Act, and any other program sponsored or operated by the Federal Housing Administration; or
- E. any program sponsored or operated by the United States Department of Housing and Urban Development (“HUD”), the HOPE NOW Alliance, the Homeownership Preservation Foundation, or any other HUD-approved housing counseling agency.

10. **“Financial related product or service”** means any product, service, plan, or program represented, expressly or by implication, to:

- A. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, credit, debit, or stored value cards;
- B. improve, or arrange to improve, any consumer’s credit record, credit history, or credit rating;
- C. provide advice or assistance to any consumer with regard to any activity or service the purpose of which is to improve a consumer’s credit record, credit history, or credit rating;
- D. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, a loan or other extension of credit;
- E. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving a debt relief product or service; or
- F. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving any service represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt or obligation, including but not limited to a tax debt or obligation, between a consumer and one or more secured creditors, servicers, or debt collectors.

11. **“Material fact”** means any fact that is likely to affect a person’s choice of, or conduct regarding, goods or services.

12. **“Mortgage assistance relief product or service”** means any product, service, plan, or program, offered or provided to the consumer in exchange for consideration, that is

represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

- A. stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;
- B. negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
- C. obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
- D. negotiating, obtaining, or arranging any extension of the period of time within which the consumer may (i) cure his or her default on a dwelling loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise any right to reinstate a dwelling loan or redeem a dwelling;
- E. obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or
- F. negotiating, obtaining, or arranging (i) a short sale of a dwelling, (ii) a deed-in-lieu of foreclosure, (iii) or any other disposition of a dwelling loan other than a sale to a third party that is not the dwelling loan holder.

The foregoing shall include any manner of claimed assistance, including but not limited to, auditing or examining a consumer's mortgage or home loan application.

13. “Person” means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.

14. “Servicer” means any beneficiary, mortgagee, trustee, loan servicer, loan holder, or other entity that performs loan or credit account administration or processing services and/or its authorized agents.

I.

ORDER

BAN ON MORTGAGE ASSISTANCE RELIEF PRODUCT AND SERVICES

IT IS THEREFORE ORDERED that Defendant Kevin McCormick, whether acting directly or through any person, is permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any mortgage assistance relief product or service; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any mortgage assistance relief product or service.

II.

**PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL
RELATED PRODUCTS OR SERVICES**

IT IS FURTHER ORDERED that Defendant Kevin McCormick and his agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion,

offering for sale or sale of any financial related good or service, are hereby permanently restrained and enjoined from:

- A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:
 1. The terms or rates that are available for any loan or other extension of credit, including but not limited to:
 - a. closing costs or other fees;
 - b. the payment schedule, the monthly payment amount(s), or other payment terms, or whether there is a balloon payment; interest rate(s), annual percentage rate(s), or finance charge(s); the loan amount, the amount of credit, the draw amount, or outstanding balance; the loan term, the draw period, or maturity; or any other term of credit;
 - c. the savings associated with the credit;
 - d. the amount of cash to be disbursed to the borrower out of the proceeds, or the amount of cash to be disbursed on behalf of the borrower to any third parties;
 - e. whether the payment of the minimum amount specified each month covers both interest and principal, and whether the credit has or can result in negative amortization;
 - f. that the credit does not have a prepayment penalty or that no prepayment penalty and/or other fees or costs will be incurred if the consumer subsequently refinances; and

- g. that the interest rate(s) or annual percentage rate(s) are fixed rather than adjustable or adjustable rather than fixed;
 - 2. Any person's ability to improve or otherwise affect a consumer's credit record, credit history, or credit rating or ability to obtain credit;
 - 3. That any person can improve any consumer's credit record, credit history, or credit rating by permanently removing negative information from the consumer's credit record, credit history, or credit rating, even where such information is accurate and not obsolete;
 - 4. Any aspect of any debt relief product or service, including but not limited to, the amount of savings a consumer will receive from purchasing, using, or enrolling in such debt relief product or service; the amount of time before which a consumer will receive settlement of the consumer's debts; or the reduction or cessation of collection calls;
 - 5. That a consumer will receive legal representation;
 - 6. That any person providing a testimonial has purchased, received, or used the product, service, plan or program; or
 - 7. That the experience represented in a testimonial of the product, service, plan or program represents the person's actual experience resulting from the use of the product, service, plan or program under the circumstances depicted in the advertisement;
- B. Advertising or assisting others in advertising credit terms other than those terms that actually are or will be arranged or offered by a creditor or lender.

III.

