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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

21 DAMIAN KUTZNER, individually and  
22 as an officer of BROOKSTONE LAW  
23 P.C. (California), BROOKSTONE  
24 LAW P.C. (Nevada), ADVANTIS LAW  
25 P.C., and ADVANTIS LAW GROUP  
26 P.C.; VITO TORCHIA, JR., individually  
27 and as an officer of BROOKSTONE  
28 LAW P.C. (California) and  
BROOKSTONE LAW P.C. (Nevada);  
JONATHAN TARKOWSKI,  
individually and as an officer of  
BROOKSTONE LAW P.C. (California)  
and BROOKSTONE LAW P.C.  
(Nevada); R. GEOFFREY  
BRODERICK, individually and as an  
officer of ADVANTIS LAW P.C. and  
ADVANTIS LAW GROUP P.C.;  
CHARLES T. MARSHALL,  
individually and as an officer of  
ADVANTIS LAW P.C. and  
ADVANTIS LAW GROUP P.C.;  
BROOKSTONE LAW P.C., d/b/a  
BROOKSTONE LAW GROUP, a  
California professional corporation;  
BROOKSTONE LAW P.C., d/b/a  
BROOKSTONE LAW GROUP, a

Case No. SACV16-00999 BRO (AFMx)

**PLAINTIFF'S MEMORANDUM IN  
SUPPORT OF EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER WITH  
ASSET FREEZE, APPOINTMENT  
OF TEMPORARY RECEIVER,  
LIMITED EXPEDITED  
DISCOVERY, AND OTHER  
EQUITABLE RELIEF, AND  
ORDER TO SHOW CAUSE WHY  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE**

**[Lodged Under Seal]**

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Nevada professional corporation;  
ADVANTIS LAW P.C., a California  
professional corporation; and  
ADVANTIS LAW GROUP P.C., a  
California professional corporation,  
  
Defendants.

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## INTRODUCTION

Damian Kutzner, a recidivist scofflaw,<sup>1</sup> has teamed with unethical lawyers to market dubious “mass joinder” lawsuits against mortgage lenders. These activities defrauded consumers out of thousands of dollars in upfront and recurring monthly fees in violation of the Federal Trade Commission (“FTC”) Act. The attorneys include: (1) Vito Torchia, whose bar license is indefinitely suspended because of his involvement in this scheme; (2) Geoffrey Broderick, a current owner of the enterprise who last year settled allegations of running a nearly identical fraud in Florida; (3) Charles Marshall, a co-owner who the California Bar has repeatedly sanctioned for taking upfront fees for mortgage relief and then providing no services; and (4) Jonathan Tarkowski, who is a 2014 bar admittee and the current attorney of record in defendants’ dubious lawsuits, purporting to solely represent hundreds of plaintiffs. Defendants have operated this scheme through

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<sup>1</sup> Kutzner is already subject to two injunctive orders signed by this Court for FTC violations. *FTC v. GM Funding, Inc.*, SACV02-1026 DOC (C.D. Cal.), Stipulated Judgment and Order for Permanent Injunction as to Defendants GM Funding, Inc., Robert D. Kutzner, Global Mortgage Funding, Inc., and Damian R. Kutzner (May 5, 2003) (the “2003 Order”); *U.S. v. Global Mortgage Funding, Inc.*, SACV07-1275 DOC (C.D. Cal.), Stipulated Judgment and Order for Permanent Injunction (July 17, 2009) (the “2009 Order”) (Department of Justice brought on the FTC’s behalf). The FTC will be filing a contempt motion against Kutzner for violating the 2003 Order. Attached as Exhibit 1 is the memorandum supporting the motion to show cause why Kutzner should be held in contempt that the FTC intends to file. The FTC intends to file that motion once the FTC has served Kutzner with the pleadings in this matter. The FTC is not filing a contempt motion under the 2009 Order because only the United States, through the Department of Justice, can seek contempt under that order. Nonetheless, as described below, Kutzner was plainly violating the 2009 Order’s telemarketing ban.

1 purported law firms, Brookstone Law P.C.<sup>2</sup> and Advantis Law P.C.<sup>3</sup> Defendants  
2 convince consumers that if added to a “mass joinder” case against their lender,  
3 they can expect a significant recovery, typically at least \$75,000. In reality,  
4 defendants have never won a mass joinder case, do not have the experience or  
5 resources to litigate them, and never sue on behalf of many paying consumers.

6 The fraud at the heart of this scheme and the defendants’ histories make an  
7 *ex parte* temporary restraining order (“TRO”) and preliminary injunction,  
8 imposing a receivership and asset freeze to preserve assets and evidence necessary.  
9 Absent a TRO, they will continue to harm consumers, abscond with assets, and  
10 destroy evidence. Defendants Kutzner, Torchia, Broderick, and Marshall are  
11 recidivists who have shown they are likely to abscond with assets and destroy  
12 evidence.

13 **STATEMENT OF FACTS**

14 **I. BROOKSTONE AND ADVANTIS ARE THE CONTINUATION OF**  
15 **KUTZNER’S PREVIOUS SCAM, UNITED LAW GROUP.**

16 From 2009 to 2010, Kutzner operated United Law Group (“ULG”), a “law  
17 firm” offering advance fee loan modifications.<sup>4</sup> In October 2009, California  
18 outlawed advance-fee loan modifications, with no attorney exemptions. CA. Civ.  
19 Code 2944.7. Simultaneously, ULG faced numerous allegations that its two  
20  
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22 <sup>2</sup> “Brookstone” includes both the California and identically named Nevada  
23 company.

24 <sup>3</sup> “Advantis” includes both Advantis Law PC and Advantis Law Group PC,  
25 unless otherwise noted.

26 <sup>4</sup> Declaration of Leslie Lewis (“Lewis Decl.”), Atts. 1 & 2 (Kutzner’s  
27 compliance reports listing ULG as his employer and including an employment  
28 agreement stating he “shall oversee, direct and manage all ‘Non-Legal’ operations  
of” ULG).

1 primary lawyers committed mortgage modification fraud.<sup>5</sup> Both were then  
2 disbarred,<sup>6</sup> and ULG was raided by both the FBI and the United States Postal  
3 Inspectors.<sup>7</sup>

4 As ULG began to unravel, Kutzner hired Torchia<sup>8</sup> and formed Brookstone<sup>9</sup>  
5 with the advice and support of Phil Kramer and Mitch Stein, attorneys who are  
6 now disbarred.<sup>10</sup> Stein is in prison.<sup>11</sup> Kramer and Stein helped Brookstone begin  
7 marketing “mass joinder” lawsuits.<sup>12</sup> In a so-called mass joinder, tens or hundreds  
8 of plaintiffs are added to a single case against a common group of defendants. The  
9 facts and circumstances of each plaintiff are different and must be proved  
10 separately, unlike a class action. To market the mass joinders, Brookstone filed

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11  
12 <sup>5</sup> Declaration of Joseph Kennedy (“Kennedy Decl.”), Atts. 6 & 7 (Sean  
13 Rutledge and Robert Buscho attorney profiles, including disciplinary filings related  
14 to their ULG activities).

15 <sup>6</sup> Kennedy Decl., Atts. 6A & 7A (copies of orders showing Buscho disbarred  
16 and Rutledge voluntarily resigned following findings that he likely committed  
17 multiple, serious ethical violations).

18 <sup>7</sup> Ex. 2, Transcript of Proceedings Before the Honorable Richard A. Platel,  
19 May 6, 2014, to May 8, 2014, *In the Matter of Vito Torchia, Jr., Esq.*, No. 12-O-  
20 11847-RAP (Cal. Bar Ct.) (“Torchia Trial Transcript”) at II-70.

21 <sup>8</sup> Torchia Trial Transcript at II-62 to 64.

22 <sup>9</sup> Torchia Trial Transcript at II-75 (he started Brookstone with Kutzner and  
23 Kutzner is chief operating officer).

24 <sup>10</sup> Torchia Trial Transcript at II-124 to 128, II-135 to 139 (in 2010 he was  
25 approached, through Kutzner, by attorneys operating a mass joinder scheme,  
26 including Kramer and Stein); Declaration of Gregory Madden (“Madden Decl.”),  
27 Atts. 33-34 (case summary and complaint against Kramer and Stein for their mass  
28 joinder scheme); Kennedy Decl., Atts. 4 & 5 (attorney profiles of Kramer and  
Stein, including Bar decisions preventing them from practicing law).

<sup>11</sup> Kennedy Decl., Atts. 4 & 5 (attorney profiles of Kramer and Stein, including  
Bar decisions preventing them from practicing law).

<sup>12</sup> Torchia Trial Transcript at II-145 to 149 (Brookstone began marketing their  
own mass joinder action, copied from Kramer and Stein’s previous mass joinder  
action).

1 several complaints against lenders, including Bank of America, JPMorgan Chase,  
 2 Wells Fargo, Ally, Indymac, and CitiBank, which they then touted in mailers to  
 3 potential clients.<sup>13</sup> In time, all but the *Wright v. Bank of America* case were  
 4 dismissed for lack of prosecution, misjoinder, or failure to state a claim.<sup>14</sup>  
 5 Defendants' have not taken any steps to pursue any of the litigation beyond  
 6 responding to demurrer motions and, in *Wright*, pursuing an appeal following  
 7 dismissal for misjoinder.

8 After *Wright's* dismissal, and during its appeal, defendants morphed again  
 9 from Brookstone to Advantis in 2014. Apparently expecting to lose the appeal,  
 10 they abandoned their clients in the fall of 2014. As numerous clients attest,  
 11 Brookstone went from being consistently unresponsive to impossible to even  
 12 locate. Brookstone stopped answering phone calls, moved without informing  
 13 clients, and lied to clients about where they were located.<sup>15</sup> After the unexpected,  
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15 <sup>13</sup> Madden Decl., Atts. 1-32 (case summaries/dockets for Brookstone's mass  
 16 joinder actions); Declaration of Anthony Gales ("Gales Decl."), Att. 17 at 22  
 17 (Brookstone website's listing of all of its "multi-plaintiff" cases).

18 <sup>14</sup> Madden Decl., Atts. 1-27, 29-30 (case summaries/dockets showing dismissal  
 of all cases filed prior to 2016, except *Wright v. Bank of America*).

19 <sup>15</sup> Declaration of Teresa Irannejad ("Irannejad Decl."), ¶¶ 18-20 (continued to  
 20 pay through November 2014 because she was told to expect a settlement from  
 Bank of America but then when she visited Brookstone's office found that they  
 21 had moved and that she could not reach Brookstone via phone); Declaration of  
 22 Michael Nava ("Nava Decl."), ¶ 11 (Brookstone changed phone numbers and  
 email addresses without any notice to the client or forwarding information);  
 23 Declaration of Corina Durrett ("C. Durrett Decl."), ¶¶ 10-13 (Brookstone stopped  
 24 taking payment in October 2014 and consumer could reach them afterwards,  
 determined they had moved, and then could not find Brookstone at the alleged  
 25 "new" address. Consumer went to claimed Brookstone address, could not find  
 26 Brookstone there, and when she called Brookstone to find out why she could not  
 find them and where they were, Brookstone hung up on her.). *See also* Madden  
 27 Decl., Att. 47 (Order, Decision, or Award of the Labor Commissioner, *Smith v.*  
 28

1 limited, success of their appeal in *Wright*,<sup>16</sup> holding that mass joinders are  
 2 technically possible, defendants have regrouped and now exist as both Brookstone  
 3 and Advantis.<sup>17</sup> Tarkowski is the current lead attorney.<sup>18</sup> Marshall, through  
 4 Advantis, represented the lead plaintiff in *Wright* until his bar license suspension in  
 5 November 2015.<sup>19</sup> Following a notice from Bank of America that defendants were  
 6 not prosecuting *Wright* on remand<sup>20</sup> and more than a year after the Court of  
 7 Appeals decision, on January 5, 2016, Tarkowski filed a new amended complaint  
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10 *Brookstone Law P.C.*, No. 18-92557/529/530 (Calif. Labor Commissioner, entered  
 11 April 17, 2015) (employee assisted Brookstone in moving offices on November 7,  
 12 2014, having arrived without knowing the office was moving)).

13 <sup>16</sup> The court held that a mass joinder, in theory, could proceed, but criticized  
 14 defendants' "desultory and scattered allegations," and required that on remand they  
 15 replead the Complaint into an intelligible pleading. *Petersen v. Bank of America*,  
 232 Cal. App. 4th 238, 254 (2014), *review denied* (Mar. 25, 2015).

16 <sup>17</sup> They both shared an original address on Von Karman Ave. *See Gales Decl.*,  
 17 Atts. 4 & 5 (Advantis Law PC and Advantis Law Group PC incorporation papers);  
 18 Madden Decl., Att. 43 (*Bradford* Complaint identifies Brookstone at same  
 19 address); Ex. 3 (Torchia bar records showing same address as his Brookstone  
 20 address from October 31, 2013 to December 22, 2014). Now, both operate from 6  
 21 Hutton Centre in Santa Ana, CA. Madden Decl., Att. 46 (Tarkowski and  
 22 Brookstone Notice of Change of Address, *Wright v. Bank of America*, No. 30-  
 2011-00449059-CU-MT-CXC (Super. Ct. Orange Cty., filed on March 11, 2016));  
 23 Declaration of Diane Samar Ayoub ("Ayoub Decl."), ¶ 6. They both also tout  
 24 *Wright* as their own case, using identical language. *Gales Decl.*, Att. 17 at 7  
 25 (Brookstone website); *Gales Decl.*, Att. 18 (Advantis website).

26 <sup>18</sup> Madden Decl., Atts. 36-38 & 48 (pleadings with Tarkowski claiming to be  
 27 the attorney of record and a filing by Bank of America detailing Tarkowski's claim  
 28 to be the sole Brookstone attorney)

29 <sup>19</sup> Madden Decl., Atts. 38 & 49 (pleadings listing Marshall as counsel in  
 30 *Wright v. Bank of America*); Kennedy Decl., Att. 3 (Marshall's attorney bio and  
 31 disciplinary proceedings).

32 <sup>20</sup> Madden Decl., Atts. 36-37 (July 2015 Bank of America pleadings).

1 in *Wright*,<sup>21</sup> and sought leave to further amend it in March 2016.<sup>22</sup> Bank of  
 2 America filed a demurrer seeking dismissal of the case in its entirety and moved to  
 3 strike the complaint.<sup>23</sup> Most recently, Tarkowski filed three new complaints in  
 4 March and April 2016, one of which appears to be a previously dismissed case  
 5 that, in blatant violation of defendants' ethical duties, includes as plaintiffs  
 6 "clients" who have already fired defendants for defrauding them.<sup>24</sup>

7 **II. DEFENDANTS MARKET THEIR DECEPTIVE MORTGAGE**  
 8 **SERVICES THROUGH MASS MAILERS.**

9 Defendants seek victims through mass mailers stating: "[Y]ou may be a  
 10 potential plaintiff against your lender;" Mass joinder litigation is a way to "void  
 11 your note(s), and/or award you relief and monetary damages;" "[O]ur team of  
 12 experienced lawyers offers you a superior alternative for recovery;" and "It may be  
 13 necessary to litigate your claims against your lender to get the help you need and  
 14 our lawyers know how to do so."<sup>25</sup> The mailers identify Vito Torchia as the  
 15 responsible attorney and typically refer to the mass joinder cases that Brookstone  
 16 has filed. *Id.* Some versions reference the Department of Justice's multibillion  
 17 dollar settlements with the banks, suggesting that Brookstone's cases are  
 18 somehow connected. *Id.* They emphasize "You should act now!" and that failing  
 19 to act quickly could "bar your claims in the future." *Id.*

21  
 22 <sup>21</sup> Madden Decl., Atts. 28 & 53.

23 <sup>22</sup> Madden Decl., Att. 41.

24 <sup>23</sup> Madden Decl., Att. 28, DEs 649-54.

25 <sup>24</sup> Madden Decl., Atts. 13 & 31-32; Declaration of Ronald Kolodziej  
 ("Kolodziej Decl."), ¶¶ 23-24 (firing defendants in July 2015).

26 <sup>25</sup> See, e.g., Declaration of Mario Rios ("Rios Decl."), Att. 1; Declaration of  
 27 Raymond Navarro ("Navarro Decl."), Atts. 4 & 5; Declaration of Jesse Chapman  
 ("Chapman Decl."), Att. 1; C. Durrett Decl., Att. A.



### III. DEFENDANTS THEN CONVINCED CONSUMERS TO PAY LARGE UPFRONT FEES FOR THEIR WORTHLESS SERVICES.

Based on the mailers, consumers call defendants. During these calls, defendants convince consumers to come into the office for an evaluation.<sup>26</sup> Consumers then bring their mortgage papers and sign an initial retainer agreement, agreeing to pay between \$895 and \$1,300 for a forensic mortgage analysis.<sup>27</sup> Before and after defendants “review” the files, they tell consumers that they are great candidates for existing mass joinders, or one yet to be filed, including statements that a consumer has “a very strong case;” that prevailing in the litigation is “basically a done deal;” and “it was not a question of whether I would win my cases, but how much money I would get.”<sup>28</sup> Most consumers receive a “Legal

<sup>26</sup> Chapman Decl., ¶ 3; Rios Decl., ¶ 5; Navarro Decl., ¶ 4; Declaration of Richard Leonido (“Leonido Decl.”), ¶ 4; C. Durrett Decl., ¶ 8.

<sup>27</sup> Chapman Decl., ¶ 6 & Att. 2; Rios Decl., ¶ 9 & Att. 2; Navarro Decl., ¶¶ 6-7 & Att. 1; C. Durrett Decl., ¶ 8. Some people completed this step over the phone. Leonido Decl., ¶¶ 4-5; Nava Decl., ¶ 4.

<sup>28</sup> Nava Decl., ¶ 7 (told “that I definitely had a very strong case, it was basically a done deal”); Kolodziej Decl., ¶ 8 (“it was not a question of whether I would win my cases, but how much money I would get.”); Irannejad Decl., ¶ 12 (told “I had a good case” and that “the minimum I would get would be \$75,000”); Chapman Decl., ¶ 5 (told he and his wife “were very good candidates and were entitled to a refund as a result of litigation between the Department of Justice and Bank of America”); Rios Decl., ¶ 7 (“The Brookstone Law representatives told me that Brookstone Law had a great chance of succeeding in the lawsuit. They said that although it may take some time, Brookstone Law would succeed eventually”); Navarro Decl., ¶ 7 (told case was strong enough to expect to recover \$300k); Leonido Decl. ¶¶ 7 & 9 (told he had a case against his lender and that the mass joinder “would, at the very least, put me in a better position on my mortgage”); C. Durrett Decl., ¶¶ 10-11 (explaining that they had multiple valid causes of action and that based on defendants’ years of experience their claim was “pretty good” and could get them \$1 million).

1 Analysis” that purports to document numerous law violations.<sup>29</sup> Sales peoples’  
 2 claims vary, seemingly based on what it takes to convince a particular consumer,  
 3 but most are told they should expect to receive damages or that their loan be  
 4 entirely forgiven.<sup>30</sup> These claims are corroborated by an undercover call placed by  
 5 FTC investigator Anthony Gales, where defendants stated, after hearing only his  
 6 name and lender, that they can stop the foreclosure on his house and add him to a  
 7 mass joinder case that will get him a mortgage modification.<sup>31</sup>

8 To proceed with the mass joinder, defendants require another retainer  
 9 agreement with at least \$1,500 upfront and a monthly fee, typically \$250.<sup>32</sup>  
 10 Contrary to their sales pitch, these 10-page, legalese-ridden retainer agreements  
 11 contain disclaimers, including that the mass joinder case cannot and will not seek  
 12

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13 <sup>29</sup> See e.g., Rios Decl., Att. 3; Leonido Decl., Att. 3; Declaration of Timothy  
 14 Durrett (“T. Durrett Decl.”), Att. A. Some consumers, although having paid for  
 15 the analysis and having been assured they had a strong case, were never provided a  
 16 copy of the analysis despite asking for it. Nava Decl., ¶5.

17 <sup>30</sup> Chapman Decl., ¶ 5 (“were entitled to a refund”); Rios Decl., ¶ 6 (“at least  
 18 \$75,000 off the principal of my house, and that it might remove the entire  
 19 mortgage from my house”); Navarro Decl., ¶ 6 (should expect \$75,000 for him and  
 20 his girlfriend for both the original loan and refinance, for a total of \$300,000);  
 21 Nava Decl., ¶¶ 6-7 (\$75,000 and an additional \$750,000 in punitives); T. Durrett  
 22 Decl., ¶ 7 (had a good case and could get up to \$1.5 million); Leonido Decl., ¶ 9 (  
 “would, at the very least, put me in a better position on my mortgage”). See also  
 Rios Decl., ¶¶ 17-18 (an email from defendants in October 2015 stating defendants  
 are “very confident we will prevail”).

23 <sup>31</sup> Gales Decl., ¶ 12 & Att. 2.

24 <sup>32</sup> The fees vary. Chapman Decl., ¶ 7 (\$3,000 advance fee with \$250 monthly  
 25 fee); Rios Decl., ¶ 12 (\$1,500 advance fee with \$250 monthly fee); Navarro Decl.,  
 26 ¶ 7 (\$3,000 advance fee with \$250 monthly fee); Nava Decl., ¶¶ 8-9 (\$3,000  
 27 advance fee with \$250 monthly fee); C. Durrett Decl., ¶ 12 (\$3,000 advance fee  
 28 with \$250 monthly fee for first 12 months and then a \$59.99 monthly fee); Leonido  
 Decl., ¶ 8 (\$1,500 advance fee with \$250 monthly fee for first 12 months and then  
 a \$59.99 monthly fee).