**PROHIBITED MISREPRESENTATIONS RELATING TO
ANY PRODUCTS OR SERVICES**

IT IS FURTHER ORDERED that Defendant Kevin McCormick and his agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any product, service, plan, or program are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- B. That any person is affiliated with, endorsed or approved by, or otherwise connected to any other person; government entity; any federal homeowner relief or financial stability program; public, non-profit, or other non-commercial program; or any other program;
- C. The total costs to purchase, receive, or use, or the quantity of, the product, service, plan, or program;
- D. Any material restriction, limitation, or condition on purchasing, receiving, or using the product, service, plan, or program;

- E. That any person has implemented reasonable and appropriate measures to protect consumers' non-public personal information against unauthorized access; or
- F. Any material aspect of the performance, efficacy, nature, or characteristics of the product, service, plan, or program.

IV.

SUBSTANTIATION FOR BENEFIT, PERFORMANCE, AND EFFICACY CLAIMS

IT IS FURTHER ORDERED that Defendant Kevin McCormick and his agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any financial related product or service are hereby permanently restrained and enjoined from making any representation or assisting others in making any representation, expressly or by implication, about the benefits, performance, or efficacy of any financial related product or service, unless at the time such representation is made, Defendant Kevin McCormick possesses and relies upon competent and reliable evidence that substantiates that the representation is true.

V.

PROHIBITION ON COLLECTING ACCOUNTS

IT IS FURTHER ORDERED that Defendant Kevin McCormick and his successors, assigns, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any

corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from attempting to collect, collecting, selling, or assigning, or otherwise transferring any right to collect payment for any mortgage assistance relief product or service from any consumer who purchased or agreed to purchase a mortgage assistance relief product or service from Defendant Kevin McCormick or any other Defendant prior to the entry of this Order.

VI.

ORDER PROVISION REGARDING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Kevin McCormick and his successors, assigns, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account) of any person that Defendant Kevin McCormick or any Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promotion, offering for sale or sale of any mortgage assistance relief product or service, debt relief product or service, or financial related product or service, and
- B. Failing to dispose of such customer information in all forms in his possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information,

such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VII.

EQUITABLE MONETARY JUDGMENT

IT IS FURTHER ORDERED THAT judgment is hereby entered against Defendant Kevin McCormick in the amount of Seven Hundred Seventeen Thousand Dollars (\$717,000.00), *provided, however,* that full payment of the foregoing amount shall be suspended upon the satisfaction of the obligations set forth in subparagraph A of this Section, and subject to the conditions set forth in subparagraphs B, C, D, and E of this Section;

- A. Defendant Kevin McCormick, as a beneficiary of a certain trust known as the Jean C. Seng Trust, shall transfer or caused to be transferred any and all disbursements to him as a beneficiary of the foregoing trust to the Temporary Receiver, Mark Dottore, within 5 (five) days of his receipt of any disbursement from said trust. Notwithstanding the foregoing sentence, Defendant McCormick shall be entitled to retain the first Seven Thousand Dollars (\$7,000.00) of the aggregate amount of disbursements made to him from the foregoing trust. This obligation commences upon the date of the execution of this Order by Defendant Kevin McCormick.
- B. Temporary Receiver Dottore shall hold such funds for no other purpose than payment to the Federal Trade Commission after entry of this Order or compliance

with an Order of this Court. Within five (5) days after receiving notice of the entry of such Order(s), Temporary Receiver Dottore shall wire transfer the funds to the Federal Trade Commission, in accordance with instructions provided by a representative of the Commission, or handle the funds as required by Court Order.

- C. Any funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress funds. If direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief, including but not limited to consumer information remedies, as the FTC determines to be reasonably related to the practices alleged in the Amended Complaint. Any funds not used for such equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement. Defendant Kevin McCormick shall have no right to challenge the FTC's choice of remedies or the manner of distribution.
- D. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial disclosure statements and supporting documents provided to the Commission by Defendant Kevin McCormick on or about November 30, 2009 and May 5, 2011, as supplemented by the asset deposition of Defendant McCormick conducted on or about October 26, 2010.
- E. If the Court finds, upon motion by the Commission, that the Defendant Kevin McCormick has failed to disclose any material asset or materially misstated the value of any asset in the Financial Information described above, then this Order

shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of monetary relief in the amount of Seven Hundred Seventeen Thousand Dollars (\$717,000.00), less the sum of any amounts paid to the Commission pursuant to subparagraph A of this Section, and any other payments made by the DAC Defendants. *Provided, however*, that in all other respects this Order shall remain in full force and effect, unless otherwise ordered by the Court.