1 more than \$75,000 in relief<sup>33</sup> and that litigation is inherently risky,<sup>34</sup> but consumers  
 2 did not understand them and they directly contradict defendants' express  
 3 representations of certain relief. One consumer noticed the disclaimer and asked  
 4 what it meant, only to be told "it was just legal words in the retainer . . . but there  
 5 was no risk of losing."<sup>35</sup>

6 **IV. DEFENDANTS DO NOT KEEP THE ADVANCE FEES IN**  
 7 **ACCORDANCE WITH CALIFORNIA LAW.**

8 Defendants take upfront fees, but fail to keep them in client trust accounts in  
 9 accordance with California law. Through 2014, Defendants received more than  
 10 \$15 million but did not even maintain client trust accounts let alone deposit funds  
 11 in them.<sup>36</sup> In fact, they spent the money as they received it.<sup>37</sup> Also contrary to  
 12 ethics rules, numerous consumers report being unable to obtain refunds or an  
 13  
 14  
 15  
 16  
 17  
 18

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19 <sup>33</sup> This is to avoid federal diversity jurisdiction.

20 <sup>34</sup> *See, e.g.*, Chapman Decl., Att. 3 at 2 & 8; Rios Decl., Att. 4 at 4; Navarro  
 Decl., Att. 2 at 2 & 8.

21 <sup>35</sup> *See* Irannejad Decl., ¶ 14 ("He said I shouldn't pay attention to the  
 22 disclaimer because the case against Countrywide had already been proven.  
 Anthony Stout said trust me, I can assure you that you will get \$75,000 and the  
 23 money you paid to Brookstone back."); Chapman Decl., ¶ 8.

24 <sup>36</sup> Declaration of Emil George ("George Decl."), ¶¶ 8 & 9 (defendants'  
 25 accounts show \$24.4 million in raw credits, offset by \$7.4 million in intercompany  
 transfers, and there are approximately \$1 million in check deposits that have not  
 26 been analyzed to determine if they are intercompany transfers); George Decl., Att.  
 A (listing defendants' accounts, none of which are trust accounts).

27 <sup>37</sup> George Decl., Att. C (monthly summaries of each of the accounts).  
 28

1 accounting of work performed.<sup>38</sup> The California Bar found that Torchia repeatedly  
2 violated his ethical duties through such failures.<sup>39</sup>

3 **V. CONSUMERS RECEIVE NO BENEFIT FROM DEFENDANTS’**  
4 **SERVICES.**

5 **A. Many Consumers Receive No Services from the Defendants.**

6 Many consumers who sign up are not added to a mass joinder. They have  
7 paid upfront and monthly fees, frequently totaling more than \$5,000, and received  
8 nothing in return.<sup>40</sup>

9 **B. Five Years Later, Defendants Have Never Won A Mass**  
10 **Joinder And Nearly All of Their Cases Have Been Dismissed.**

11 The results are little better for those added to a case. They pay upfront and  
12 monthly fees for the services of purportedly experienced professionals, but receive  
13

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14 <sup>38</sup> Chapman Decl., ¶ 12; Rios Decl., ¶ 16. Mr. Navarro in particular made  
15 repeated attempts to get a refund and accounting of work performed. Defendants  
16 never offered one and Mr. Navarro was forced to go to small claims court twice to  
17 secure his refund. Navarro Decl., ¶¶ 9-13.

18 <sup>39</sup> Kennedy Decl., Att. 1.C (Decision, *In the Matter of Vito Torchia, Jr.*, No.  
19 12-O-11847-RAP (Cal. Bar Ct.) (“Torchia August 6, 2014 Bar Decision”).

20 <sup>40</sup> Navarro Decl., ¶¶ 9-13 (paid nearly \$5,000, was never added to a case or  
21 provided with an accounting, and was forced to go to small claims court multiple  
22 times to get his money back from Defendants); Torchia August 6, 2014 Bar  
23 Decision at 13-15 (Keith and Myra Daily never added to cases against IndyMac, as  
24 promised); *id.* at 30-32 (Yvonne Welling never added to case against Chase, as  
25 promised). Other consumers report demanding information about the status of  
26 their cases and understanding that nothing whatsoever was done for them and that  
27 they were never added to any case. Rios Decl., ¶¶ 13-16 (paid more than \$2,000  
28 but was not added to a case and never got a response to his refund request);  
Chapman Decl., ¶ 12 (paid more than \$5,000 but, as far as he knew, was never  
added to a case and no work was ever done for him); C. Durrett Decl., ¶¶ 14-17  
(paid more than \$6,000 but, as far as she could tell, was never actually added to the  
case); Nava Decl., ¶¶ 8-12 (paid more than \$6,000, as far as he knew was not  
added to a case, and could not get a response when he called defendants).

1 nothing. Contrary to the promised recoveries, all but one mass joinder lawsuit  
 2 filed before 2016 has been dismissed for lack of prosecution, misjoinder, or failure  
 3 to state a claim. Consumers cannot even receive status updates because defendants  
 4 are unavailable, difficult to reach, or unresponsive.<sup>41</sup> Contrary to the claimed  
 5 experience, the California Bar found Torchia “lacked and continues to lack the  
 6 law-office-management skills and basic knowledge of mortgage lending law and  
 7 bankruptcy law necessary to adequately and properly represent some 4,000  
 8 mortgage loan clients and to adequately supervise a law office staff of 30 to 40  
 9 employees,” almost all of whom are sales people. August 6, 2014 Decision.<sup>42</sup>  
 10 Following Torchia’s effective disbarment, Tarkowski, a lawyer admitted to the bar  
 11 in 2014 with no experience suggesting he can effectively litigate hundreds of  
 12

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13 <sup>41</sup> Leonido Decl., ¶ 13 (added to a case but unable to get updates about the  
 14 case). The communication was so poor that some consumers were completely  
 15 unaware they were added to cases. Chapman Decl., ¶ 12; C. Durrett Decl., ¶¶ 14-  
 16 17; Nava Decl., ¶¶ 8-12; Declaration of Malu Lujan (“Lujan Decl.”), ¶ 15;  
 17 Kolodziej Decl., ¶¶ 23-24 (added to cases without his knowledge, including after  
 18 firing defendants); Madden Decl., Atts. 13, 42-44 (including complaints in  
 19 *Bradford v. Bank of America*, in which Chapman was named as a plaintiff without  
 20 his knowledge, *Brooksheir v. Bank of America*, in which the Durrett, Nava, and  
 21 Lujan were named as plaintiffs without their knowledge; and *Lawley v. Bank of*  
 22 *America*, in which Kolodziej was named as a plaintiff without his knowledge).

23 <sup>42</sup> Torchia admitted at his ethics trial that he is “not a real estate attorney. . . .  
 24 [or] a banking specialist.” Torchia Trial Transcript at II-164. He further admitted  
 25 that he was not competent to run a law firm: “[T]his firm grew pretty fast, and,  
 26 unfortunately for me, there was some learning—there was a learning curve that  
 27 shouldn’t have been a learning curve. I tried to hire more—I did hire senior  
 28 people, older than me, much more experienced than me, to do the work, but I  
 didn’t have someone above me to help me.” *Id.* at IV-127 to 128 (detailing several  
 of the more “experienced” lawyers they tried and failed to convince to be a part of  
 the scheme). Although he is the attorney of record, in light of his incompetence,  
 he even admits that he was not handling the mass joinder cases. *Id.* at IV-9 (“Me  
 personally? I wasn’t handling these mass-joinder cases.”).

1 simultaneous fraud cases, represents the plaintiffs.<sup>43</sup> In sum, it appears defendants  
 2 are merely keeping complaints on file so they can continue to charge monthly  
 3 fees.<sup>44</sup>

### 4 **C. The Mass Joinders Do Not Seek to Void Consumers' Notes.**

5 Despite luring consumers with contrary representations, the mass joinder  
 6 lawsuits do not even attempt to void consumers' notes. If they did, the banks could  
 7 remove the cases to federal court, where they would be promptly dismissed for  
 8 misjoinder under the Federal Rules of Civil Procedure. To avoid this result,  
 9 defendants have explicitly opposed removal by stating that the lawsuits do not seek  
 10 to void consumers' notes.<sup>45</sup>

## 11 **VI. KUTZNER AND HIS COHORTS EACH HAVE CONTROL OVER 12 THE SCHEME AND KNOWLEDGE OF THE FRAUDULENT 13 CONDUCT.**

### 14 **A. Kutzner Founded the Scheme After ULG Failed.**

15 As described above, when ULG failed, Kutzner and Torchia marketed mass  
 16 joinder lawsuits. Kutzner is the purported COO of Brookstone running all non-  
 17 legal operations,<sup>46</sup> continues to have an office at Advantis,<sup>47</sup> and controls the

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18  
 19 <sup>43</sup> Madden Decl., Atts. 45-46 & 48-49 (recent filings listing Tarkowski as  
 20 attorney of record).

21 <sup>44</sup> Current income is significant, almost certainly based on continuing monthly  
 22 payments from defrauded consumers. A very recent bank production showing  
 23 Brookstone's account activity through November 2015, shows \$1,474,108.77 in  
 gross deposits between November 2014 and November 2015, averaging more than  
 \$100,000 per month. Kennedy Decl., ¶ 14.

24 <sup>45</sup> See Madden Decl., Att. 50 (Pltf. Reply in Support of Motion to Remand, at  
 25 15-16, (DE 24), *Potter v. JP Morgan Chase Bank N.A.*, No. 11-10255 (C.D. Cal.)  
 ("Plaintiffs do not seek to set aside Defendants' loans, nor rescind them but rather  
 26 seek loss of equity damages resulting from Defendants' wrongful conduct.")).

27 <sup>46</sup> *Legaspi v. Spivak*, 2013 WL 3947691 (Cal. Ct. App. July 30, 2013)  
 28 ("Kutzner identified himself as Brookstone's chief operating officer."); Torchia

1 Advantis Law website.<sup>48</sup> Kutzner was also integral in devising the scheme. He  
2 introduced Kramer and Stein to Torchia and participated in meetings to determine  
3 how Brookstone could copy Kramer and Stein’s mass joinder scheme.<sup>49</sup> Kutzner’s  
4 longtime accountant<sup>50</sup> is the registered agent for Advantis,<sup>51</sup> and is a signatory on  
5

6 Trial Transcript at II-75 (Kutzner was COO); *Id.* at II-81 (“So [Kutzner] pretty  
7 much set up the business flow of the office. He set up the computer systems, got  
8 the servers running, the telephone systems, the cubicles, knew how to train people,  
9 the business side of it, which I was never—I didn’t know, which was new to me. I  
10 knew the law side, or was getting to learn the law side, but I’m trained as a  
11 lawyer.”). *See also* Lewis Decl., Att. 5 (“Ex. A” to the compliance report  
including United Law Group employment agreement under which Kutzner was  
also the COO and, per the agreement, ran all non-legal portions of the business).

12 <sup>47</sup> Ayoub Decl., ¶ 8. *See also* Gales Decl., ¶ 29 (Kutzner filed complaint with  
CFPB using his Advantis Law contact information).

13 <sup>48</sup> Kutzner, using the alias Damian Reimers, controls the Advantis Law  
14 website. Gales Decl., Att. 19 at GD 000612 to 615 (account held by “Damian  
15 Reimers” controls the Advantis websites, among many others, including websites  
16 apparently related to Kramer and Stein). Although an alias, it is obvious that this is  
17 actually Kutzner because one of his employees at his other company, Serious  
18 Pimp, is the email contact for the account. *Id.* at GD 000612 (listing  
19 jcook@seriouspimp.com as the email contact); Gales Decl., Att. 9 (Serious Pimp  
20 incorporation papers identify Kutzner as the owner). The same account controls  
Kutzner’s personal websites. Gales Decl., Att. 19 at GD 000613. For at least one  
of the websites on the account he apparently slipped up and listed his actual name  
for the registration. *Id.* at GD 000754. Finally, several of the payment receipts list  
Kutzner as the payor. *Id.* at GD 001053, GD 001062, GD 001087, GD 001113.

21 <sup>49</sup> Torchia Trial Transcript at II-124 to 128, II-135 to 139.

22 <sup>50</sup> Josephine Lobo, who dates back at least to ULG. *See* Madden Decl., Att. 51  
23 (Monthly Operating Statement, *In re United Law Group*, No. 10-bk-18945-RK  
24 (Bankr. C.D. Cal., Sept. 13, 2010), at 5-7, 10-11 (listing payments to Josephine  
25 Lobo)). She is also the signatory on an account of Broad Base Inc., d/b/a Serious  
26 Pimp, a company that Damian Kutzner is known to own and control. *See* Gales  
27 Decl., Att. 21 (Broad Base Inc. signature card); *Id.* (Inventory listing identifying  
28 Broad Base Inc. as “Broad Base Inc., DBA Serious PIMP”); *See also* Gales Decl.,  
Att. 19 at GD001093 (Broad Base paying for Kutzner’s personal websites).



1 many Brookstone bank accounts.<sup>52</sup> Kutzner also apparently controls companies  
 2 that received approximately a quarter of all payments from the defendants.<sup>53</sup>  
 3 Although Kutzner has tried to obfuscate his involvement, he clearly exercises  
 4 control over the companies and is, almost certainly, a *de facto* owner of the  
 5 companies and the defendants' ringleader.<sup>54</sup>

### 6 **B. Torchia Is a Founder and Principal.**

7 As described above, Torchia was the purported owner of Brookstone and the  
 8 original incorporator of Advantis. Torchia was the attorney of record in most if not  
 9

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10  
11  
12 <sup>51</sup> Gales Decl., Atts. 4 & 5(Advantis Law PC and Advantis Law Group PC  
13 incorporation documents).

14 <sup>52</sup> Gales Decl., Att. 21 (Business Account Add Signers Form adding Lobo as  
15 signer to Brookstone accounts 8561, 8819, 7928, and 8769); Gales Decl., Att. 20  
16 (0097 Signature Card, 0081 Signature Card, 8722 Signature Card, and 3466  
Signature Card).

17 <sup>53</sup> George Decl., Att. B. (showing Federal Management Systems Inc. receiving  
18 22.5% of all disbursements for a total of \$3,786,429.35 and Broad Base receiving  
19 2.94% of all disbursements for a total of \$440,634.14); Gales Decl., Att. 21  
20 (Federal Management Systems Inc. signature card showing Josephine Lobo as a  
21 signer as well as "Wayne Andre"); *Id.* (Broad Base Inc. signature card showing  
22 Josephine Lobo as a signer); Kennedy Decl. at Att. 11 (news report identifying  
23 Wayne Andre, the purported owner of Federal Management Systems Inc., as a  
24 professional incorporator in Nevada that offers himself as a "straw" officer and  
25 director for companies). Broad Base also received \$119,420.14 from Brookstone  
26 in an account not included in Emil George's declaration because it was produced  
27 after George had completed his bank account review. Kennedy Decl., ¶ 14.

28 <sup>54</sup> A former Brookstone employee obtained a default judgment for back wages  
and testified that Kutzner was Brookstone's "CEO." *See* Madden Decl., Att. 47  
("Order, Decision, or Award of the Labor Commissioner, *Smith v. Brookstone  
Law, P.C., Corporation*, No. 18-92557/529/530 (Calif. Labor Commissioner,  
Entered April 17, 2015)).

1 all of the scheme’s mass joinder lawsuits,<sup>55</sup> is the only attorney listed in  
 2 Brookstone advertisements,<sup>56</sup> and claims to have helped create the marketing.<sup>57</sup>  
 3 Torchia is also aware that the advertising is false.<sup>58</sup> Because he is ineligible to  
 4 practice law, Torchia is no longer an attorney for either Brookstone or Advantis,  
 5 but reportedly still works from Advantis’ office.<sup>59</sup>

### 6 **C. Tarkowski is Now Brookstone’s Only Attorney.**

7  
 8 Following Torchia’s ineligibility, Tarkowski emerged as Brookstone’s only  
 9 attorney of record and *de facto* owner, and then as an Advantis lawyer.<sup>60</sup> On  
 10 Brookstone’s current bank signature card, Tarkowski is listed as its “managing  
 11

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12 <sup>55</sup> Madden Decl., Atts. 42-43 & 52 (selected mass joinder complaint excerpts,  
 13 with Torchia’s signature from 2011-14).

14 <sup>56</sup> *See e.g.*, Rios Decl., Att. 1 at page 2; Navarro Decl., Att. 5 at page 2.

15 <sup>57</sup> Torchia Trial Transcript at II-165 (“I manage the overall operations. I make  
 16 sure that it’s being—like, the scripts are done right. I make sure, you know, that  
 17 we have meetings in which, well, we have tape reviews, because when clients call  
 18 in, they’re notified that ‘This call is being recorded for quality and training  
 19 purposes.’ I make sure that the managers are managing their staff.”).

20 <sup>58</sup> In responding to posts on a purported consumer advocacy website, Torchia  
 21 contradicted the defendants’ sales pitch by stating: “Without question, we might  
 22 lose some or all of these lawsuits. Further, without question, some of our clients  
 23 might win and others might lose. It is therefore true that the retainer might do  
 24 nothing more than increase our client’s loss.” Kennedy Decl., Att. 10.

25 <sup>59</sup> Ayoub Decl., ¶ 14.

26 <sup>60</sup> *See, e.g.*, Madden Decl., Att. 36 (Separate Case Management Statement of  
 27 Defendants at 13-15, *Wright v. Bank of America*, Case No. 30-2011-00449059-  
 28 CU-MT-CXC (Super. Ct. Orange County, filed July 29, 2015) (“July BofA  
 Filing”) (“[Tarkowski] indicated he was [Brookstone’s] only attorney. . . . Mr.  
 Tarkowski said he had spoken frequently with Mr. Torchia, and with Mr. Kutzner.  
 . . .”); Madden Decl., Att. 53 (Fourth Amended Complaint, *Wright v. Bank of  
 America*, Case No. 30-2011-00449059-CU-MT-CXC (Super. Ct. Orange County,  
 filed January 4, 2016)) (Tarkowski is the only lawyer on the pleading).

1 attorney.”<sup>61</sup> Tarkowski is a junior lawyer, first admitted to the bar in 2014, without  
 2 litigation experience, let alone experience in the type of complex cases defendants  
 3 hawk.<sup>62</sup> Tarkowski also works full time from the Advantis office.<sup>63</sup> He has  
 4 knowledge of defendants’ wrongdoing, having been served with a copy of Bank of  
 5 America’s July 2015 filing highlighting defendants’ dubious actions.<sup>64</sup>

#### 6 **D. Marshall and Broderick are the New Owners of Advantis.**

7  
 8 Following Torchia’s ineligibility, Marshall and Broderick became Advantis’  
 9 apparent owners and officers. They both appear on the state incorporation papers  
 10 and, until Marshall ran into issues with the bar in November 2015, both were listed  
 11 as “Directors” on Advantis’ website.<sup>65</sup> A former Advantis employee confirms that  
 12 Broderick claimed to own Advantis and worked at its office.<sup>66</sup> Broderick is well  
 13 aware of mass joinder fraud, having just recently stipulated to a judgment arising  
 14 from an alleged mass joinder fraud he ran with Kramer, among others.<sup>67</sup> Kramer,  
 15 as noted above, was disbarred because of a mass joinder scheme and is one of the  
 16 attorneys from whom Kutzner and Torchia learned to market their mass joinder  
 17 scheme. Broderick is also listed as a Brookstone attorney on Brookstone’s current  
 18

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19 <sup>61</sup> Gales Decl., Att. 20 (signature card for account 7366).

20 <sup>62</sup> Kennedy Decl., Att. 2 (Tarkowski’s State Bar biography).

21 <sup>63</sup> Ayoub Decl., ¶ 11.

22 <sup>64</sup> See July BofA Filing (Proof of service includes Tarkowski).

23 <sup>65</sup> Gales Decl., Att. 18 (Advantis website showing both as “Directors”).

24 Following Marshall’s suspension in November, he was scrubbed from the website  
 25 and, at the same time, Broderick was also scrubbed from the website, likely  
 26 because he is not licensed to practice law in California. Kennedy Decl., Att. 8  
 27 (attorney page no longer identifying any lawyers).

28 <sup>66</sup> Ayoub Decl., ¶¶ 4, 10.

<sup>67</sup> Madden Decl., Att. 54 (Stipulated Final Judgment and Order for Permanent  
 Injunction and Settlement of Claims as to Defendant Geoffrey Broderick, *Florida*  
*v. Berger Law Group PA*, 14-cv-1825 (M.D. Fla., Feb. 27, 2015)).



1 bank signature card.<sup>68</sup> Marshall does not work from the Advantis office, but  
 2 appeared in the *Wright v. Bank of America* suit, and is aware of defendants'  
 3 wrongdoing.<sup>69</sup>

#### 4 ARGUMENT

##### 5 I. THE FTC IS LIKELY TO SUCCEED ON THE MERITS AGAINST 6 ALL OF THE DEFENDANTS

7 Preliminary relief is appropriate because the FTC is likely to succeed and the  
 8 equities are presumed to favor such relief.<sup>70</sup> “[W]hen a district court balances the  
 9 hardships of the public interest against a private interest, the public interest should  
 10 receive greater weight.” *World Wide Factors, Ltd.*, 882 at 347. Critically, the  
 11 public interest includes the ability to provide consumers “effective relief.” *Id.*  
 12 Preliminary relief is both appropriate and necessary because defendants engaged in  
 13 a scheme to defraud consumers in violation of the FTC Act and, absent relief, are  
 14 likely to continue, abscond with evidence, and dissipate assets.