- F. Upon any reinstatement of the monetary judgment, the Court shall make an express determination that the monetary judgment shall be immediately due and payable. The Commission shall be entitled to interest on the judgment, computed from the date of entry of this Order, at the rate prescribed by 28 U.S.C. § 1961, as amended, on any outstanding amounts not paid. The Commission shall be permitted to execute on the judgment immediately after the suspension is lifted and engage in discovery in aid of execution. In the event of Kevin McCormick's default on any obligation to make payment under this Order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment, and shall immediately become due and payable. In the event such default continues for ten (10) calendar days beyond the date the payment is due, the entire amount of the judgment, less any amounts previously paid pursuant to this Order, together with interest, shall immediately become due and payable.
- G. Defendant Kevin McCormick relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant Kevin McCormick shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

H. Defendant Kevin McCormick agrees that the facts as alleged in the Amended Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case. Defendant Kevin McCormick further stipulates and agree that the facts alleged in the Amended Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order shall have collateral estoppel effect for such purposes.

VIII.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant Kevin McCormick shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant Kevin McCormick shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or occurrences that are the subject of the Complaint, without the service of a subpoena.

IT IS FURTHER ORDERED that Defendant Kevin McCormick shall secure and retain any documents and records relating to this litigation that are in his possession, custody or control until the conclusion of this litigation as it proceeds against any or all of the Non-Stipulating

Defendants to this Order. During the pendency of this litigation against any or all of the Non-Stipulating Defendants, Defendant Kevin McCormick shall make available or produce within a reasonable time frame any documents or records relating to this litigation that are in his possession, custody or control, without the service of a subpoena. Upon the conclusion of this litigation, Defendant Kevin McCormick shall properly dispose of all documents and records relating to this litigation that are in his possession, custody or control as required by the Section titled "Order Provision Regarding Customer Information."

IX.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze against Defendant Kevin McCormick's assets pursuant to the Stipulated Preliminary Injunction entered on January 21, 2010, shall be lifted upon entry of the Stipulated Final Judgment and Order.

X.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendant Kevin McCormick obtain acknowledgments of receipt of this Order:

A. Defendant Kevin McCormick within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For three (3) years after entry of this Order, Defendant Kevin McCormick for any business that he, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, must deliver a copy of this Order to (a) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct specified in Sections I, II, III and IV; and (3) any business entity resulting in any change

in structure as set forth in the Section titled Compliance Reporting (XI). Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant Kevin McCormick delivered a copy of this Order, he must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

XI.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendant Kevin McCormick make timely submissions to the Commission:

A. One year after entry of this Order, Defendant Kevin McCormick must submit a compliance report, sworn under penalty of perjury, which:

1. (a) identifies all telephone numbers and all email, Internet, physical, and postal addresses, including all residences of Defendant McCormick; (b) identifies all titles and roles in all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describes in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.
2. (a) designates at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Defendant McCormick; (b) identifies all of that Defendant's businesses by all of their names,

telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describes in detail whether and how Defendant McCormick is in compliance with each Section of this Order; and (e) provides a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

B. For 3 years following entry of this Order, Defendant McCormick must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Individual Defendant McCormick must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.
2. Defendant McCormick must report any change in: (a) any designated point of contact, or (b) the structure of any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant Kevin McCormick must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against him within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 18 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington D.C. 20580
RE: FTC v. Kevin McCormick, Matter No. X100008

XII.

RECORDKEEPING

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Defendant Kevin McCormick for any business in which he, individually or collectively with any other Defendant, is a majority owner or directly or indirectly controls, is hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Customer files showing the names, addresses, phone numbers, dollar amounts paid, and the quantity and description of goods or services purchased;
- D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including, all submissions to the Commission; and
- F. A copy of each advertisement or other marketing material.

XIII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant Kevin McCormick's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, Defendant Kevin McCormick must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for deposition; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45 and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with Defendant Kevin McCormick. Defendant Kevin McCormick must permit

representatives of the Commission to interview any employee or other person affiliated with him who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendant Kevin McCormick or any individual or entity affiliated with him, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

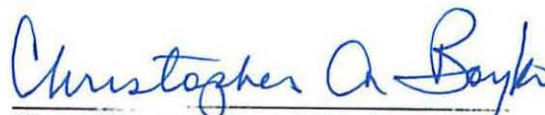
XIV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED.

DATED this 1st day of MAY, 2011²



HON. CHRISTOPHER A. BOYKO
United States District Judge

STIPULATED AND AGREED TO:

FOR PLAINTIFF
FEDERAL TRADE COMMISSION:

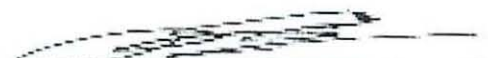
WILLARD K. TOM
General Counsel
Federal Trade Commission

JON MILLER STEIGER
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FOR DEFENDANT KEVIN
McCORMICK:


Kevin McCormick, individually

Date: November 9, 2011