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16  
17  
18 <sup>68</sup> Gales Decl., Att. 20 (signature card for account 7366).

19 <sup>69</sup> See July BofA Filing (Proof of service includes Marshall).

20 <sup>70</sup> *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346 (9th Cir. 1989) (“the  
 21 district court is required (i) to weigh equities; and (ii) to consider the FTC’s  
 22 likelihood of ultimate success before entering a preliminary injunction”); *Id.* at 347  
 23 (“Because irreparable injury must be presumed in a statutory enforcement action,  
 24 the district court need only to find some chance of probable success on the  
 25 merits.”) (quoting *U.S. v. Odessa Union Warehouse Co-op*, 833 F.2d 172 at 176  
 26 (9<sup>th</sup> Cir. 1987)); *FTC v. Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999)  
 27 (same and further stating the FTC Act “places a lighter burden on the Commission  
 28 than that imposed on private litigants by the traditional equity standard; the  
 Commission need not show irreparable harm to obtain a preliminary injunction”)  
 (quoting *FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1159 (9th Cir.  
 1984)).

**A. Defendants Violated Section 5 of the FTC Act By Lying to Consumers to Convince Them to Sign Up for Their Mortgage Relief Services.**

Defendants violated Section 5 of the FTC Act, prohibiting “unfair or deceptive acts or practices.” 15 U.S.C. § 45(a). “An act or practice is deceptive if ‘first, there is a representation, omission, or practice that, second, is likely to mislead consumers acting reasonably under the circumstances, and third, the representation, omission, or practice is material.’” *FTC v. Stefanich*, 559 F.3d 924, 928 (9th Cir. 2009) (quoting *FTC v. Gill*, 265 F.3d 944, 954 (9th Cir. 2001)). Defendants lied: (1) about the likelihood of success in mass joinder litigation; (2) that they will provide certain services, such as seeking to void consumers’ notes in the mass joinder lawsuits and adding consumers to mass joinder lawsuits; and (3) that they have the experience and resources necessary to litigate complicated lender fraud cases on behalf of hundreds or thousands of consumers simultaneously. These claims are presumed material and in fact affected consumers’ decisions.<sup>71</sup>

Defendants told every consumer there was a high likelihood of success in the mass joinder litigation, assuring each he had a strong case. Defendants promised many, if not most, they would recover at least \$75,000. Defendants told consumers it was a “done deal” and “it was not a question of whether I would win my cases, but how much money I would get.” Of course, defendants have never obtained a judgment for any of their clients and it is unlikely they ever will,

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<sup>71</sup> *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095-96 (9th Cir. 1994) (“Express product claims are presumed to be material.”). *See also* FTC Policy Statement on Deception, Oct. 14, 1983, reprinted in *Cliffdale Associates Inc.*, 103 F.T.C. 110, at 175 (1984) (stating an “act or practice . . . likely to affect the consumer’s conduct or decision with regard to a product or service” is material); *Pantron I Corp.*, 33 F.3d at 1095 (adopting policy statement from *Cliffdale Associates*).

1 regardless of the merits of the cases, because they do not have the experience or  
2 resources necessary to litigate them. This misrepresentation is material and typical  
3 of those that violate the FTC Act.<sup>72</sup>

4 Defendants also lie to consumers about: (1) filing a mass joinder case that  
5 would seek to void the consumer's note and (2) adding consumers to mass joinder  
6 litigation.<sup>73</sup> Contrary to statements that the cases will seek to void consumers'  
7 notes, they argue in court that the cases do not seek to void notes. As shown  
8 above, there are also a number of people who are promised they will be added to a  
9 case who then are never added. In these instances, defendants simply do not  
10 deliver the promised services.

11 Defendants also lie when they claim to be experienced lender law litigators  
12 capable of obtaining the promised results. The lead attorney, Vito Torchia, does  
13 not have any relevant experience and the California bar found him incompetent to  
14 represent these clients.<sup>74</sup> The current lead attorney, Tarkowski, lacks the promised  
15 experience given that he was admitted to the bar in 2014, after many of the  
16 consumers had already signed up. The California Bar found, and it is  
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18 <sup>72</sup> See, e.g., *FTC v. Network Svcs. Depot Inc.*, 617 F.3d 1127, 1139-40 (9th Cir.  
19 2010) (finding claims that consumers could expect to earn \$1,000 per month from  
20 internet kiosks material and unreasonable); *FTC v. Wolf*, 1996 WL 812940 (S.D.  
21 Fla. 1996) (express claims of money to be earned and success others have achieved  
22 are material because they concern issues at the heart of consumers' purchase  
23 decisions), *aff'd* 113 F.3d 1251 (11th Cir. 1997); *FTC v. Medicor LLC*, 217 F.  
24 Supp. 2d 1048, 1053-4 (C.D. Cal. 2002) (consumers highly unlikely to make  
potential \$20k-\$45k per year when 64 people had submitted a total of 2,641  
medical claims for earnings of \$3 per claim).

25 <sup>73</sup> As noted above, many are never added to cases.

26 <sup>74</sup> August 6, 2014 Bar Decision at 4 (“[Torchia] lacked and continues to lack  
27 the law-office management skills and basic knowledge of mortgage lending law  
28 and bankruptcy law to adequately and properly represent some 4,000 mortgage  
loan clients and to adequately supervise a law office staff of 30 to 40 employees.”).

1 unquestionably true, that a firm with only one, or a handful of attorneys, cannot  
2 prosecute 4,000 separate claims. The mass joinder lawsuits involve only one  
3 shared fact—a claimed conspiracy to artificially raise home values—with each  
4 consumer’s mortgage case to be proved separately.<sup>75</sup> Unlike a class action, they  
5 are truly separate cases under a shared case number. Currently, Tarkowski, as to  
6 whom there is no evidence he has done a trial of any kind, claims to solely  
7 represent more than 800 clients whose claims, if pursued, could result in more than  
8 800 separate trials. Defendants’ claimed experience and ability to obtain the  
9 promised results cannot be true.

### 10 **B. Defendants’ Disclaimers Are Not Effective.**

11 Defendants may argue that “disclaimers” corrected any express promises  
12 about the likelihood of success. But, they are part of a 10-page, legalese contract  
13 and contradict defendants’ express sales pitch.<sup>76</sup> When a consumer specifically  
14 asked about the disclaimer, she was told “it was just legal words in the retainer and  
15 they had to use them in the agreement, but there was no risk of losing.”<sup>77</sup> She was  
16 further assured that she “shouldn’t pay attention to the disclaimer because the case  
17 against Countrywide had already been proven” and “trust me, I can assure you that  
18 you will get \$75,000.”<sup>78</sup> This Court granted summary judgment in a similar case in  
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21 <sup>75</sup> *Petersen v. Bank of America*, 181 Cal. Rptr. 3d 330, 340-41 (Cal. Ct. App.  
22 2014) (shared issues are only whether Countrywide drove up home prices and  
23 systematically concealed loan terms, noting that actual damages would “of course  
24 vary widely” depending on circumstances). The dissenting judge noted: “[T]o  
25 recover on the cause of action for intentional misrepresentation or the cause of  
26 action for negligent misrepresentation, each and every plaintiff—yes, each one of  
27 them—will have to submit evidence to prove liability and damages.” *Id.* at 345.

26 <sup>76</sup> *See. e.g.*, Navarro Decl., Att. 2 at 2 (disclaimer in paragraph e.).

27 <sup>77</sup> Irannejad Decl., ¶ 14.

28 <sup>78</sup> *Id.*

1 the face of nearly identical disclaimers. *See FTC v. A to Z Marketing, Inc.*, 13-cv-  
2 919 (C.D. Cal. Sept. 17, 2014) (granting summary judgment). In other cases,  
3 courts have repeatedly found disclaimers in subsequent documents or that  
4 contradict express claims ineffective.<sup>79</sup>

5 Additionally, the retainer agreements contain other unenforceable provisions  
6 and have previously been found unconscionable. The agreements' statements that  
7 fees paid by consumers are fully earned regardless of the amount of work, if any,  
8 performed by defendants,<sup>80</sup> contradict the California Bar's rulings on advance and  
9 flat fees, as found in the Bar's decision to suspend Torchia.<sup>81</sup> Furthermore, one  
10 consumer challenged these agreements in fee arbitration, and the Orange County  
11 Bar Association arbitrators found the retainer agreements unconscionable.<sup>82</sup>

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17 <sup>79</sup> *Resort Car Rental v. FTC*, 518 F.2d 962 (9th Cir. 1975) ("The Federal Trade  
18 Act is violated if [the advertising] induces the first contact through deception, even  
19 if the buyer later becomes fully informed before entering the contract."); *FTC v.*  
20 *Gill*, 71 F. Supp. 2d 1030, 1044 (C.D. Cal. 1999) (disclaimers in contract  
21 consumers received after initial sales pitch were not sufficient to defeat summary  
22 judgment on Section 5 falsity claim), *aff'd* 265 F.3d 944 (9th Cir. 2001); *FTC v.*  
23 *Medlab, Inc.*, 615 F. Supp. 2d 1068, 1077 (N.D. Cal. 2009) ("Defendants' attempts  
24 to create a factual dispute in this issue are unavailing. . . . Defendants cannot  
25 inoculate themselves from the representations that appear in the body of the text by  
26 including these cautionary statements at the foot of the advertisements."); *FTC v.*  
27 *Cyberspace.com LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006) (holding that fine print  
28 disclaimers that contradicted express claims were ineffective).

<sup>80</sup> *See, e.g.*, Navarro Decl., Att. 2 at 5 (paragraph f.).

<sup>81</sup> *See, e.g.*, August 6, 2014 Bar Decision at 40 (ruling that Torchia failed to  
refund unearned fees to mass joinder clients).

<sup>82</sup> Kolodziej Decl., ¶ 21, Att. E.

1                                   **C. The Corporate Defendants are Liable as a Common**  
 2                                   **Enterprise.**

3                   Brookstone and Advantis form a classic common enterprise, the touchstone  
 4 of which is operating through a “maze of interrelated companies” with shared  
 5 control, office space, employees, and services.<sup>83</sup> This standard is easily met here  
 6 and extends to non-defendants like Broad Base Inc. and FMS, entities Kutzner  
 7 controls and through which he has funneled significant consumer funds.

8                                   **D. Each of the Individual Defendants Are Liable Because They**  
 9                                   **Have Control, Participate in the Acts, and Have Knowledge.**

10                   Each Individual Defendant is liable for injunctive relief because each  
 11 controls the Corporate Defendants or participated in the wrongful conduct.<sup>84</sup>  
 12 They are subject to monetary liability because they “had knowledge that the  
 13 [company] or one of its agents engaged in dishonest or fraudulent conduct, that the  
 14 misrepresentations were the type upon which a reasonable and prudent person  
 15 would rely, and that consumer injury resulted.”<sup>85</sup> The “knowledge” requirement is  
 16 met by proof of “actual knowledge of material misrepresentations, . . . reckless[]  
 17 indifferen[ce] to the truth or falsity of a misrepresentation, or . . . awareness of a  
 18 high probability of fraud along with an intentional avoidance of the truth.”<sup>86</sup> “The

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 20 <sup>83</sup> See *Delaware Watch v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964); *FTC v.*  
 21 *Network Svcs Depot*, 617 F.3d 1127, (9th Cir. 2010) (“[Q]ualities that may be  
 22 demonstrated by a showing of strongly interdependent economic interests or the  
 23 pooling of assets and revenues.”); accord *FTC v. J.K. Publications, Inc.*, 99 F.  
 24 Supp. 2d 1176, 1202 (C.D. Cal. 2000) (common enterprise shown where corporate  
 25 defendants were under common control; shared office space, employees, and  
 26 officers”).

25 <sup>84</sup> See, e.g., *FTC v. Stefanichik*, 559 F.3d 924, 931 (9th Cir. 2009); *FTC v.*  
 26 *Publishing Clearing House, Inc.*, 1170-71 104 F.3d 1168, (9th Cir. 1997).

26 <sup>85</sup> *FTC v. Grant Connect, LLC*, 763 F.3d 1094, 1101 (9th Cir. 2014) (quoting  
 27 *Publishing Clearing House*, 104 F.3d at 1171).

27 <sup>86</sup> *Grant Connect*, 763 F.3d at 1101-02.  
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1 extent of an individual's involvement in a fraudulent scheme alone is sufficient to  
2 establish the requisite knowledge for personal restitutionary liability."<sup>87</sup> Kutzner  
3 and Torchia plainly had this knowledge given that they controlled the marketing  
4 materials, changed the name of the operating company when Torchia began having  
5 bar difficulties, and absconded when they believed that the California Court of  
6 Appeals was going to hold mass joinders *per se* unlawful. Tarkowski and Marshall  
7 have knowledge given that they took over following Torchia's bar suspension and  
8 received copies of filings in *Wright v. Bank of America*, detailing the likely  
9 fraudulent aspects of defendants' business.<sup>88</sup> Broderick's knowledge stems from  
10 his ownership and operation of the companies following Torchia's bar suspension.  
11 *See, Publishing Clearing House*, 104 F.3d at 1171 (holding officer liable because  
12 she filed for business licenses while knowing that the owner was facing criminal  
13 charges). He also is aware of the high probability of fraud and is at least  
14 intentionally avoiding the truth because he joined this scheme after the Connecticut  
15 and Florida Attorneys General sued him for running a nearly identical scheme with  
16 two individuals who taught Kutzner and Torchia how to run this scheme.<sup>89</sup>

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21 <sup>87</sup> *FTC v. Affordable Media*, 179 F.3d 1228, 1235 (9th Cir. 1999).

22 <sup>88</sup> The filing details defendants' general unsavoriness, including defendants'  
23 close connections to Kramer and Stein, and related unlawful conduct. Separate  
24 Case Management Statement of Defendants, *Wright v. Bank of America*, No. 30-  
2011-00449059-CU-MT-CXC (Super. Ct. Orange, filed July 29, 2015).  
25 Additionally, while Tarkowski and Marshall were lawyers of record, Brookstone  
26 sent out notices to clients claiming they still expected to prevail in the lawsuit. *See*  
27 Rios Decl., ¶¶ 17-18 & Att. 7.

28 <sup>89</sup> Kramer and Gary DiGirolamo. *See* fn. 10.

**E. Although Unnecessary For the Court's Ruling, the FTC is also Likely to Prevail on the MARS Rule Counts, Including the Advance Fee Ban.**

All of the relief included in the proposed TRO is supported by defendants' high likelihood of violating Section 5 of the FTC Act, and the Court need not reach the following issue to grant the requested preliminary relief. Nonetheless, defendants also violated several provisions of the Mortgage Assistance Relief Services ("MARS") Rule. 12 C.F.R. Part 1015 (recodified as Regulation O by the Consumer Financial Protection Bureau). Defendants offered MARS by offering to void consumers' notes or otherwise obtain loan concessions through litigation. 12 C.F.R. § 1015.2 ("negotiating, obtaining, or arranging a modification of any term of a dwelling loan"). As a result, they were prohibited from taking advance fees, 12 C.F.R. § 1015.5, and making any misrepresentations like those detailed above, 12 C.F.R. § 1015.3(b). Furthermore, their advertisements were required to include certain disclosures, but did not do so. *See* 12 C.F.R. § 1015.4. The proposed TRO, therefore, contains optional language for the Court to include if it decides to reach this issue.

Defendants' only possible defenses are that they fit within the narrow exemption for some attorneys or that, because of a recent MARS Rule decision in Wisconsin, the MARS Rule is invalid as applied to attorneys in the practice of law. However, neither argument can prevail. First, the attorney exemption only applies if defendants are (1) providing services as part of the practice of law, (2) licensed in the relevant states, and (3) complying "with state laws and regulations that cover the same type of conduct the rule requires." 12 C.F.R. §1015.7(a). Factor (3) requires compliance with state ethics rules, such as "the competent and diligent provision of legal services, communication with clients, charging and receipt of fees, promotion of services, and not engaging in fraudulent or deceitful conduct."



1 FTC’s MARS Rule Statement of Basis and Purpose, 75 F.R. 75128.<sup>90</sup> As each of  
2 the consumer declarants attest, they did not receive the services they were  
3 promised and were unable to obtain timely updates on their legal representation.  
4 Defendants absconded with unearned fees and sold their services with  
5 misrepresentations. This is corroborated by the August 6, 2014, California State  
6 Bar Court decision that Torchia violated his ethical duties and Torchia’s  
7 admissions at the bar trial.<sup>91</sup>

8 Even if they met that exemption, defendants would still be barred from  
9 advance fees unless they: (1) deposited fees in client trust accounts and (2)  
10 maintained those accounts in accordance with state regulations. 12 CFR  
11 1015.7(b). As the California Bar explains, fees withdrawn from client trust  
12 accounts must be substantiated by work performed and the withdrawals must be  
13 documented.<sup>92</sup> Here, bank records show that funds were not deposited in client  
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15 <sup>90</sup> The FTC’s interpretation and explanation of its own rule has nearly the same  
16 force as the rule’s text. *See, e.g., Decker v. NW Environmental Defense Ctr.*, 133  
17 S. Ct. 1326, 1337 (2013) (“It is well established that an agency’s interpretation  
18 need not be the only possible reading of a regulation—or even the best one—to  
19 prevail. When an agency interprets its own regulation, the Court, as a general rule,  
20 defers to it unless that interpretation is plainly erroneous or inconsistent with the  
21 regulation.”) (internal quotes omitted).

22 <sup>91</sup> Torchia Trial Transcript at IV-118 (admitting that he and Brookstone failed  
23 to adequately explain to consumers what it meant to be added to a case and when  
24 consumers could be added to cases, and further admitted that they had instilled  
25 “unreasonable expectations” in clients); Torchia Trial Transcript at IV-112 to IV-  
26 114 (admitting that he and Brookstone failed to communicate with clients, even  
27 after they would send multiple complaints to him in writing).

28 <sup>92</sup> The California Bar’s “Handbook on Client Trust Accounting for California  
Attorneys” explains that fees must be withdrawn after they have been earned and  
unearned fees must be returned to the client as soon as they request them. At 20  
(withdrawal is appropriate after fees have been earned), *available at*  
<http://ethics.calbar.ca.gov/Publications/ClientTrustAccountingHandbook.aspx>

1 trust accounts and that defendants spent consumers' money as soon as they  
2 received it.<sup>93</sup> Additionally, all consumers report defendants took advance fees and,  
3 when refunds were sought, defendants could not substantiate what if any work was  
4 done for them.

5 Second, the only other possible MARS Rule defense would rely on another  
6 district's almost certainly incorrect ruling that the MARS Rule is invalid as applied  
7 to attorneys in the practice of law. *CFPB v. The Mortgage Law Group LLP*, 2016  
8 U.S. Dist. LEXIS 4663 (W.D. Wisc. Jan. 14, 2016). That court's ruling ignores  
9 that the FTC was empowered to engage in rulemaking addressing "unfair or  
10 deceptive acts or practices involving loan modification and foreclosure rescue  
11 services" covering all entities "subject to enforcement of the Federal Trade  
12 Commission Act."<sup>94</sup> Attorneys are, plainly, subject to enforcement of the FTC  
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16 ("Trust Handbook"). Although California law does not strictly require advance  
17 fees be kept in a trust account, they are permitted to do so under California law and  
18 the MARS Rule is clear that fees must be kept in trust accounts to meet this  
19 exemption from the advance fee ban. Statement of Basis and Purpose, 75 FR  
20 75133. Furthermore, even if not maintained in a client trust account, the  
21 Handbook explains that advance fees must be accounted for in the same way.  
22 Trust Handbook at 16 (stating that advance fees can be placed in trust accounts,  
23 that they are not earned until work is performed, and that there is an accounting  
24 requirement for these fees "regardless of whether such fee payments are designated  
25 as 'nonrefundable' in the attorney-client fee agreement").

26 <sup>93</sup> George Decl., Att. A (showing accounts, none of which are client trust  
27 accounts); *Id.*, Att. C (monthly summaries of activity of accounts, showing money  
28 flowing out of the accounts nearly as fast as it is deposited).

<sup>94</sup> Section 626 of the Omnibus Appropriations Act of 2009, as modified by the  
Credit Card Act of 2009. This was not modified by the Dodd-Frank Act. Dodd-  
Frank Wall Street Reform and Consumer Protection Act, PL 111-203, 124 Stat  
1376, § 1061(b)(5)(B)(i).

1 Act.<sup>95</sup> Indeed, this Court applied the FTC Act to attorneys under similar  
 2 circumstances in *FTC v. A to Z Marketing, Inc.*, 13-cv-919 (C.D. Cal. Sept. 17,  
 3 2014) (granting summary judgment). The *Mortgage Law Group* ruling also fails  
 4 to take into account the FTC’s reasoned explanation of its authority over attorneys  
 5 in propounding the MARS Rule.<sup>96</sup> Although that court cites no authority for its  
 6 ruling, it apparently relied on defendants’ mis-cited authority that attorneys are  
 7 beyond the FTC’s jurisdiction. *ABA v. FTC*, 430 F.3d 457 (D.C. Cir. 2005). That  
 8 authority, however, held only that attorneys are not “financial institutions” subject  
 9 to regulation under the Gramm-Leach-Bliley Act.<sup>97</sup> The DC Circuit has even  
 10 suggested that, if read as a ruling that attorneys are beyond the scope of federal  
 11 regulation, the ruling is contrary to the Supreme Court’s decision in *Milavetz,*  
 12 *Gallp & Milavetz, P.A. v. U.S.*, 559 U.S. 229 (2010), in which the Supreme Court  
 13 held that attorneys are bound by federal regulations.<sup>98</sup>

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15 <sup>95</sup> See e.g., *FTC v. Sup. Ct. Trial Lawyers Assoc.*, 493 U.S. 411 (1990)  
 16 (affirming a ruling that trial lawyers violated Section 5 by engaging in an illegal  
 17 boycott); *FTC v. Gill*, 265 F.3d 944 (9th Cir. 2001) (affirming summary judgment  
 18 over attorney and law firm offering credit repair services); *In the Matter of Wilson*  
 19 *Chemical Co.*, 64 F.T.C. 168 (1964) (holding attorney liable for his role in sending  
 20 deceptive collections letters as part of deceptive scheme).

21 <sup>96</sup> Statement of Basis and Purpose, 75 FR 75128-32 (explaining the frequency  
 22 with which attorneys participate in MARS fraud schemes, the cases the FTC and  
 23 State AGs have brought, and the requirement that attorneys abide by state ethics  
 24 rules to be entitled to an exemption from the MARS Rule).

25 <sup>97</sup> *ABA*, 430 F.3d at 381 (“[A]ttorneys and law firms, even viewed as  
 26 ‘institutions,’ are not institutions ‘the business of which is engaging in financial  
 27 activities,’ as defined in the statute.”). See also *CFPB v. Frederick J. Hanna &*  
 28 *Assocs. P.C.*, 2015 U.S. Dist. LEXIS 91357, \*27-31 (N.D. Ga. July 14, 2015)  
 (rejecting arguments that the *ABA* decision requires that attorneys not be subject to  
 the FDCPA).

<sup>98</sup> *Ass'n of Private Sector Colleges & Universities v. Duncan*, 681 F.3d 427,  
 459 (D.C. Cir. 2012).

1 In any event, this misguided ruling is not binding on this Court.  
2 Procedurally, that court has not issued its final ruling on the matter, leaving open  
3 for trial whether the defendants are even attorneys in the practice of law, the  
4 ultimate outcome of which could moot its decision on the scope of the MARS  
5 Rule.<sup>99</sup> Furthermore, even if interpreted as a current invalidation of the MARS  
6 Rule as applied to attorneys in the practice of law, it does not bind this Court  
7 because nonmutual collateral estoppel does not apply against the government.  
8 *United States v. Mendoza*, 464 U.S. 154, 162 (1984). The Ninth Circuit has  
9 similarly held that when a district court invalidates a rule, its ruling should not  
10 constitute nationwide injunction against the government because such a result is  
11 more than what is necessary to resolve the dispute amongst the parties and would  
12 inappropriately stifle litigation where, as here, multiple courts in many  
13 jurisdictions are likely to hear similar disputes. *Los Angeles Haven Hospice, Inc.*  
14 *v. Sebelius*, 638 F.3d 644, 664-65 (9th Cir. 2011).<sup>100</sup>

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20 <sup>99</sup> The court set trial to determine if the defendants in that case were even  
21 attorneys in the practice of law. *CFPB v. The Mortgage Law Group LLP*, 14-cv-  
22 513 (W.D. Wisc., April 21, 2016).

23 <sup>100</sup> Admittedly, the Ninth Circuit has ruled otherwise in a decision later vacated.  
24 *Earth Island Institute v. Ruthenbeck*, 490 F.3d 687, 699 (9th Cir. 2006)  
25 (invalidation of a rule requires a nationwide injunction). On appeal to the Supreme  
26 Court, the Solicitor General argued that *Earth Island* is contrary to *Mendoza*. 2007  
27 U.S. Briefs 463; 2008 U.S. S. Ct. Briefs LEXIS 615; 2008 WL 2817674.  
28 Ultimately, the Supreme Court did not reach the issue, instead holding that the  
plaintiffs lacked standing to challenge the rule at issue and vacating the Ninth  
Circuit's ruling. *Summers v. Earth Island Institute*, 555 U.S. 488 (2009).

1 **II. AN *EX PARTE* TRO, WITH ASSET FREEZE, EXPEDITED**  
 2 **DISCOVERY, AND APPOINTMENT OF A TEMPORARY**  
 3 **RECEIVER IS NECESSARY TO PREVENT DEFENDANTS FROM**  
 4 **DISSIPATING ASSETS AND DESTROYING EVIDENCE.**

5 **A. An *Ex Parte* TRO is Necessary to Ensure This Court Will be**  
 6 **Able to Grant Effective Relief.**

7 Because defendants are engaged in fraud and have proven themselves  
 8 incapable of complying with court orders, *ex parte* relief is necessary and  
 9 proper.<sup>101</sup> *Ex parte* relief is particularly appropriate “when it is the sole method of  
 10 preserving a state of affairs in which the court can provide effective final relief.”<sup>102</sup>  
 11 In circumstances like these, providing defendants notice would defeat the purpose  
 12 of the TRO by giving them the opportunity to dissipate assets and destroy  
 13 evidence.

14 Defendants are unlikely to comply with court orders. The evolution of ULG  
 15 to Brookstone to Advantis shows defendants’ willingness to change names to  
 16 perpetuate their fraudulent practices. Additionally, Kutzner, Torchia, Broderick,  
 17 and Marshall are all MARS fraud recidivists. Kutzner in particular is violating a  
 18 prior order from this Court by perpetrating this fraud; the third time the FTC has  
 19 been forced to bring his unlawful actions to this Court’s attention.<sup>103</sup> Aside from

20 <sup>101</sup> Fed. R. Civ. P. 65(b)(1)(a) (providing for *ex parte* relief when “immediate  
 21 and irreparable injury, loss, or damage will result” upon notice). As the Supreme  
 22 Court and Ninth Circuit have explained, *ex parte* relief is appropriate when  
 23 necessary to preserve the status quo and particularly when defendants are unlikely  
 24 to comply with court orders. *Granny Goose Foods, Inc. v. Brotherhood of*  
*Teamsters*, 415 U.S. 423, 439 (1974); *Reno Air Racing Ass’n, Inc. v. McCord*, 452

25 <sup>102</sup> *See In re Vuitton et Fils S.A.*, 606 F.2d 1, 4 (2nd Cir. 1979)

26 <sup>103</sup> Kutzner is also violating the reporting obligations of his 2009 Order, which  
 27 require him to provide annual updates explaining his compliance with that order  
 28 and identifying his residence and business activities. He has not filed such a report  
 since 2010. Lewis Decl. ¶ 5.



1 recidivism, Kutzner, Torchia, and Broderick have a history of violating court  
2 orders. After ULG filed for bankruptcy, Kutzner, with Torchia's help, violated a  
3 bankruptcy court order when he absconded with ULG's computers and monitors  
4 by "breaking and entering" the bankruptcy estate's premises.<sup>104</sup> In one of the mass  
5 joinder cases, *Randall v. CitiGroup*, the court sanctioned Brookstone and Torchia,  
6 ultimately issuing a bench warrant to compel Torchia's appearance after he and  
7 Brookstone ignored the Court's orders.<sup>105</sup> Broderick is also likely violating his  
8 own court order from his other recent mass joinder scheme. Moreover, in a case  
9 related to that scheme, the court sanctioned him for failing to comply with his  
10 discovery obligations,<sup>106</sup> and he testified that during discovery and prior to a  
11 30(b)(6) deposition he destroyed both the computer and cell phone he used to  
12 conduct business.<sup>107</sup> Finally, as explained in the FTC's Rule 65 certification, FTC  
13 defendants in cases like this one routinely attempt to thwart Court orders by  
14 absconding with assets and destroying evidence. Rule 65(b)(1) Certification and  
15 Declaration of Benjamin J. Theisman in Support of *Ex Parte* Motion for a  
16 Temporary Restraining Order, Asset Freeze, Appointment of Temporary Receiver,  
17 Limited Expedited Discovery, and Other Equitable Relief, and Order to Show

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19 <sup>104</sup> *In re United Law Group Inc.*, No. 10-18945 (Bankr. C.D. Cal.); Transcript  
of Hearing on June 30, 2011, at 94.

20 <sup>105</sup> *See* Order to Show Cause Re Compliance of August 7, 2016 Order (Dkt. 52)  
and Why Enforcement or Contempt Proceedings Should Not Commence, *Randall*  
21 *v. Citigroup, Inc.*, LA CV14-00097 JAK (AGRx) (C.D. Cal. Filed Feb. 23, 2015).

22 <sup>106</sup> Memorandum Opinion, *First Mariner Bank v. The Resolution Law Group*,  
23 No. MJG-12-1133 (D. Md., Filed Oct. 24, 2013).

24 <sup>107</sup> After he had been sued and a few weeks to a month before a 30(b)(6)  
deposition, he destroyed the cell phone he used for business. Ex. 4, Deposition of  
25 Robert Geoffrey Broderick, *First Mariner Bank v. The Resolution Law Group*, No.  
26 12-cv-1133 (D. Md., Dec. 18, 2013) ("Broderick Depo"), at 78-80. He also  
27 disposed of the laptop that he used for business after he had been sued. *Id.* at 62-  
28 68.

1 Cause Why a Preliminary Injunction Should Not Issue.<sup>108</sup> Furthermore, this Court  
2 has issued multiple orders like the Proposed TRO,<sup>109</sup> as have other judges in this  
3 district.<sup>110</sup>

#### 4 **B. A Complete Asset Freeze is Necessary.**

5 An asset freeze is necessary to preserve the possibility of restitution for  
6 victimized consumers. This Court has the power to enter a complete asset  
7 freeze,<sup>111</sup> which is necessary because defendants are likely to dissipate or hide  
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11 <sup>108</sup> *Vuitton*, 606 F.2d at 2-5 (granting *ex parte* relief based on certification that  
12 in prior actions defendants had taken steps to thwart court orders).

13 <sup>109</sup> Temporary Restraining Order Including an Asset Freeze and Limits on  
14 Using Assets, Appointment of a Receiver, Immediate Access to Business Premises,  
15 Limited Expedited Discovery, and an Order to Show Cause Why a Preliminary  
16 Injunction Should Not Issue, *FTC v. A to Z Mktg., Inc. et al.*, No. SACV13-919  
17 DOC (RNBx) (C.D. Cal., June 19, 2013); *Ex Parte* Temporary Restraining Order  
18 with Asset Freeze, Appointment of Temporary Receiver, Expedited Discovery, and  
19 Other Equitable Relief, and Order to Show Cause Why Preliminary Injunction  
20 Should Not Issue, *FTC v. Am. Mortgage Consulting Group, LLC et al.*, No.  
21 SACV12-01561 DOC (JPRx) (C.D. Cal., Sept. 18, 2012).

22 <sup>110</sup> *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of  
23 Temporary Receiver, Limited Expedited Discovery, and Other Equitable Relief,  
24 and Order to Show Cause Why Preliminary Injunction Should Not Issue, *FTC v.*  
25 *Good EBusiness LLC et al.*, No. CV16-1048 ODW (JPRx) (C.D. Cal., Feb. 16,  
26 2016); *Ex Parte* Temporary Restraining Order and Other Equitable Relief, *FTC v.*  
27 *Telestar Consulting, Inc. et al.*, No. CV-16-00555 SJO (SSx) (C.D. Cal., Feb. 1,  
28 2016); *Ex Parte* Temporary Restraining Order with an Asset Freeze and Other  
Equitable Relief, an Order to Show Cause Why a Preliminary Injunction Should  
Not Issue, *FTC v. Bam Financial LLC et al.*, No. SACV 15-01672 JVS (DFMx)  
(C.D. Cal., October 21, 2015).

<sup>111</sup> The Court has authority to issue an asset freeze. *See, e.g., FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1990) (finding the district court authorized to issue an asset freeze in 13(b) case).

1 assets.<sup>112</sup> As the Ninth Circuit explained, “[o]bviously, the public interest in  
2 preserving the illicit proceeds . . . for restitution to the victims is great.” *FTC v.*  
3 *Affordable Media*, 179 F.3d 1228, 1236 (9th Cir. 1999). As explained above,  
4 defendants’ actions are permeated with fraud, which alone makes an asset freeze  
5 necessary.<sup>113</sup> Furthermore, the banking records show likely dissipation. The  
6 largest, by far, share of disbursements from defendants’ enterprise go to an entity  
7 known as Federal Management Services, Inc. (“FMS”), ostensibly controlled by a  
8 convicted fraudster who is a professional incorporator in Nevada specializing in  
9 providing corporate secrecy.<sup>114</sup> In reality, FMS is almost certainly controlled by  
10 Kutzner, who is using “straw” officers to hide these assets. This is consistent with  
11 Kutzner’s history of using purportedly unrelated entities to hide funds. During his  
12 2008 bankruptcy, he admitted to keeping significant assets in the name of  
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15 <sup>112</sup> *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). Although under  
16 *Johnson* a court must find dissipation likely, previous Ninth Circuit law required  
17 simply the possibility. *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989). It is  
18 likely that this latter standard should apply in the context of a government  
19 enforcement action. The *Johnson* court overruled *Sahni* in the context of private  
20 litigants where the private litigant was required to show “irreparable harm.”  
21 *Johnson*, 572 F.3d at 1085, fn. 11. But, the FTC need not show irreparable harm in  
22 a statutory enforcement action like this one. Whatever the standard, the facts here  
23 are sufficient.

24 <sup>113</sup> Fraudulent activities “lead to the conclusion that, absent a freeze,  
25 [defendants] would either dispose of, or conceal, or send abroad, all of the moneys  
26 that they have obtained[.]” *H.N. Singer*, 668 F.2d at 1113; *S.E.C. v. Manor*  
27 *Nursing Centers, Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972).

28 <sup>114</sup> George Decl., Att. B (showing Federal Management Services Inc. receiving  
22.9% of all disbursements from defendants’ bank accounts and further showing  
the next largest recipient of money only received 9.07%.); Gales Decl., Att. 21  
(signature card for FMS including Wayne Andre and Josephine Lobo); Kennedy  
Decl., Att. 11 (news article explaining Wayne Andre’s role in helping people set  
up secret companies and detailing his previous financial misconduct).



1 companies he purportedly did not control for “asset protection” purposes.<sup>115</sup>  
2 Similarly, as disclosed by FMS’ registered agent, Kutzner has in the past  
3 controlled multiple other companies with “straw” officers hiding his  
4 involvement.<sup>116</sup> In addition, as shown above: (1) Kutzner uses aliases; (2)  
5 defendants systematically and improperly dissipate consumer’ funds, in violation  
6 of client trust accounting procedures; (3) Torchia blatantly ignored court sanctions  
7 until hauled before the court on a bench warrant; (4) Brookstone refused to pay an  
8 employee for work performed; and (5) Brookstone refused to comply with a court  
9 order to refund money to a consumer, forcing that consumer to go to small claims  
10 court twice.<sup>117</sup> Given the nature of the fraud and defendants’ past practices, it is  
11 highly likely that they will hide assets to thwart any possible recovery in this suit.

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14  
15 <sup>115</sup> Ex. 5, Section 341(a) Creditors’ Examination of Damian Kutzner, *In re*  
16 *Kutzner*, No. 08-bk-12656 (Bankr. C.D. Cal., July 14, 2008) (“Kutzner Depo”) at  
17 13-15.

18 <sup>116</sup> These documents include a list of companies that the registered agent  
19 provided services for, including entities like Black Gold Leasing Inc. that bank  
20 records show Kutzner controlled, and other entities that the document associates  
21 him with, but which he is absent from in the public records, including HTM LLC,  
22 Liberty Management Group Inc., Scripts Development Inc., UHG Inc., United  
23 Holdings and Acquisitions Inc., and ZEC Management Corp. Gales Decl., Att. 8  
24 (Federal Management Systems, Inc. Incorporation Papers, including list of entities  
25 the registered agent was resigning for and identifying the client); Gales Decl., Att.  
26 21 (showing Kutzner as a signer for Black Gold Leasing Inc.); Gales Decl., Att. 10  
27 (Black Gold Leasing Inc. Incorporation Papers); Gales Decl., Att. 11 (HTM LLC  
28 Incorporation Papers); Gales Decl., Att. 12 (Liberty Management Group Inc.  
Incorporation Papers); Gales Decl., Att. 13 (Scripts Development Inc.  
Incorporation Papers); Gales Decl., Att. 14 (UHG Inc. Incorporation Papers);  
Gales Decl., Att. 15 (United Holdings and Acquisitions Inc. Incorporation Papers);  
Gales Decl., Att. 16 (ZEC Management Corp. Incorporation Papers).

<sup>117</sup> Navarro Decl., ¶¶ 9-13.

1                                   **C. The TRO’s Expedited Discovery Provisions Are Necessary to**  
2                                   **Preserve Assets and Evidence.**

3                   The TRO contains expedited discovery provisions to ensure compliance with  
4 the TRO’s asset freeze and receivership provisions. Fed. R. Civ. P. 26(d)  
5 (permitting expedited discovery on motion of a party); Fed. R. Civ. P. 33(b)  
6 (permitting the Court to shorten discovery response periods); Fed. R. Civ. P. 34(b)  
7 (same); Fed. R. Civ. P. 36(a) (same); *Pantron I*, 33 F.3d at 1102 (“[T]he authority  
8 granted by section 13(b) is not limited to the power to issue an injunction; rather it  
9 includes the authority to grant any ancillary relief necessary to accomplish  
10 complete justice.”) (internal citations and quotations omitted). This Court has  
11 included these provisions in previous TROs<sup>118</sup> and they are necessary given the  
12 likelihood that defendants will attempt to thwart this Court’s TRO.

13                                   **D. A Temporary Receiver is Necessary to Preserve the Status**  
14                                   **Quo.**

15                   Under Section 13(b) of the FTC Act, the Court has wide latitude to fashion  
16 temporary relief that furthers the statutory purpose. *H.N. Singer*, 668 F.2d at 1112-  
17 13. This power includes the appointment of a temporary receiver. *See, e.g., FTC*  
18 *v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984) (holding that the  
19 court has inherent power “to grant ancillary relief, including freezing assets and  
20 appointing a Receiver, as an incident to its express statutory authority to issue a  
21 permanent injunction under Section 13”) (per curiam). When a corporate  
22 defendant, through its management, has defrauded members of the public, “it is  
23 likely that, in the absence of the appointment of a receiver to maintain the status  
24 quo, the corporate assets will be subject to diversion and waste” to the detriment of  
25 the fraud’s victims. *SEC v. First Fin. Group*, 645 F.2d 429, 438 (5th Cir. 1981).

26  
27 <sup>118</sup> *See supra* at fn. 109.  
28

1 Because the receiver would be taking over ostensible law firms, the specific  
2 provisions in the proposed TRO provide guidance to protect “clients” and ensure  
3 that the “clients” of the firm are able to obtain replacement counsel for any  
4 pending actions.<sup>119</sup> The proposed receivership includes Broad Base Inc. and FMS  
5 in addition to Brookstone and Advantis. These entities share ownership and  
6 employees, and are involved in the scheme. Such relief is necessary to ensure that  
7 the receiver can fully take control over the enterprise and all of its assets. This  
8 Court has previously included non-defendants in receiverships.<sup>120</sup> Other courts  
9 have also done so, using language nearly identical to that in the proposed TRO,<sup>121</sup>  
10 including holding defendants liable for the conduct they committed through non-  
11 defendant members of the common enterprise.<sup>122</sup>

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16 <sup>119</sup> In particular, the proposed TRO requires the Temporary Receiver to identify  
17 and preserve client files, contact current clients to inform them of the receivership,  
18 file notices in ongoing litigation informing those courts of the receivership, and file  
19 requests for stays of litigation to allow clients to obtain replacement counsel in  
20 light of the receivership.

21 <sup>120</sup> See Temporary Restraining Order Including an Asset Freeze and Limits on  
22 Using Assets, Appointment of a Receiver, Immediate Access to Business Premises,  
23 Limited Expedited Discovery, and an Order to Show Cause Why a Preliminary  
24 Injunction Should Not Issue, *FTC v. A to Z Mktg., Inc. et al.*, No. SACV13-919  
25 DOC (RNBx) (C.D. Cal., June 19, 2013).

26 <sup>121</sup> See Temporary Restraining Order with Ancillary Equitable Relief, Including  
27 Asset Freeze, and an Order to Show Cause Why a Preliminary Injunction Should  
28 Not Issue, *FTC v. Ideal Financial Solutions Inc. et al.*, No. 13-00143 MMD-GWF  
(D. Nev., January 30, 2013).

<sup>122</sup> See, e.g., *FTC v. Ideal Financial Solutions Inc.*, 2016 WL 756527 at \*3 (D.  
Nev. Feb. 23, 2016) (holding defendants liable for \$10 million in illegal conduct  
committed through a non-defendant, Zeal Money Solutions).

CONCLUSION

1  
2 Because the FTC is likely to succeed on the merits, having proved that the  
3 defendants, who are incorrigible recidivists, are engaged in a fraudulent scheme,  
4 the Court should grant the *ex parte* TRO, which, among other things, freezes the  
5 defendants' assets and puts a receiver in charge of the fraudulent scheme.

6  
7 Respectfully submitted,

8 Dated: May 26, 2016



9 Benjamin J. Theisman  
Gregory J. Madden

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11 FEDERAL TRADE COMMISSION  
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FEDERAL TRADE COMMISSION

10  
11 **UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

12 **FEDERAL TRADE COMMISSION,**

13  
14 Plaintiff,

15 v.

16 DAMIAN KUTZNER, individually and as  
an officer of BROOKSTONE LAW P.C.  
17 (California), BROOKSTONE LAW P.C.  
(Nevada), ADVANTIS LAW P.C., and  
18 ADVANTIS LAW GROUP P.C.; VITO  
TORCHIA, JR., individually and as an  
19 officer of BROOKSTONE LAW P.C.  
(California) and BROOKSTONE LAW  
20 P.C. (Nevada); JONATHAN  
TARKOWSKI, individually and as an  
21 officer of BROOKSTONE LAW P.C.  
(California) and BROOKSTONE LAW  
22 P.C. (Nevada); R. GEOFFREY  
BRODERICK, individually and as an  
23 officer of ADVANTIS LAW P.C. and  
ADVANTIS LAW GROUP P.C.;  
24 CHARLES T. MARSHALL, individually  
and as an officer of ADVANTIS LAW  
25 P.C. and ADVANTIS LAW GROUP P.C.;  
BROOKSTONE LAW P.C., d/b/a  
26 BROOKSTONE LAW GROUP, a  
California professional corporation;  
27 BROOKSTONE LAW P.C., d/b/a  
BROOKSTONE LAW GROUP, a Nevada  
28

Case No. \_\_\_\_\_

**[PROPOSED] EX PARTE  
TEMPORARY  
RESTRAINING ORDER  
WITH ASSET FREEZE,  
APPOINTMENT OF  
TEMPORARY RECEIVER,  
LIMITED EXPEDITED  
DISCOVERY, AND OTHER  
EQUITABLE RELIEF, AND  
ORDER TO SHOW CAUSE  
WHY PRELIMINARY  
INJUNCTION SHOULD NOT  
ISSUE**

**[LODGED UNDER SEAL]**

1 professional corporation; ADVANTIS  
2 LAW P.C., a California professional  
3 corporation; and ADVANTIS LAW  
4 GROUP P.C., a California professional  
5 corporation,

6 Defendants.

7 Plaintiff, the Federal Trade Commission (“FTC”), pursuant to Section 13(b)  
8 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the  
9 2009 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524,  
10 678 (Mar. 11, 2009) (“Omnibus Act”), as clarified by the Credit Card  
11 Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24,  
12 Section 511, 123 Stat. 1734, 1763-64 (Mar. 22, 2009) (“Credit Card Act”), and  
13 amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,  
14 Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010)  
15 (“Dodd-Frank Act”), 12 U.S.C. § 5538, has filed a complaint to obtain temporary,  
16 preliminary, and permanent injunctive relief, rescission or reformation of contracts,  
17 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other  
18 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the  
19 FTC Act, 15 U.S.C. § 45(a), and the Mortgage Assistance Relief Services Rule  
20 (“MARS Rule”), 16 C.F.R. Part 322, recodified as Mortgage Assistance Relief  
21 Services, 12 C.F.R. Part 1015 (“Regulation O”), and has applied for a temporary  
22 restraining order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

23 **FINDINGS OF FACT**

24 This Court, having considered the FTC’s Complaint, *ex parte* application,  
25 declarations, exhibits, and memoranda filed in support of the FTC’s application,  
26 and the evidence presented, finds that:

27 1. This Court has jurisdiction over the subject matter of this case, and  
28 there is good cause to believe it will have jurisdiction over all parties hereto;



1           2.     There is good cause to believe that venue lies properly with this  
2 Court;

3           3.     There is good cause to believe that Defendants Damian Kutzner,  
4 Advantis Law P.C., Advantis Law Group P.C., Brookstone Law P.C. (California),  
5 Brookstone Law P.C. (Nevada), Vito Torchia, Jonathan Tarkowski, Geoffrey  
6 Broderick, and Charles Marshall have engaged, and are likely to continue to  
7 engage, in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. §  
8 45(a), including but not limited to falsely and misleadingly representing, directly or  
9 indirectly, expressly or by implication that:

10               a. Defendants are likely to obtain relief for consumers, including in  
11               some instances “at least \$75,000” or consumers’ homes free and  
12               clear;

13               b. Defendants will seek to void consumers’ mortgages;

14               c. Defendants have a team of experienced lawyers and personnel to  
15               litigate mass joinder cases alleging lender fraud and related claims  
16               on behalf of hundreds or thousands of clients simultaneously; and

17               d. Defendants will file lawsuits on particular consumers’ behalf.

18           4.     **[PROPOSED MARS RULE LANGUAGE:** There is good cause to  
19 believe that Defendants Damian Kutzner, Advantis Law P.C., Advantis Law Group  
20 P.C., Brookstone Law P.C. (California), Brookstone Law P.C. (Nevada), Vito  
21 Torchia, Jonathan Tarkowski, Geoffrey Broderick, and Charles Marshall have  
22 engaged and are likely to continue to engage in acts or practices that violate the  
23 MARS Rule, 12 C.F.R. Part 1015, including but not limited to:

24               a. Misrepresenting, expressly or by implication, material aspects of  
25               any mortgage assistance relief services, in violation of the MARS  
26               Rule; 12 C.F.R. § 1015.3(b);

- 1           b. Failing to make disclosures in all general and consumer-specific  
2           commercial communications as required by the MARS Rule; 12  
3           C.F.R. § 1015.4(a)-(c);
- 4           c. Asking for or receiving payment of any fee or other consideration  
5           before a consumer has executed a written agreement between the  
6           consumer and the consumer’s loan holder or servicer incorporating  
7           the offer of mortgage assistance relief the provider obtained from  
8           the consumer’s loan holder or servicer in violation of the MARS  
9           Rule; 12 C.F.R. § 1015.5(a);]

10           5. There is good cause to believe that immediate and irreparable harm  
11 will result from Defendants’ ongoing violations of Section 5(a) of the FTC Act  
12 **[PROPOSED MARS RULE LANGUAGE:** and MARS Rule] unless Defendants  
13 are restrained and enjoined by Order of this Court;

14           6. There is good cause to believe that the Court’s ability to grant  
15 effective final relief for consumers in the form of monetary restitution and  
16 disgorgement of ill-gotten gains will suffer immediate and irreparable damage  
17 from the Defendants’ transfer, dissipation, or concealment of their Assets or  
18 business records unless Defendants continue to be restrained and enjoined by  
19 Order of this Court and that, in accordance with Fed. R. Civ. P. 65(b), the interest  
20 of justice requires that the FTC’s application be heard *ex parte* without prior notice  
21 to Defendants. Therefore, there is good cause for relieving the FTC of the duty to  
22 provide Defendants with prior notice of the FTC’s application;

23           7. Good cause exists to permit the FTC to take limited expedited  
24 discovery from third parties as to the existence and location of Assets and  
25 Documents;

26           8. Weighing the equities and considering the FTC’s likelihood of  
27 ultimate success, a temporary restraining order with an Asset freeze, limited  
28

1 expedited discovery as to the existence and location of Assets and Documents, and  
2 other equitable relief is in the public interest; and

3 9. No security is required of any agency of the United States for the  
4 issuance of a Temporary Restraining Order. Fed. R. Civ. P. 65(c).

5 **DEFINITIONS**

6 For the purposes of this Temporary Restraining Order, the following  
7 definitions apply:

8 A. **“Asset”** or **“Assets”** means any legal or equitable interest in, right to,  
9 or claim to, any and all real and personal property of Defendants, or held for the  
10 benefit of Defendants, wherever located, whether in the United States or abroad,  
11 including but not limited to chattel, goods, instruments, equipment, fixtures,  
12 general intangibles, effects, leaseholds, contracts, mail or other deliveries,  
13 inventory, checks, notes, accounts, credits, receivables (as those terms are defined  
14 in the Uniform Commercial Code), shares of stock, futures, all cash or currency,  
15 and trusts, including but not limited to a trust held for the benefit of any Defendant,  
16 any of the Individual Defendants’ minor children, or any of the Individual  
17 Defendants’ spouses, and shall include both existing Assets and Assets acquired  
18 after the date this order is signed, or any interest therein.

19 B. **“Asset Freeze Accounts”** includes accounts that are held by or for the  
20 benefit of, or controlled by, directly or indirectly, any Corporate Defendant,  
21 Individual Defendant, Broad Base Inc., Federal Management Systems Inc., Black  
22 Gold Leasing Inc., Doheny Development Corporation, HTM LLC, Liberty  
23 Management Group Inc., Scripts Development Inc., Serious Pimp Inc., UHG Inc.,  
24 United Holdings and Acquisitions Inc., Vizcayan Corporation, and ZEC  
25 Management Corp. Asset Freeze Accounts also includes the following accounts,  
26 identified by the account holder, the Financial Institution, and last four digits of the  
27 account number:  
28

- 1 1. Advantis Law, Bank of America, No. unknown;
- 2 2. Advantis Law, California Republic Bank, No. unknown;
- 3 3. Black Gold Leasing Inc., JPMorgan Chase, 7178;
- 4 4. Broad Base Inc., JPMorgan Chase, 3379;
- 5 5. Broad Base Inc., JPMorgan Chase, 3819;
- 6 6. Brookstone Law P.C., JPMorgan Chase, 9552;
- 7 7. Brookstone Law P.C., JPMorgan Chase, 8561;
- 8 8. Brookstone Law P.C., JPMorgan Chase, 7928;
- 9 9. Brookstone Law P.C., JPMorgan Chase, 8769;
- 10 10. Brookstone Law P.C., JPMorgan Chase, 8819;
- 11 11. Brookstone Law P.C., JPMorgan Chase, 6317;
- 12 12. Brookstone Law P.C., JPMorgan Chase, 9052;
- 13 13. Brookstone Law P.C., Bank of America, 0081;
- 14 14. Brookstone Law P.C., Bank of America, 0097;
- 15 15. Brookstone Law P.C., Bank of America, 0098;
- 16 16. Brookstone Law P.C., Bank of America, 0099;
- 17 17. Brookstone Law P.C., Bank of America, 2747;
- 18 18. Brookstone Law P.C., Bank of America, 2748;
- 19 19. Brookstone Law P.C., Bank of America, 2909;
- 20 20. Brookstone Law P.C., Bank of America, 3466;
- 21 21. Brookstone Law P.C., Bank of America, 8722;
- 22 22. Brookstone Law P.C., Bank of America, 8735;
- 23 23. Brookstone Law P.C., Bank of America, 7366;
- 24 24. Brookstone Law P.C., CitiBank, No. unknown;
- 25 25. Charles T. Marshall, JPMorgan Chase, 4691;
- 26 26. Charles T. Marshall, JPMorgan Chase, 4708;
- 27 27. Charles T. Marshall, JPMorgan Chase, 6085;
- 28

- 1 28. Charles T. Marshall, JPMorgan Chase, 7957;
- 2 29. Charles T. Marshall, JPMorgan Chase, 8120;
- 3 30. Charles T. Marshall, JPMorgan Chase, 2107;
- 4 31. Charles T. Marshall, Bank of America, 1763;
- 5 32. Damian Kutzner, JPMorgan Chase, 9111;
- 6 33. Doheny Development Corp., JPMorgan Chase, 5983;
- 7 34. Federal Management Systems Inc., JPMorgan Chase, 2850;
- 8 35. Geoffrey Broderick, JPMorgan Chase, 9253;
- 9 36. Geoffrey Broderick, JPMorgan Chase, 3571;
- 10 37. Geoffrey Broderick, JPMorgan Chase, 4891;
- 11 38. Geoffrey Broderick, JPMorgan Chase, 9914;
- 12 39. Geoffrey Broderick, JPMorgan Chase, 6319;
- 13 40. Geoffrey Broderick, JPMorgan Chase, 9209;
- 14 41. Vito Torchia, JPMorgan Chase, 8371;
- 15 42. Vito Torchia, JPMorgan Chase, 3853;
- 16 43. Vito Torchia, JPMorgan Chase, 7060;
- 17 44. Vito Torchia, JPMorgan Chase, 8993;
- 18 45. Vito Torchia, JPMorgan Chase, 5587;
- 19 46. Vito Torchia, JPMorgan Chase, 7490;
- 20 47. Vito Torchia, JPMorgan Chase, 9320; and
- 21 48. Vizcayan Corporation, JPMorgan Chase, 7307.

22 C. **“Assisting others”** includes but is not limited to: (1) performing  
23 customer service functions, including, but not limited to, receiving or responding  
24 to consumer complaints; (2) formulating or providing, or arranging for the  
25 formulation or provision of, any advertising or marketing material, including but  
26 not limited to, any telephone sales script, direct mail solicitation, or the design,  
27 text, or use of images of any Internet website, email, or other electronic  
28

1 communications; (3) formulating or providing, or arranging for the formulation or  
2 provision of, any marketing support material or service, including but not limited  
3 to, web or Internet Protocol addresses or domain name registration for any Internet  
4 websites, affiliate marketing services, or media placement services; (4) providing  
5 names of, or assisting in the generation of, potential customers; (5) performing or  
6 providing marketing, billing, or payment services of any kind; (6) acting or serving  
7 as an owner, officer, director, manager, or principal of any entity; (7) providing  
8 telemarketing services; or (8) consulting with regard to any of the above.

9 D. **“Corporate Defendants”** means, collectively, Advantis Law P.C.,  
10 Advantis Law Group P.C., Brookstone Law P.C. (California), Brookstone Law  
11 P.C. (Nevada), and their successors, assigns, affiliates, or subsidiaries, and each of  
12 them by whatever names each might be known.

13 E. **“Defendants”** means all Individual Defendants, Corporate  
14 Defendants, and their successors, assigns, affiliates, subsidiaries, or agents,  
15 individually, collectively, or in any combination, and each of them by whatever  
16 names each might be known.

17 F. **“Document”** is synonymous in meaning and equal in scope to the  
18 terms “Document” and “electronically stored information,” as described and used  
19 in the Federal Rules of Civil Procedure. This includes, but is not limited to,  
20 electronic mail, instant messaging, videoconferencing, and other electronic  
21 correspondence (whether active, archived, or in a deleted items folder), word  
22 processing files, spreadsheets, databases, and video and sound recordings, whether  
23 stored on: cards; magnetic or electronic tapes; disks; computer hard drives,  
24 network shares or servers, or other drives; cloud-based platforms; cell phones,  
25 PDAs, computer tablets, or other mobile devices; or other storage media.

26 G. **“Electronic Data Host”** means any person or entity in the business of  
27 storing, hosting, or otherwise maintaining electronically stored information. This  
28



1 includes, but is not limited to, any entity hosting a website or server, and any entity  
2 providing “cloud based” electronic storage.

3 H. **“Financial Institution”** means any bank, savings and loan institution,  
4 credit union, payment processor, trust, or any financial depository of any kind,  
5 including but not limited to, any brokerage house, trustee, broker-dealer, escrow  
6 agent, title company, commodity trading company, or precious metal dealer.

7 I. **“Individual Defendants”** means, collectively, Damian Kutzner, Vito  
8 Torchia, Jonathan Tarkowski, Geoffrey Broderick, Charles Marshall, and any other  
9 names they might use, have used, be known by or have been known by.

10 J. **“Mortgage assistance relief product or service”** or **“MARS”** means  
11 any product, service, plan, or program, offered or provided to the consumer in  
12 exchange for consideration, that is represented, expressly or by implication, to  
13 assist or attempt to assist the consumer with any of the following:

14 1. stopping, preventing, or postponing any mortgage or deed of  
15 trust foreclosure sale for the consumer’s dwelling, any repossession of the  
16 consumer’s dwelling, or otherwise saving the consumer’s dwelling from  
17 foreclosure or repossession;

18 2. negotiating, obtaining, or arranging a modification of any term  
19 of a dwelling loan, including a reduction in the amount of interest, principal  
20 balance, monthly payments, or fees;

21 3. obtaining any forbearance or modification in the timing of  
22 payments from any dwelling loan holder or servicer on any dwelling loan;

23 4. negotiating, obtaining, or arranging any extension of the period  
24 of time within which the consumer may (i) cure his or her default on a dwelling  
25 loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise  
26 any right to reinstate a dwelling loan or redeem a dwelling;

1           5.     obtaining any waiver of an acceleration clause or balloon  
2 payment contained in any promissory note or contract secured by any dwelling; or

3           6.     negotiating, obtaining, or arranging (i) a short sale of a  
4 dwelling, (ii) a deed-in-lieu of foreclosure, (iii) or any other disposition of a  
5 dwelling loan other than a sale to a third party that is not the dwelling loan holder.

6           The foregoing shall include any manner of claimed assistance, including, but  
7 not limited to, auditing or examining a consumer’s mortgage or home loan  
8 application and offering to provide or providing legal services, or offering to sell a  
9 consumer a plan or subscription to a service that provides such assistance.

10          K.     **“Person”** means any individual, group, unincorporated association,  
11 limited or general partnership, corporation or other business entity.

12          L.     **“Plaintiff”** means the Federal Trade Commission (“Commission” or  
13 “FTC”).

14          M.     **“Receivership Entities”** means Corporate Defendants and any  
15 entities that are part of Defendants’ common enterprise, including but not limited  
16 to Broad Base Inc. and Federal Management Systems Inc. “Receivership Entities”  
17 includes businesses that lack formal legal structure (such as businesses operating  
18 under fictitious business names), but that otherwise satisfy the definition of  
19 “Receivership Entity.”

20          N.     **“Temporary Receiver”** means the Temporary Receiver appointed in  
21 this Order. The term “Temporary Receiver” also includes any deputy receivers or  
22 agents as may be named by the Temporary Receiver.

23                   **I.     PROHIBITED REPRESENTATIONS**

24           **IT IS THEREFORE ORDERED** that Defendants, Defendants’ officers,  
25 agents, servants, employees, and attorneys, and all other persons in active concert  
26 or participation with any of them, who receive actual notice of this Order, whether  
27 acting directly or indirectly, in connection with the advertising, marketing,  
28

1 promotion, offering for sale, sale, or performance of any service or product, are  
2 temporarily restrained and enjoined from misrepresenting or assisting others in  
3 misrepresenting, expressly or by implication:

4 A. Defendants are likely to obtain relief for consumers, including “at  
5 least \$75,000” or consumers’ homes free and clear;

6 B. Defendants will seek to void consumers’ mortgages;

7 C. Defendants have a team of experienced lawyers and personnel to  
8 litigate mass joinder cases alleging lender fraud and related claims; and

9 D. Defendants will file lawsuits on particular consumers’ behalf.

10 **II. [PROPOSED MARS RULE LANGUAGE: DISCLOSURES REQUIRED**  
11 **BY AND REPRESENTATIONS PROHIBITED BY THE MARS RULE**

12 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,  
13 agents, servants, employees, and attorneys, and all other persons in active concert  
14 or participation with any of them, who receive actual notice of this Order, whether  
15 acting directly or indirectly, in connection with the advertising, marketing,  
16 promotion, offering for sale, sale, or provision of any mortgage assistance relief  
17 product or service, are hereby temporarily restrained and enjoined from engaging  
18 in, or assisting others in engaging in, the following conduct:

19 A. Misrepresenting, expressly or by implication, any material aspect of  
20 any mortgage assistance relief service, as required by 12 C.F.R. § 1015.3(b);

21 B. Failing to make the following disclosure in all general and consumer-  
22 specific commercial communications: “[Name of Company] is not associated with  
23 the government, and our service is not approved by the government or your  
24 lender,” as required by 12 C.F.R. § 1015.4(a)(1) & 1015.4(b)(2);

25 C. Failing to make the following disclosure in all general and consumer-  
26 specific commercial communications: “Even if you accept this offer and use our  
27 service, your lender may not agree to change your loan,” as required by 12 C.F.R.  
28 § 1015.4(a)(2) & 1015.4(b)(3); and

1 D. Failing to make the following disclosure in all consumer-specific  
2 commercial communications: “You may stop doing business with us at any time.  
3 You may accept or reject the offer of mortgage assistance we obtain from your  
4 lender [or servicer]. If you reject the offer, you do not have to pay us. If you  
5 accept the offer, you will have to pay us [insert amount or method for calculating  
6 the amount] for our services,” as required by 12 C.F.R. § 1015.4(b)(1). For the  
7 purposes of this subsection, the amount “you will have to pay” shall consist of the  
8 total amount the consumer must pay to purchase, receive, and use all of the  
9 mortgage assistance relief services that are the subject of the sales offer, including  
10 but not limited to, all fees and charges.]

11 **III. [PROPOSED MARS RULE LANGUAGE: ADVANCE FEE**  
12 **PROHIBITION**

13 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,  
14 agents, servants, employees, and attorneys, and all other persons in active concert  
15 or participation with any of them, who receive actual notice of this Order, whether  
16 acting directly or indirectly, in connection with the advertising, marketing,  
17 promotion, offering for sale, sale, or provision of any mortgage assistance relief  
18 product or service are hereby temporarily restrained and enjoined from asking for,  
19 or receiving payment of, any fee or other consideration until a consumer has  
20 executed a written agreement between the consumer and the consumer’s loan  
21 holder or servicer incorporating the offer of mortgage assistance relief the  
22 Defendants obtained on the consumer’s behalf.]

23 **IV. PRESERVATION OF RECORDS AND TANGIBLE THINGS**

24 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,  
25 agents, servants, employees, and attorneys, and all other persons in active concert  
26 or participation with any of them, who receive actual notice of this Order, whether  
27 acting directly or indirectly, in connection with the advertising, marketing,  
28 promotion, offering for sale, sale, or provision of any product or service, are

1 hereby temporarily restrained and enjoined from destroying, erasing, mutilating,  
2 concealing, altering, transferring, or otherwise disposing of, in any manner,  
3 directly or indirectly, any Documents or records that relate to the business  
4 practices, or business and personal finances, of Defendants, or an entity directly or  
5 indirectly under the control of Defendants.

6 **V. DISABLEMENT OF WEBSITES AND PRESERVATION OF**  
7 **ELECTRONICALLY STORED INFORMATION**

8 **IT IS FURTHER ORDERED** that, immediately upon service of the Order  
9 upon them and pending determination of the FTC's request for a preliminary  
10 injunction, (1) any Electronic Data Host and (2) Defendants, Defendants' officers,  
11 agents, servants, employees, and attorneys, and all other persons in active concert  
12 or participation with any of them, who receive actual notice of this Order, whether  
13 acting directly or indirectly, shall:

14 A. Immediately take all necessary steps to ensure that any Internet  
15 website used by Defendants for the advertising, marketing, promotion, offering for  
16 sale, sale, or provision of services or products relating to consumers' mortgages or  
17 containing statements or representations prohibited by Section I of this Order  
18 cannot be accessed by the public; and

19 B. Prevent the alteration, destruction or erasure of any (1) Internet  
20 website used by Defendants for the advertising, marketing, promotion, offering for  
21 sale, sale, or provision of services or products relating to consumers' mortgages by  
22 preserving such websites in the format in which they are maintained currently and  
23 (2) any electronically stored information stored on behalf of Corporate Defendants,  
24 or entities in active concert or participation with any of them.

25 **VI. SUSPENSION OF INTERNET DOMAIN NAME REGISTRATIONS**

26 **IT IS FURTHER ORDERED** that, pending determination of the FTC's  
27 request for a preliminary injunction, any domain name registrar shall suspend the  
28 registration of any Internet website used by Defendants for the advertising,

1 marketing, promotion, offering for sale, sale, or provision of services or products  
2 relating to consumers' mortgages or containing statements or representations  
3 prohibited by Section I of this Order and provide immediate notice to counsel for  
4 the FTC of any other Internet domain names registered by Defendants,  
5 Defendants' officers, agents, servants, employees, and attorneys, and all other  
6 persons in active concert or participation with any of them who receive actual  
7 notice of this Order by personal service or otherwise.

8 **VII. PROHIBITION ON USE OF CUSTOMER INFORMATION**

9 **IT IS FURTHER ORDERED** that Defendants, and Defendants' officers,  
10 agents, directors, servants, employees, salespersons, and attorneys, as well as all  
11 other persons or entities in active concert or participation with them, who receive  
12 actual notice of this Order by personal service or otherwise, whether acting directly  
13 or through any trust, corporation, subsidiary, division, or other device, are hereby  
14 temporarily restrained and enjoined from using, benefitting from, selling, renting,  
15 leasing, transferring, or otherwise disclosing the name, address, telephone number,  
16 email address, Social Security number, credit card number, debit card number,  
17 bank account number, any financial account number, or any data that enables  
18 access to any customer's account, or other identifying information of any person  
19 which any Defendant obtained prior to when this Order is signed in connection  
20 with the marketing or sale of any good or service, including those who were  
21 contacted or are on a list to be contacted by any of the Defendants; provided that  
22 Defendants may disclose such identifying information to the Temporary Receiver,  
23 a law enforcement agency, or as required by any law, regulation, or court order.

24 **VIII. ASSET FREEZE**

25 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents,  
26 servants, employees, and attorneys, and all other persons or entities directly or  
27 indirectly under the control of any of them, and all other persons or entities in  
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1 active concert or participation with any of them who receive actual notice of this  
2 Order are hereby temporarily restrained and enjoined from directly or indirectly:

3 A. Transferring, liquidating, converting, encumbering, pledging, loaning,  
4 selling, concealing, dissipating, disbursing, assigning, spending, withdrawing,  
5 granting a lien or security interest or other interest in, or otherwise disposing of any  
6 Assets, or any interest therein, wherever located, including outside the United  
7 States, that are:

- 8 1. Asset Freeze Accounts;
- 9 2. owned or controlled, directly or indirectly, by any Defendant, in  
10 whole or in part, or held, in whole or in part, for the benefit of any Defendant;
- 11 3. in the actual or constructive possession of any Defendant;
- 12 4. owned, controlled by, or in the actual or constructive possession  
13 of any corporation, partnership, or other entity directly or indirectly owned,  
14 managed, or controlled by, or under common control with any Defendant,  
15 including any entity acting under a fictitious name owned by or controlled by any  
16 Defendant, and any Assets held by, for, or under the name of any Defendant at any  
17 bank or savings and loan institution, or with any broker-dealer, escrow agent, title  
18 company, commodity trading company, payment processing company, precious  
19 metal dealer, or other Financial Institution or depository of any kind;

20 B. Opening or causing to be opened any safe deposit boxes titled in the  
21 name of any Defendant, or subject to access by any Defendant;

22 C. Incurring charges or cash advances on any credit card, debit card, or  
23 checking card issued in the name, singly or jointly, of any Defendant;

24 D. Obtaining a personal or secured loan;

25 E. Incurring liens or encumbrances on real property, personal property or  
26 other Assets in the name, singly or jointly, of any Defendant; and  
27  
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1 F. Cashing any checks or depositing any money orders or cash received  
2 from consumers, clients, or customers of any Defendant.

3 **IT IS FURTHER ORDERED** that the Assets affected by this Section shall  
4 include: (1) all Assets of Defendants as of the time this Order is signed; and (2) for  
5 Assets obtained after the time this Order is signed, those Assets of Defendants that  
6 are derived, directly or indirectly, from the Defendants' activities as described in  
7 the Commission's Complaint, including the activities of any Receivership Entity.  
8 This Section does not prohibit transfers to the Temporary Receiver, as specifically  
9 required in the Section titled "Transfer of Funds to the Temporary Receiver by  
10 Financial Institutions and Other Third Parties," nor does it prohibit the repatriation  
11 of foreign Assets, as specifically required in the Section titled "Repatriation of  
12 Foreign Assets" of this Order.

13 **IX. RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES**

14 **IT IS FURTHER ORDERED** that, pending determination of the FTC's  
15 request for a preliminary injunction, any Financial Institution, business entity,  
16 Electronic Data Host, or person served with a copy of this Order that holds,  
17 controls, or maintains custody of any account, Document, or Asset of, on behalf of,  
18 in the name of, for the benefit of, subject to withdrawal by, subject to access or use  
19 by, or under the signatory power of any Defendant, or other party subject to the  
20 Asset Freeze above, or has held, controlled, or maintained any such account,  
21 Document, or Asset, shall:

22 A. Hold, preserve, and retain within such entity's or person's control, and  
23 prohibit the withdrawal, removal, alteration, assignment, transfer, pledge,  
24 hypothecation, encumbrance, disbursement, dissipation, conversion, sale,  
25 liquidation, or other disposal of such account, Document, or Asset held by or under  
26 such entity's or person's control, except as directed by further order of the Court;

1           B. Provide the Temporary Receiver immediate access to electronically  
2 stored information stored, hosted, or otherwise maintained on behalf of any  
3 Defendants for forensic imaging;

4           C. Deny access to any safe deposit boxes that are either titled in the name  
5 of, individually or jointly, or subject to access by, any Defendant or other party  
6 subject to the Asset Freeze above; and

7           D. Provide to counsel for the FTC, within one (1) business day, a sworn  
8 statement setting forth:

9               1. the identification of each account or Asset titled in the name,  
10 individually or jointly, or held on behalf of or for the benefit of, subject to  
11 withdrawal by, subject to access or use by, or under the signatory power of any  
12 Defendant or other party subject to the Asset Freeze above;

13               2. the balance of each such account, or a description of the nature  
14 and value of such Asset, as of the close of business on the day on which this Order  
15 is served, the day before the Order is served, and the average daily balance for the  
16 six months before the Order is served;

17               3. the identification of any safe deposit box that is either titled in  
18 the name of, individually or jointly, or is otherwise subject to access or control by,  
19 any Defendant or other party subject to the Asset Freeze above; and

20               4. if the account, safe deposit box, or other Asset has been closed  
21 or removed, the date closed or removed, the balance on said date, and the name or  
22 the person or entity to whom such account or other Asset was remitted;

23           E. Provide counsel for the FTC, within three (3) business days after  
24 being served with a request, copies of all Documents pertaining to such account or  
25 Asset, including but not limited to: account statements, account applications,  
26 signature cards, underwriting files, checks, deposit tickets, transfers to and from  
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1 the accounts, wire transfers, all other debit and credit instruments or slips, 1099  
2 forms, and safe deposit box logs; and

3 F. Cooperate with all reasonable requests of the FTC relating to this  
4 Order's implementation.

5 **IT IS FURTHER ORDERED** that this Section shall apply to both existing  
6 Documents, records, and Assets and to Documents, records, and Assets acquired  
7 after the date this Order is signed. This Section does not prohibit transfers to the  
8 Temporary Receiver, as specifically required in the Section titled "Transfer of  
9 Funds to the Temporary Receiver by Financial Institutions and Other Third  
10 Parties," nor does it prohibit the repatriation of foreign Assets, as specifically  
11 required in the Section titled "Repatriation of Foreign Assets" of this Order.

12 **X. FINANCIAL STATEMENTS AND ACCOUNTING**

13 **IT IS FURTHER ORDERED** that each Defendant, within three (3)  
14 business days of service of this Order, shall prepare and deliver to counsel for the  
15 FTC:

16 A. For Individual Defendants, a completed financial statement, accurate  
17 as of the date of service of this Order upon such Defendant, in the form of  
18 Attachment A to this Order captioned "Financial Statement of Individual  
19 Defendant."

20 B. For Corporate Defendants, a completed financial statement, accurate  
21 as of the date of service of this Order upon such Defendant (unless otherwise  
22 agreed upon with FTC counsel), in the form of Attachment B to this Order  
23 captioned "Financial Statement of Corporate Defendant."

24 **XI. CREDIT REPORTS**

25 **IT IS FURTHER ORDERED** that the FTC may obtain credit reports  
26 concerning any Defendant pursuant to Section 604(a)(1) of the Fair Credit  
27 Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit  
28

1 reporting agency from which such reports are requested shall provide them to the  
2 FTC.

3 **XII. REPATRIATION OF FOREIGN ASSETS**

4 **IT IS FURTHER ORDERED** that, within three (3) days following the  
5 service of this Order, each Defendant shall:

6 A. Transfer to the territory of the United States and provide the FTC and  
7 the Temporary Receiver with a full accounting of all Assets, Documents, and  
8 records outside of the territory of the United States that are:

- 9 1. owned or controlled by;
- 10 2. subject to access by;
- 11 3. held in whole or in part for the benefit of;
- 12 4. belonging to any entity that is directly or indirectly owned,  
13 managed, or under the control of; or
- 14 5. belonging to a person under the control of any Defendant;

15 B. Hold all repatriated Assets, Documents, and records as required by the  
16 Asset Freeze imposed by this Order; and

17 C. Provide the FTC access to all records of accounts or Assets of the  
18 Defendants held by any Financial Institution or other person located outside the  
19 territorial United States by signing the Consent to Release of Financial Records  
20 attached to this Order as Attachment C and by signing any other Documents  
21 required by any person, including any Financial Institution, or other person holding  
22 any such Asset.

23 **XIII. NON-INTERFERENCE WITH REPATRIATION**

24 **IT IS FURTHER ORDERED** that Defendants, and each of their  
25 successors, assigns, members, officers, agents, servants, employees, and attorneys,  
26 and those persons in active concert or participation with them who receive actual  
27 notice of this Order by personal service or otherwise, whether acting directly or  
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1 through any entity, corporation, subsidiary, division, affiliate or other device, are  
2 hereby temporarily restrained and enjoined from taking any action, directly or  
3 indirectly, that may result in the encumbrance or dissipation of foreign Assets, or  
4 in the hindrance of the repatriation required by the preceding “Repatriation of  
5 Assets” Section of this Order, including, but not limited to:

6 A. Sending any statement, letter, fax, email or wire transmission, or  
7 telephoning or engaging in any other act, directly or indirectly, that results in a  
8 determination by a foreign trustee or other entity that a “duress” event has occurred  
9 under the terms of a foreign trust agreement until such time that all Assets have  
10 been fully repatriated pursuant to the “Repatriation of Assets” Section of this  
11 Order; or

12 B. Notifying any trustee, protector, or other agent of any foreign trust or  
13 other related entities of either the existence of this Order, or of the fact that  
14 repatriation is required pursuant to a court order, until such time that all Assets  
15 have been fully repatriated pursuant to “Repatriation of Assets” Section of this  
16 Order.

17 **XIV. RECORDKEEPING AND BUSINESS OPERATIONS**

18 **IT IS FURTHER ORDERED** that Defendants are hereby temporarily  
19 restrained and enjoined from:

20 A. Failing to create and maintain Documents that, in reasonable detail,  
21 accurately, fairly, and completely reflect their incomes, disbursements,  
22 transactions, and use of money;

23 B. Creating, operating, or exercising any control over any business  
24 entity, including any partnership, limited partnership, joint venture, sole  
25 proprietorship, limited liability company or corporation, without first providing the  
26 Commission with a written statement disclosing: (1) the name of the business  
27 entity; (2) the address and telephone number of the business entity; (3) the names  
28



1 of the business entity's officers, directors, principals, managers, and employees;  
2 and (4) a detailed description of the business entity's intended activities; and

3 C. Affiliating with, becoming employed by, or performing any work for  
4 any business that is not a named Defendant in this action without first providing  
5 the Commission with a written statement disclosing: (1) the name of the business;  
6 (2) the address and telephone number of the business; and (3) a detailed description  
7 of the nature of the business or employment and the nature of the Defendant's  
8 duties and responsibilities in connection with that business or employment.

9 **XV. APPOINTMENT OF TEMPORARY RECEIVER**

10 **IT IS FURTHER ORDERED** that \_\_\_\_\_ is  
11 appointed Temporary Receiver for the Receivership Entities, with the full power of  
12 an equity Receiver. The Temporary Receiver shall be the agent of this Court and  
13 solely the agent of this Court in acting as Temporary Receiver under this Order.  
14 The Temporary Receiver shall be accountable directly to this Court. The  
15 Temporary Receiver shall comply with all local rules and laws governing federal  
16 equity receivers.

17 **XVI. COOPERATION WITH THE TEMPORARY RECEIVER**

18 **IT IS FURTHER ORDERED** that Defendants shall fully cooperate with  
19 and assist the Temporary Receiver. Defendants' cooperation and assistance shall  
20 include, but not be limited to, providing any information to the Temporary  
21 Receiver that the Temporary Receiver deems necessary to exercise the authority  
22 and discharge the responsibilities of the Temporary Receiver under this Order;  
23 providing any login, password, or biometric identifier required to access any  
24 computer or electronic files or information in or on any medium; and advising all  
25 persons who owe money to the Receivership Entities that all debts should be paid  
26 directly to the Temporary Receiver. Defendants are hereby restrained and enjoined  
27 from directly or indirectly:  
28

- 1           A.    Transacting any of the business of the Receivership Entities;
- 2           B.    Excusing debts owed to the Receivership Entities;
- 3           C.    Destroying, secreting, defacing, transferring, or otherwise altering or
- 4 disposing of any Documents of the Receivership Entities;
- 5           D.    Transferring, receiving, altering, selling, encumbering, pledging,
- 6 assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or
- 7 in the possession or custody of, or in which an interest is held or claimed by, the
- 8 Receivership Entities, or the Temporary Receiver;
- 9           E.    Failing to provide any assistance or information requested by the
- 10 Temporary Receiver in connection with obtaining possession, custody, or control
- 11 of any Assets within the receivership estate that the Receiver or the FTC has
- 12 identified; or
- 13           F.    Doing any act or thing whatsoever to interfere with the Temporary
- 14 Receiver's taking and keeping custody, control, possession, or managing of the
- 15 Assets or Documents subject to this receivership; or to harass or interfere with the
- 16 Temporary Receiver in any way; or to interfere in any manner with the exclusive
- 17 jurisdiction of this Court over the Assets or Documents of the Receivership
- 18 Entities; or to refuse to cooperate with the Temporary Receiver or the Temporary
- 19 Receiver's duly authorized agents in the exercise of their duties or authority under
- 20 any Order of this Court.

21           **XVII. DUTIES AND AUTHORITY OF TEMPORARY RECEIVER**

22           **IT IS FURTHER ORDERED** that the Temporary Receiver is directed and

23 authorized to accomplish the following:

- 24           A.    Assume full control of the Receivership Entities by removing, as the
- 25 Temporary Receiver deems necessary or advisable, any director, officer,
- 26 independent contractor, employee, attorney, or agent of any Receivership Entity
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1 from control of, management of, or participation in, the affairs of the Receivership  
2 Entities;

3 B. Take exclusive custody, control, and possession of all Assets and  
4 Documents of, or in the possession, custody, or under the control of, any  
5 Receivership Entity, wherever situated. The Temporary Receiver shall have full  
6 power to divert mail and to sue for, collect, receive, take possession of, hold, and  
7 manage all Assets and Documents of the Receivership Entities and other persons  
8 or entities whose interests are now held by or under the direction, possession,  
9 custody, or control of the Receivership Entities;

10 C. Take all steps necessary to secure the business premises of the  
11 Receivership Entities, which may include, but are not limited to, taking the  
12 following steps as the Temporary Receiver deems necessary or advisable:  
13 (1) serving and filing this Order; (2) completing a written inventory of all  
14 receivership Assets; (3) obtaining pertinent information from all employees and  
15 other agents of the Receivership Entities, including, but not limited to, the name,  
16 home address, Social Security number, job description, method of compensation,  
17 and all accrued and unpaid commissions and compensation of each such employee  
18 or agent; (4) video-recording and/or photographing all portions of the location at  
19 which any Receivership Entity conducts business or has Assets; (5) changing the  
20 locks and disconnecting any computer networks or other means of access to  
21 electronically stored information or other Documents maintained at that location;  
22 or (6) requiring any persons present on the premises at the time this Order is served  
23 to leave the premises, to provide the Temporary Receivers with proof of  
24 identification, and/or to demonstrate to the satisfaction of the Temporary Receiver  
25 that such persons are not removing from the premises Documents or Assets of the  
26 Receivership Entities. Such authority shall include, but not be limited to, the  
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1 authority to order any owner, director, officer, employee, or agent of the  
2 Receivership Entities to leave the business premises;

3 D. Conserve, hold, and manage all receivership Assets, and perform all  
4 acts necessary or advisable to preserve the value of those Assets, in order to  
5 prevent any irreparable loss, damage, or injury to consumers, including, but not  
6 limited to, obtaining an accounting of the Assets and preventing the transfer,  
7 withdrawal, or misapplication of Assets;

8 E. Enter into contracts and purchase insurance as advisable or necessary;

9 F. Prevent the inequitable distribution of Assets and determine, adjust,  
10 and protect the interests of consumers and creditors who have transacted business  
11 with the Receivership Entities;

12 G. Manage and administer the business of the Receivership Entities until  
13 further order of this Court by performing all incidental acts that the Temporary  
14 Receiver deems to be advisable or necessary, which includes retaining, hiring, or  
15 dismissing any employees, independent contractors, or agents;

16 H. Continue and conduct the businesses of the Defendants in such  
17 manner, to such extent, and for such duration as the Temporary Receiver may in  
18 good faith deem to be necessary or appropriate to operate the businesses profitably,  
19 using the Assets of the receivership estate, and lawfully, if at all;

20 I. Choose, engage, and employ attorneys, accountants, appraisers,  
21 investigators, and other independent contractors and technical specialists, as the  
22 Temporary Receiver deems advisable or necessary in the performance of their  
23 duties and responsibilities, including but not limited to the law firm in which the  
24 Receiver is a partner;

25 J. Make payments and disbursements from the receivership estate that  
26 are necessary or advisable for carrying out the directions of, or exercising the  
27 authority granted by, this Order. The Temporary Receiver shall apply to the Court  
28

1 for prior approval of any payment of any debt or obligation incurred by the  
2 Receivership Entities prior to the date this Order is signed, except payments that  
3 the Temporary Receiver deems necessary or advisable to secure Assets of the  
4 Receivership Entities, such as rental payments;

5 K. Collect any money due or owing to the Receivership Entities;

6 L. Institute, compromise, adjust, appear in, intervene in, or become party  
7 to such actions or proceedings in state, federal or foreign courts that the Temporary  
8 Receiver deems necessary and advisable to preserve or recover the Assets of the  
9 Receivership Entities, or to carry out the Temporary Receiver's mandate under this  
10 Order;

11 M. Defend, compromise, adjust, or otherwise dispose of any or all actions  
12 or proceedings instituted against the Receivership Entities or the Temporary  
13 Receiver that the Temporary Receiver deems necessary and advisable to preserve  
14 the Assets of the Receivership Entities, or to carry out the Temporary Receiver's  
15 mandate under this Order;

16 N. Take depositions and issue subpoenas to obtain Documents and  
17 records pertaining to the receivership and compliance with this Order. Subpoenas  
18 may be served by electronic mail, by agents or attorneys of the Temporary  
19 Receiver and by agents of any process server retained by the Temporary Receiver;

20 O. Open one or more bank accounts as designated depositories for funds  
21 of the Receivership Entities. The Temporary Receiver shall deposit all funds of  
22 the Receivership Entities in such a designated account and shall make all payments  
23 and disbursements from the receivership estate from such an account;

24 P. Maintain accurate records of all receipts and expenditures made by the  
25 Temporary Receiver;

26 Q. Cooperate with reasonable requests for information or assistance from  
27 any state or federal law enforcement agency;

28

1 R. Permit, within the Temporary Receiver's discretion, copies of client  
2 files to be given to a lawyer working for a Receivership Entity if the files relate to  
3 a matter other than one within the scope of the allegations in the Complaint;

4 S. File, within the Temporary Receiver's discretion, notices in any  
5 ongoing litigation being conducted by a lawyer working for or with the  
6 Receivership Entity, informing that court and the parties, that the Receivership  
7 Entities have been placed in a receivership, that the Receivership Entities are  
8 withdrawing from the case, and further seek leave of that court for a stay of all  
9 proceedings for at least ninety (90) days to permit any client of the Receivership  
10 Entities to obtain replacement counsel, *provided, however*, that the Temporary  
11 Receiver will not be required to litigate, or hire attorneys to litigate, any such  
12 pending cases; and

13 T. Identify all attorney-client files held by a Receivership Entity; take  
14 reasonable steps to contact current clients to inform them of the receivership; take  
15 reasonable steps to advise current clients that the Temporary Receiver will not be  
16 providing any attorney services and that the clients may seek replacement counsel;  
17 and return any client files to the clients upon request; *provided, however*, that the  
18 Temporary Receiver maintain a copy of all such client files; *and provided further*,  
19 the Temporary Receiver is authorized to work with representatives of the  
20 California State Bar to perform these actions.

21 **XVIII. TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER**  
22 **BY FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES**

23 **IT IS FURTHER ORDERED** that, upon service of a copy of this Order,  
24 any Financial Institution shall cooperate with all reasonable requests of counsel for  
25 the FTC and the Temporary Receiver relating to implementation of this Order,  
26 including transferring funds at the Temporary Receiver's direction and producing  
27 records related to the Assets and sales of the Receivership Entities.  
28



**XIX. TEMPORARY RECEIVER'S REPORTS**

1  
2 **IT IS FURTHER ORDERED** that the Temporary Receiver shall report to  
3 this Court at least one day before the date set for the hearing regarding the  
4 Preliminary Injunction, regarding: (1) the steps taken by the Temporary Receiver  
5 to implement the terms of this Order; (2) the value of all liquidated and  
6 unliquidated Assets of the Receivership Entities; (3) the sum of all liabilities of the  
7 Receivership Entities; (4) the steps the Temporary Receiver intends to take in the  
8 future to: (a) prevent any diminution in the value of Assets of the Receivership  
9 Entities; (b) pursue receivership Assets from third parties; and (c) adjust the  
10 liabilities of the Receivership Entities, if appropriate; and (5) any other matters  
11 which the Temporary Receiver believes should be brought to the Court's attention.  
12 Provided, however, if any of the required information would hinder the Temporary  
13 Receiver's ability to pursue receivership Assets, the portions of the Temporary  
14 Receiver's report containing such information may be filed under seal and not  
15 served on the parties.

16 **XX. TEMPORARY RECEIVER'S BOND**

17 **IT IS FURTHER ORDERED** that the Temporary Receiver shall file with  
18 the Clerk of this Court a bond in the sum of \$\_\_\_\_\_ with sureties to be approved  
19 by the Court, conditioned that the Temporary Receiver will well and truly perform  
20 the duties of the office and abide by and perform all acts the Court directs.

21 **XXI. COMPENSATION OF THE TEMPORARY RECEIVER**

22 **IT IS FURTHER ORDERED** that the Temporary Receiver, and all persons  
23 or entities retained or hired by the Temporary Receiver as authorized under this  
24 Order, shall be entitled to reasonable compensation for the performance of duties  
25 undertaken pursuant to this Order and for the cost of actual out-of-pocket expenses  
26 incurred by them from the Assets now held by or in the possession or control of, or  
27 which may be received by, the Receivership Entities. The Temporary Receiver  
28 shall file with the Court and serve on the parties a request for the payment of

1 reasonable compensation at the time of the filing of any report required by the  
2 “Temporary Receiver’s Reports” Section of this Order. The Temporary Receiver  
3 shall not increase the fees or rates used as the bases for such fee applications  
4 without prior approval of the Court.

5 **XXII. TEMPORARY RECEIVER’S ACCESS TO BUSINESS PREMISES**  
6 **AND RECORDS**

7 **IT IS FURTHER ORDERED** that:

8 A. The Temporary Receiver, and his representatives, agents, and  
9 assistants, shall have immediate access to all business premises and storage  
10 facilities, owned, controlled, or used by any Receivership Entity, including but not  
11 limited to the offices and facilities at 6 Hutton Centre Drive, Suite 1000, Santa  
12 Ana, CA 92707, and any offsite commercial mail boxes or virtual offices used by  
13 any Receivership Entity. The Temporary Receiver is authorized to employ the  
14 assistance of law enforcement as he deems necessary to effect service and  
15 peacefully implement this Order. The Temporary Receiver may exclude  
16 Receivership Entities and their employees from part or all of the business premises  
17 during the immediate access. The purpose of the immediate access shall be to  
18 effect service and to inspect and copy the business and financial records of the  
19 Receivership Entities, including forensic imaging of electronically stored  
20 information. Such business records include, but are not limited to, correspondence,  
21 contracts, emails, and financial data;

22 B. The Temporary Receiver and its representatives, agents, and  
23 assistants, shall have the right to remove materials from the above-listed premises  
24 for inspection and copying;

25 C. Receivership Entities and all employees or agents of Receivership  
26 Entities shall provide the Temporary Receiver with any necessary means of access  
27 to Documents and records, including, without limitation, the locations of the  
28

1 Receivership Entities' business premises, keys and combinations to locks,  
2 computer access codes, and storage area access information;

3 D. If any Individual Defendant possesses a smartphone or tablet on  
4 receivership premises, they will turn over the device to the Receiver for imaging.  
5 Within two business days, the Temporary Receiver will return the device; and

6 E. If any Documents, computers, smartphones, tablets, or electronic data  
7 storage devices containing information related to the business practices or finances  
8 of the Receivership Entities are at a location other than those listed herein,  
9 including but not limited to, the personal residence(s) of the Defendants, then,  
10 immediately upon notice of this Order, Defendants shall produce to the Temporary  
11 Receiver all such Documents, computers, smartphones, tablets, or electronic data  
12 storage devices. To prevent the destruction of electronic data, upon service of this  
13 Order upon any Receivership Entity, any computers, smartphones, tablets, or  
14 electronic data storage devices containing such information shall be powered down  
15 (turned off) in the normal course for the operating systems used on such devices  
16 and shall not be used until produced for copying and inspection, along with any  
17 codes needed for access. For any smartphone or tablet that contains information  
18 related to the business practices or finances of the Receivership Entities that is in  
19 the personal possession of an Individual Defendant, the Temporary Receiver shall  
20 image that device and return it to the Individual Defendant within two business  
21 days.

22 **XXIII. PARTIES' ACCESS TO BUSINESS PREMISES AND**  
23 **RECORDS**

24 **IT IS FURTHER ORDERED** that the Temporary Receiver shall allow the  
25 FTC, the Defendants, and their representatives reasonable access to the premises of  
26 the Receivership Entities. The purpose of this access shall be to inspect, inventory,  
27 and copy any Documents and other property owned by, or in the possession of, the  
28 Receivership Entities, provided that those Documents and property are not

1 removed from the premises without the permission of the Temporary Receiver.  
2 The Temporary Receiver shall have the discretion to determine the time, manner,  
3 and reasonable conditions of such access. The Temporary Receiver will segregate  
4 all materials subject to an attorney-client privilege held by a Receivership Entity's  
5 clients and shall not make these materials available to either the FTC or  
6 Defendants without the clients' consent. The FTC's access to any Documents  
7 pursuant to this provision shall not provide grounds for any Defendant to object to  
8 any subsequent request for Documents served by the FTC.

9 **XXIV. LIMITED EXPEDITED DISCOVERY**

10 **IT IS FURTHER ORDERED** that the Temporary Receiver and the FTC  
11 are granted leave to conduct certain expedited discovery and that in lieu of the time  
12 periods, notice provisions, and other requirements of the applicable Local Rules for  
13 this District and Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure,  
14 the Temporary Receiver and the FTC are granted leave to:

15 A. Depose, on three (3) days' notice, any party or non-party for the  
16 purpose of discovering: (1) the nature, location, status, and extent of Assets of  
17 Defendants or their affiliates or subsidiaries; (2) the nature and location of  
18 Documents and business records of Defendants or their affiliates or subsidiaries;  
19 and (3) compliance with this Order. Any such depositions shall not be counted  
20 toward any deposition limit set forth in the Federal Rules of Civil Procedure or this  
21 Court's Local rules and shall not preclude the FTC from subsequently deposing the  
22 same person during discovery on the merits in this case. Depositions may be taken  
23 by telephone, video conference, or other remote means. Any deposition taken  
24 pursuant to this Section that has not been reviewed and signed by the deponent  
25 may be used by any party for purposes of any preliminary injunction hearing;

26 B. Serve upon parties interrogatories or requests for production of  
27 Documents or inspection that require a response, production or inspection within  
28

1 four (4) days of service, and may serve subpoenas upon non-parties that direct  
2 production or inspection within seven (7) days of service, for the purpose of  
3 discovering: (1) the nature, location, status, and extent of Assets of Defendants or  
4 their affiliates or subsidiaries; (2) the nature and location of Documents and  
5 business records of Defendants or their affiliates or subsidiaries; and (3)  
6 compliance with this Order; provided, however, that forty-eight (48) hours' notice  
7 shall be deemed sufficient for the production of any such Documents that are  
8 maintained or stored as electronic data. Any such interrogatories or requests for  
9 production or inspection shall not count toward any limit on discovery set forth in  
10 the Federal Rules of Civil Procedure or this Court's Local Rules;

11 C. For purposes of this Section, serve deposition notices and other  
12 discovery requests upon the parties to this action personally or by facsimile, email,  
13 certified or registered mail, or private courier (including a process server) with a  
14 receipt from the courier showing delivery; and

15 D. Pursuant to Fed. R. Civ. P. 45, subpoena Documents immediately  
16 from any Financial Institution, business entity, Electronic Data Host, or person  
17 served with a copy of this Order that holds, controls, or maintains custody of any  
18 account, Document, or Asset of, on behalf of, in the name of, for the benefit of,  
19 subject to withdrawal by, subject to access or use by, or under the signatory power  
20 of any Defendant or other party subject to the Asset Freeze above, or has held,  
21 controlled, or maintained any such account, Document, or Asset. The recipient  
22 shall respond to such subpoena within three (3) business days after service. The  
23 FTC may effect service by electronic mail.

24 **XXV. BANKRUPTCY PETITIONS**

25 **IT IS FURTHER ORDERED** that, in light of the appointment of the  
26 Temporary Receiver, the Receivership Entities are hereby prohibited from filing  
27  
28

1 petitions for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et*  
2 *seq.*, without prior permission from this Court.

3 **XXVI. PRE-EXISTING ORDERS**

4 **IT IS FURTHER ORDERED** that nothing herein modifies any existing  
5 Order in any way, including the Orders governing Damian Kutzner. *See FTC v.*  
6 *GM Funding, Inc.*, SACV02-1026 DOC (C.D. Cal.), Stipulated Judgment and  
7 Order for Permanent Injunction as to Defendants GM Funding, Inc., Robert D.  
8 Kutzner, Global Mortgage Funding, Inc., and Damian R. Kutzner (May 5, 2003);  
9 *U.S. v. Global Mortgage Funding, Inc.*, SACV07-1275 DOC (C.D. Cal.),  
10 Stipulated Judgment and Order for Permanent Injunction (July 17, 2009). The  
11 FTC may take discovery and pursue any other measure any existing Order permits.

12 **XXVII. STAY OF ACTIONS**

13 **IT IS FURTHER ORDERED** that:

14 A. Except by leave of this Court, during the pendency of the Temporary  
15 Receivership ordered herein, the Receivership Entities and all customers,  
16 principals, investors, creditors, stockholders, lessors, and other persons seeking to  
17 establish or enforce any claim, right, or interest against or on behalf of the  
18 Receivership Entity, and all others acting for or on behalf of such persons,  
19 including attorneys, trustees, agents, sheriffs, constables, marshals, and other  
20 officers and their deputies, and their respective attorneys, servants, agents, and  
21 employees be and are hereby stayed from:

22 1. Commencing, prosecuting, continuing, entering, or enforcing  
23 any suit or proceeding, except that such actions may be filed to toll any applicable  
24 statute of limitations;

25 2. Accelerating the due date of any obligation or claimed  
26 obligation; filing or enforcing any lien; taking or attempting to take possession,  
27 custody, or control of any Asset; attempting to foreclose, forfeit, alter, or terminate  
28



1 any interest in any Asset, whether such acts are part of a judicial proceeding, are  
2 acts of self-help, or otherwise;

3 3. Executing, issuing, serving, or causing the execution, issuance  
4 or service of, any legal process, including, but not limited to, attachments,  
5 garnishments, subpoenas, writs of replevin, writs of execution, or any other form  
6 of process, whether specified in this Order or not; or

7 4. Doing any act or thing whatsoever to interfere with the  
8 Temporary Receiver's taking custody, control, possession, or management of  
9 Assets or Documents subject to this receivership; or to harass or interfere with the  
10 Temporary Receiver in any way; or to interfere in any manner with the exclusive  
11 jurisdiction of this Court over the Assets or Documents of the Receivership  
12 Entities.

13 B. This Section does not stay:

14 1. The commencement or continuation of a criminal action or  
15 proceeding;

16 2. The commencement or continuation of an action or proceeding  
17 by a governmental unit to enforce such governmental unit's police or regulatory  
18 power;

19 3. The enforcement of a judgment, other than a money judgment,  
20 obtained in an action or proceeding by a governmental unit to enforce such  
21 governmental unit's police or regulatory power, including but not limited to any  
22 actions (including discovery) taken by the FTC in enforcing the Orders in the  
23 related matters, *FTC v. GM Funding, Inc.*, SACV02-1026 DOC (C.D. Cal.), *U.S. v.*  
24 *Global Mortgage Funding, Inc.*, SACV07-1275 DOC (C.D. Cal.); or

25 4. The issuance to the Receivership Entities of a notice of tax  
26 deficiency.  
27  
28

1 **XXVIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY**  
2 **DEFENDANTS**

3 **IT IS FURTHER ORDERED** that each Defendant, within three (3)  
4 business days of receipt of this Order, must submit to counsel for the FTC a  
5 truthful sworn statement acknowledging receipt of this Order.

6 **XXIX. CORRESPONDENCE WITH PLAINTIFF**

7 **IT IS FURTHER ORDERED** that, for the purposes of this Order, because  
8 mail addressed to the FTC is subject to delay due to heightened security screening,  
9 all correspondence and service of pleadings on Plaintiff shall be sent via electronic  
10 submission and Federal Express to:

11 Benjamin Theisman  
12 Gregory Madden  
13 Federal Trade Commission  
14 600 Pennsylvania Ave., NW, Mail Drop CC-9528  
15 Washington, DC 20580  
16 Telephone: (202) 326-2223, -2426  
17 btheisman@ftc.gov, gmadden@ftc.gov

18 **XXX. SERVICE OF THIS ORDER**

19 **IT IS FURTHER ORDERED** that copies of this Order may be served by  
20 facsimile, email, hand-delivery, personal or overnight delivery, or U.S. Mail, by  
21 agents and employees of the FTC or any state or federal law enforcement agency  
22 or by private process server, upon any Financial Institution or other entity or  
23 person that may have possession, custody, or control of any Documents or Assets  
24 of any Defendant, or that may otherwise be subject to any provision of this Order.  
25 Service upon any branch or office of any Financial Institution shall effect service  
26 upon the entire Financial Institution.  
27  
28

**XXXI. PRELIMINARY INJUNCTION HEARING**

1  
2 **IT IS FURTHER ORDERED**, pursuant to Fed. R. Civ. P. 65(b), that each  
3 of the Defendants shall appear before this Court on the \_\_\_\_\_ day of  
4 \_\_\_\_\_, 2016, at \_\_\_\_\_ AM/PM, Pacific Daylight Time, at the  
5 United States District Courthouse, Courtroom \_\_\_\_\_, Santa Ana, California, to  
6 show cause, if there is any, why this Court should not enter a preliminary  
7 injunction enjoining the violations of law alleged in the FTC's Complaint,  
8 continuing the freeze of their Assets, and imposing such additional relief as may be  
9 appropriate.

10 **IT IS FURTHER ORDERED** that the Defendants shall file with the Court  
11 and serve on the FTC's counsel any answering pleadings, affidavits, motions,  
12 expert reports, declarations, witness lists with detailed summaries of expected  
13 witness testimony, and/or legal memoranda, no later than seven days prior to the  
14 hearing. The FTC may file responsive or supplemental pleadings, materials,  
15 affidavits, witness lists with detailed summaries of expected witness testimony,  
16 and/or memoranda with the Court and serve them on Defendants' counsel no later  
17 than one day prior to that hearing. Such affidavits, pleadings, motions, expert  
18 reports, declarations, witness lists with detailed summaries of expected witness  
19 testimony, legal memoranda and/or oppositions must be served by electronic mail  
20 (or Federal Express, if electronic mail is impractical), and must be received by the  
21 other party no later than the deadlines set forth in this Section.

22 **XXXII. DURATION OF ORDER**

23 **IT IS FURTHER ORDERED** that the Temporary Restraining Order  
24 granted herein shall expire on the \_\_\_\_\_ day of \_\_\_\_\_,  
25 2016, at \_\_\_\_\_ AM/PM, Pacific Daylight Time, unless within such time the  
26 Order, for good cause shown, is extended for an additional period not to exceed  
27 fourteen (14) calendar days, or unless it is further extended pursuant to Federal  
28 Rule of Civil Procedure 65.

**XXXIII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes of construction, modification, and enforcement of this Order.

**IT IS SO ORDERED**, this \_\_\_ day of \_\_\_\_\_, 2016, at \_\_\_\_\_ AM/PM, Pacific Daylight Time.

Dated: \_\_\_\_\_

\_\_\_\_\_  
DAVID O. CARTER  
UNITED STATES DISTRICT JUDGE

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**FINANCIAL STATEMENT OF INDIVIDUAL DEFENDANT**

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**Definitions and Instructions:**

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") in the first field only of any item that does not apply to you. If you cannot fully answer a question, explain why.
2. "Dependents" include your spouse, live-in companion, dependent children, or any other person, whom you or your spouse (or your children's other parent) claimed or could have claimed as a dependent for tax purposes at any time during the past five years.
3. "Assets" and "Liabilities" include ALL assets and liabilities, located within the United States or any foreign country or territory, whether held individually or jointly and whether held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.
4. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued. On the continuation page(s), identify the Item number(s) being continued.
5. Type or print legibly.
6. Initial each page in the space provided in the lower right corner.
7. Sign and date the completed financial statement on the last page.

**Penalty for False Information:**

Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

(1) "in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or devise a material fact; makes any materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry" (18 U.S.C. § 1001);

(2) "in any . . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true" (18 U.S.C. § 1621); or

(3) "in any ( . . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration" (18 U.S.C. § 1623).

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

**BACKGROUND INFORMATION**

**Item 1. Information About You**

Full Name	Social Security No.		
Current Address of Primary Residence	Driver's License No.		State Issued
	Phone Numbers Home: ( ) Fax: ( )	Date of Birth: / / (mm/dd/yyyy)	
	Place of Birth		
<input type="checkbox"/> Rent <input type="checkbox"/> Own From (Date): / / (mm/dd/yyyy)	E-Mail Address		
Internet Home Page			

**Previous Addresses for past five years** (if required, use additional pages at end of form)

Address	From: / / (mm/dd/yyyy)	Until: / / (mm/dd/yyyy)
	<input type="checkbox"/> Rent <input type="checkbox"/> Own	
Address	From: / /	Until: / /
	<input type="checkbox"/> Rent <input type="checkbox"/> Own	
Address	From: / /	Until: / /
	<input type="checkbox"/> Rent <input type="checkbox"/> Own	

Identify any other name(s) and/or social security number(s) you have used, and the time period(s) during which they were used:

**Item 2. Information About Your Spouse or Live-In Companion**

Spouse/Companion's Name	Social Security No.	Date of Birth / / (mm/dd/yyyy)
Address (if different from yours)	Phone Number ( )	Place of Birth
	<input type="checkbox"/> Rent <input type="checkbox"/> Own From (Date): / / (mm/dd/yyyy)	

Identify any other name(s) and/or social security number(s) you have used, and the time period(s) during which they were used:

Employer's Name and Address	Job Title	
	Years in Present Job	Annual Gross Salary/Wages \$

**Item 3. Information About Your Previous Spouse**

Name and Address	Social Security No.
	Date of Birth / / (mm/dd/yyyy)

**Item 4. Contact Information** (name and address of closest living relative other than your spouse)

Name and Address	Phone Number ( )
------------------	---------------------

Initials: \_\_\_\_\_



Item 5. Information About Dependents (whether or not they reside with you)		
Name and Address	Social Security No.	Date of Birth / / (mm/dd/yyyy)
	Relationship	
Name and Address	Social Security No.	Date of Birth / / (mm/dd/yyyy)
	Relationship	
Name and Address	Social Security No.	Date of Birth / / (mm/dd/yyyy)
	Relationship	
Name and Address	Social Security No.	Date of Birth / / (mm/dd/yyyy)
	Relationship	

**Item 6. Employment Information/Employment Income**  
 Provide the following information for this year-to-date and for each of the previous five full years, for each business entity of which you were a director, officer, member, partner, employee (including self-employment), agent, owner, shareholder, contractor, participant or consultant at any time during that period. "Income" includes, but is not limited to, any salary, commissions, distributions, draws, consulting fees, loans, loan payments, dividends, royalties, and benefits for which you did not pay (e.g., health insurance premiums, automobile lease or loan payments) received by you or anyone else on your behalf.

Company Name and Address	Dates Employed		Income Received: Y-T-D & 5 Prior Yrs.	
	From (Month/Year) /	To (Month/Year) /	Year	Income
Ownership Interest? <input type="checkbox"/> Yes <input type="checkbox"/> No			20	\$
Positions Held	From (Month/Year) /	To (Month/Year) /		\$
	/	/		\$
	/	/		\$
	/	/		\$

  

Company Name and Address	Dates Employed		Income Received: Y-T-D & 5 Prior Yrs.	
	From (Month/Year) /	To (Month/Year) /	Year	Income
Ownership Interest? <input type="checkbox"/> Yes <input type="checkbox"/> No			20	\$
Positions Held	From (Month/Year) /	To (Month/Year) /		\$
	/	/		\$
	/	/		\$
	/	/		\$

  

Company Name and Address	Dates Employed		Income Received: Y-T-D & 5 Prior Yrs.	
	From (Month/Year) /	To (Month/Year) /	Year	Income
Ownership Interest? <input type="checkbox"/> Yes <input type="checkbox"/> No			20	\$
Positions Held	From (Month/Year) /	To (Month/Year) /		\$
	/	/		\$
	/	/		\$
	/	/		\$

Initials: \_\_\_\_\_

**Item 7. Pending Lawsuits Filed By or Against You or Your Spouse**

List all pending lawsuits that have been filed by or against you or your spouse in any court or before an administrative agency in the United States or in any foreign country or territory. **Note:** At Item 12, list lawsuits that resulted in final judgments or settlements in your favor. At Item 21, list lawsuits that resulted in final judgments or settlements against you.

Caption of Proceeding	Court or Agency and Location	Case No.	Nature of Proceeding	Relief Requested	Status or Disposition

**Item 8. Safe Deposit Boxes**

List all safe deposit boxes, located within the United States or in any foreign country or territory, whether held individually or jointly and whether held by you, your spouse, or any of your dependents, or held by others for the benefit of you, your spouse, or any of your dependents.

Name of Owner(s)	Name & Address of Depository Institution	Box No.	Contents

Initials: \_\_\_\_\_

**FINANCIAL INFORMATION**

**REMINDER:** When an item asks for information regarding your "assets" and "liabilities" include ALL assets and liabilities, located within the United States or in any foreign country or territory, or institution, whether held individually or jointly, and whether held by you, your spouse, or any of your dependents, or held by others for the benefit of you, your spouse, or any of your dependents. In addition, provide all documents requested in Item 24 with your completed Financial Statement.

**ASSETS**

**Item 9. Cash, Bank, and Money Market Accounts**

List cash on hand (as opposed to cash in bank accounts or other financial accounts) and all bank accounts, money market accounts, or other financial accounts, including but not limited to checking accounts, savings accounts, and certificates of deposit. The term "cash on hand" includes but is not limited to cash in the form of currency, uncashed checks, and money orders.

a. Amount of Cash on Hand \$		Form of Cash on Hand	
b. Name on Account	Name & Address of Financial Institution	Account No.	Current Balance
			\$
			\$
			\$
			\$
			\$

**Item 10. Publicly Traded Securities**

List all publicly traded securities, including but not limited to, stocks, stock options, corporate bonds, mutual funds, U.S. government securities (including but not limited to treasury bills and treasury notes), and state and municipal bonds. Also list any U.S. savings bonds.

Owner of Security	Issuer	Type of Security	No. of Units Owned
Broker House, Address	Broker Account No.		
	Current Fair Market Value \$	Loan(s) Against Security \$	
Owner of Security	Issuer	Type of Security	No. of Units Owned
Broker House, Address	Broker Account No.		
	Current Fair Market Value \$	Loan(s) Against Security \$	
Owner of Security	Issuer	Type of Security	No. of Units Owned
Broker House, Address	Broker Account No.		
	Current Fair Market Value \$	Loan(s) Against Security \$	

Initials: \_\_\_\_\_

**Item 11. Non-Public Business and Financial Interests**

List all non-public business and financial interests, including but not limited to any interest in a non-public corporation, subchapter-S corporation, limited liability corporation ("LLC"), general or limited partnership, joint venture, sole proprietorship, international business corporation or personal investment corporation, and oil or mineral lease.

Entity's Name & Address	Type of Business or Financial Interest (e.g., LLC, partnership)	Owner (e.g., self, spouse)	Ownership %	If Officer, Director, Member or Partner, Exact Title

**Item 12. Amounts Owed to You, Your Spouse, or Your Dependents**

Debtor's Name & Address	Date Obligation Incurred (Month/Year) /	Original Amount Owed \$	Nature of Obligation (if the result of a final court judgment or settlement, provide court name and docket number)
	Current Amount Owed \$	Payment Schedule \$	
Debtor's Telephone	Debtor's Relationship to You		
Debtor's Name & Address	Date Obligation Incurred (Month/Year) /	Original Amount Owed \$	Nature of Obligation (if the result of a final court judgment or settlement, provide court name and docket number)
	Current Amount Owed \$	Payment Schedule \$	
Debtor's Telephone	Debtor's Relationship to You		

**Item 13. Life Insurance Policies**

List all life insurance policies (including endowment policies) with any cash surrender value.

Insurance Company's Name, Address, & Telephone No.	Beneficiary	Policy No.	Face Value \$
	Insured	Loans Against Policy \$	Surrender Value \$
Insurance Company's Name, Address, & Telephone No.	Beneficiary	Policy No.	Face Value \$
	Insured	Loans Against Policy \$	Surrender Value \$

**Item 14. Deferred Income Arrangements**

List all deferred income arrangements, including but not limited to, deferred annuities, pensions plans, profit-sharing plans, 401(k) plans, IRAs, Keoghs, other retirement accounts, and college savings plans (e.g., 529 Plans).

Trustee or Administrator's Name, Address & Telephone No.	Name on Account		Account No.
	Date Established / / (mm/dd/yyyy)	Type of Plan	Surrender Value before Taxes and Penalties \$
Trustee or Administrator's Name, Address & Telephone No.	Name on Account		Account No.
	Date Established / /	Type of Plan	Surrender Value before Taxes and Penalties \$

Initials: \_\_\_\_\_

Item 15. Pending Insurance Payments or Inheritances		
List any pending insurance payments or inheritances owed to you.		
Type	Amount Expected	Date Expected (mm/dd/yyyy)
	\$	/ /
	\$	/ /
	\$	/ /

**Item 16. Vehicles**  
List all cars, trucks, motorcycles, boats, airplanes, and other vehicles.

Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		
Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		
Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		
Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		
Vehicle Type	Year	Registered Owner's Name	Purchase Price	Original Loan Amount	Current Balance
Make		Registration State & No.	Account/Loan No.	Current Value	Monthly Payment
Model		Address of Vehicle's Location	Lender's Name and Address		

**Item 17. Other Personal Property**  
List all other personal property not listed in Items 9-16 by category, whether held for personal use, investment or any other reason, including but not limited to coins, stamps, artwork, gemstones, jewelry, bullion, other collectibles, copyrights, patents, and other intellectual property.

Property Category (e.g., artwork, jewelry)	Name of Owner	Property Location	Acquisition Cost	Current Value
			\$	\$
			\$	\$
			\$	\$

Initials: \_\_\_\_\_

<b>Item 18. Real Property</b>			
List all real property interests (including any land contract)			
Property's Location	Type of Property	Name(s) on Title or Contract and Ownership Percentages	
Acquisition Date (mm/dd/yyyy) / /	Purchase Price \$	Current Value \$	Basis of Valuation
Lender's Name and Address		Loan or Account No.	Current Balance On First Mortgage or Contract \$
			Monthly Payment \$
Other Mortgage Loan(s) (describe)		Monthly Payment \$	<input type="checkbox"/> Rental Unit  Monthly Rent Received \$
		Current Balance \$	
Property's Location	Type of Property	Name(s) on Title or Contract and Ownership Percentages	
Acquisition Date (mm/dd/yyyy) / /	Purchase Price \$	Current Value \$	Basis of Valuation
Lender's Name and Address		Loan or Account No.	Current Balance On First Mortgage or Contract \$
			Monthly Payment \$
Other Mortgage Loan(s) (describe)		Monthly Payment \$	<input type="checkbox"/> Rental Unit  Monthly Rent Received \$
		Current Balance \$	

**LIABILITIES**

<b>Item 19. Credit Cards</b>			
List each credit card account held by you, your spouse, or your dependents, and any other credit cards that you, your spouse, or your dependents use, whether issued by a United States or foreign financial institution.			
Name of Credit Card (e.g., Visa, MasterCard, Department Store)	Account No.	Name(s) on Account	Current Balance
			\$
			\$
			\$
			\$
			\$

<b>Item 20. Taxes Payable</b>		
List all taxes, such as income taxes or real estate taxes, owed by you, your spouse, or your dependents.		
Type of Tax	Amount Owed	Year Incurred
	\$	
	\$	
	\$	

Initials: \_\_\_\_\_



**Item 21. Other Amounts Owed by You, Your Spouse, or Your Dependents**  
 List all other amounts, not listed elsewhere in this financial statement, owed by you, your spouse, or your dependents.

Lender/Creditor's Name, Address, and Telephone No.	Nature of Debt (if the result of a court judgment or settlement, provide court name and docket number)		
	Lender/Creditor's Relationship to You		

Date Liability Was Incurred / / (mm/dd/yyyy)	Original Amount Owed \$	Current Amount Owed \$	Payment Schedule
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Lender/Creditor's Name, Address, and Telephone No.	Nature of Debt (if the result of a court judgment or settlement, provide court name and docket number)		
	Lender/Creditor's Relationship to You		

Date Liability Was Incurred / / (mm/dd/yyyy)	Original Amount Owed \$	Current Amount Owed \$	Payment Schedule
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**OTHER FINANCIAL INFORMATION**

**Item 22. Trusts and Escrows**  
 List all funds and other assets that are being held in trust or escrow by any person or entity for you, your spouse, or your dependents. Include any legal retainers being held on your behalf by legal counsel. Also list all funds or other assets that are being held in trust or escrow by you, your spouse, or your dependents, for any person or entity.

Trustee or Escrow Agent's Name & Address	Date Established (mm/dd/yyyy)	Grantor	Beneficiaries	Present Market Value of Assets*
	/ /			\$
	/ /			\$
	/ /			\$

\*If the market value of any asset is unknown, describe the asset and state its cost, if you know it.

**Item 23. Transfers of Assets**  
 List each person or entity to whom you have transferred, in the aggregate, more than \$5,000 in funds or other assets during the previous five years by loan, gift, sale, or other transfer (exclude ordinary and necessary living and business expenses paid to unrelated third parties). For each such person or entity, state the total amount transferred during that period.

Transferee's Name, Address, & Relationship	Property Transferred	Aggregate Value*	Transfer Date (mm/dd/yyyy)	Type of Transfer (e.g., Loan, Gift)
		\$	/ /	
		\$	/ /	
		\$	/ /	

\*If the market value of any asset is unknown, describe the asset and state its cost, if you know it.

Initials: \_\_\_\_\_

**Item 24. Document Requests**

Provide copies of the following documents with your completed Financial Statement.

	Federal tax returns filed during the last three years by or on behalf of you, your spouse, or your dependents.
	All applications for bank loans or other extensions of credit (other than credit cards) that you, your spouse, or your dependents have submitted within the last two years, including by obtaining copies from lenders if necessary.
Item 9	For each bank account listed in Item 9, all account statements for the past 3 years.
Item 11	For each business entity listed in Item 11, provide (including by causing to be generated from accounting records) the most recent balance sheet, tax return, annual income statement, the most recent year-to-date income statement, and all general ledger files from account records.
Item 17	All appraisals that have been prepared for any property listed in Item 17, including appraisals done for insurance purposes. You may exclude any category of property where the total appraised value of all property in that category is less than \$2,000.
Item 18	All appraisals that have been prepared for real property listed in Item 18.
Item 21	Documentation for all debts listed in Item 21.
Item 22	All executed documents for any trust or escrow listed in Item 22. Also provide any appraisals, including insurance appraisals that have been done for any assets held by any such trust or in any such escrow.

**SUMMARY FINANCIAL SCHEDULES**

**Item 25. Combined Balance Sheet for You, Your Spouse, and Your Dependents**

Assets		Liabilities	
Cash on Hand (Item 9)	\$	Loans Against Publicly Traded Securities (Item 10)	\$
Funds Held in Financial Institutions (Item 9)	\$	Vehicles - Liens (Item 16)	\$
U.S. Government Securities (Item 10)	\$	Real Property – Encumbrances (Item 18)	\$
Publicly Traded Securities (Item 10)	\$	Credit Cards (Item 19)	\$
Non-Public Business and Financial Interests (Item 11)	\$	Taxes Payable (Item 20)	\$
Amounts Owed to You (Item 12)	\$	Amounts Owed by You (Item 21)	\$
Life Insurance Policies (Item 13)	\$	<b>Other Liabilities (Itemize)</b>	
Deferred Income Arrangements (Item 14)	\$		\$
Vehicles (Item 16)	\$		\$
Other Personal Property (Item 17)	\$		\$
Real Property (Item 18)	\$		\$
<b>Other Assets (Itemize)</b>			\$
	\$		\$
	\$		\$
	\$		\$
<b>Total Assets</b>	\$	<b>Total Liabilities</b>	\$

**Item 26. Combined Current Monthly Income and Expenses for You, Your Spouse, and Your Dependents**

Provide the current monthly income and expenses for you, your spouse, and your dependents. Do not include credit card payments separately; rather, include credit card expenditures in the appropriate categories.

Income (State source of each item)		Expenses	
Salary - After Taxes Source:	\$	Mortgage or Rental Payments for Residence(s)	\$
Fees, Commissions, and Royalties Source:	\$	Property Taxes for Residence(s)	\$
Interest Source:	\$	Rental Property Expenses, Including Mortgage Payments, Taxes, and Insurance	\$
Dividends and Capital Gains Source:	\$	Car or Other Vehicle Lease or Loan Payments	\$
Gross Rental Income Source:	\$	Food Expenses	\$
Profits from Sole Proprietorships Source:	\$	Clothing Expenses	\$
Distributions from Partnerships, S-Corporations, and LLCs Source:	\$	Utilities	\$

Initials: \_\_\_\_\_

<b>Item 26. Combined Current Monthly Income and Expenses for You, Your Spouse, and Your Dependents (cont.)</b>			
Distributions from Trusts and Estates Source:	\$	Medical Expenses, Including Insurance	\$
Distributions from Deferred Income Arrangements Source:	\$	Other Insurance Premiums	\$
Social Security Payments	\$	Other Transportation Expenses	\$
Alimony/Child Support Received	\$	<b>Other Expenses (Itemize)</b>	
Gambling Income	\$		\$
<b>Other Income (Itemize)</b>			\$
	\$		\$
	\$		\$
	\$		\$
	\$		\$
<b>Total Income</b>	\$	<b>Total Expenses</b>	\$

**ATTACHMENTS**

**Item 27. Documents Attached to this Financial Statement**

List all documents that are being submitted with this financial statement. For any Item 24 documents that are not attached, explain why.

Item No. Document Relates To	Description of Document

I am submitting this financial statement with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature

FEDERAL TRADE COMMISSION

FINANCIAL STATEMENT OF CORPORATE DEFENDANT

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**Instructions:**

1. Complete all items. Enter “None” or “N/A” (“Not Applicable”) where appropriate. If you cannot fully answer a question, explain why.
2. The font size within each field will adjust automatically as you type to accommodate longer responses.
3. In completing this financial statement, “the corporation” refers not only to this corporation but also to each of its predecessors that are not named defendants in this action.
4. When an Item asks for information about assets or liabilities “held by the corporation,” include ALL such assets and liabilities, located within the United States or elsewhere, held by the corporation or held by others for the benefit of the corporation.
5. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued. On the continuation page(s), identify the Item number being continued.
6. Type or print legibly.
7. An officer of the corporation must sign and date the completed financial statement on the last page and initial each page in the space provided in the lower right corner.

**Penalty for False Information:**

Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

- (1) “in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry” (18 U.S.C. § 1001);
- (2) “in any . . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true” (18 U.S.C. § 1621); or
- (3) “in any (. . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration.” (18 U.S.C. § 1623)

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

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**BACKGROUND INFORMATION**

**Item 1. General Information**

Corporation's Full Name \_\_\_\_\_

Primary Business Address \_\_\_\_\_ From (Date) \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-Mail Address \_\_\_\_\_ Internet Home Page \_\_\_\_\_

All other current addresses & previous addresses for past five years, including post office boxes and mail drops:

Address \_\_\_\_\_ From/Until \_\_\_\_\_

Address \_\_\_\_\_ From/Until \_\_\_\_\_

Address \_\_\_\_\_ From/Until \_\_\_\_\_

All predecessor companies for past five years:

Name & Address \_\_\_\_\_ From/Until \_\_\_\_\_

Name & Address \_\_\_\_\_ From/Until \_\_\_\_\_

Name & Address \_\_\_\_\_ From/Until \_\_\_\_\_

**Item 2. Legal Information**

Federal Taxpayer ID No. \_\_\_\_\_ State & Date of Incorporation \_\_\_\_\_

State Tax ID No. \_\_\_\_\_ State \_\_\_\_\_ Profit or Not For Profit \_\_\_\_\_

Corporation's Present Status: Active \_\_\_\_\_ Inactive \_\_\_\_\_ Dissolved \_\_\_\_\_

If Dissolved: Date dissolved \_\_\_\_\_ By Whom \_\_\_\_\_

Reasons \_\_\_\_\_

Fiscal Year-End (Mo./Day) \_\_\_\_\_ Corporation's Business Activities \_\_\_\_\_

**Item 3. Registered Agent**

Name of Registered Agent \_\_\_\_\_

Address \_\_\_\_\_ Telephone No. \_\_\_\_\_

**Item 4. Principal Stockholders**

List all persons and entities that own at least 5% of the corporation's stock.

<u>Name &amp; Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____

**Item 5. Board Members**

List all members of the corporation's Board of Directors.

<u>Name &amp; Address</u>	<u>% Owned</u>	<u>Term (From/Until)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Item 6. Officers**

List all of the corporation's officers, including *de facto* officers (individuals with significant management responsibility whose titles do not reflect the nature of their positions).

<u>Name &amp; Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____

**Item 7. Businesses Related to the Corporation**

List all corporations, partnerships, and other business entities in which this corporation has an ownership interest.

<u>Name &amp; Address</u>	<u>Business Activities</u>	<u>% Owned</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

State which of these businesses, if any, has ever transacted business with the corporation \_\_\_\_\_

**Item 8. Businesses Related to Individuals**

List all corporations, partnerships, and other business entities in which the corporation’s principal stockholders, board members, or officers (i.e., the individuals listed in Items 4 - 6 above) have an ownership interest.

<u>Individual’s Name</u>	<u>Business Name &amp; Address</u>	<u>Business Activities</u>	<u>% Owned</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

State which of these businesses, if any, have ever transacted business with the corporation \_\_\_\_\_

**Item 9. Related Individuals**

List all related individuals with whom the corporation has had any business transactions during the three previous fiscal years and current fiscal year-to-date. A “related individual” is a spouse, sibling, parent, or child of the principal stockholders, board members, and officers (i.e., the individuals listed in Items 4 - 6 above).

<u>Name and Address</u>	<u>Relationship</u>	<u>Business Activities</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____



**Item 10. Outside Accountants**

List all outside accountants retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>	<u>CPA/PA?</u>

**Item 11. Corporation's Recordkeeping**

List all individuals within the corporation with responsibility for keeping the corporation's financial books and records for the last three years.

<u>Name, Address, &amp; Telephone Number</u>	<u>Position(s) Held</u>

**Item 12. Attorneys**

List all attorneys retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>

**Item 13. Pending Lawsuits Filed by the Corporation**

List all pending lawsuits that have been filed by the corporation in court or before an administrative agency. (List lawsuits that resulted in final judgments or settlements in favor of the corporation in Item 25).

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

**Item 14. Current Lawsuits Filed Against the Corporation**

List all pending lawsuits that have been filed against the corporation in court or before an administrative agency. (List lawsuits that resulted in final judgments, settlements, or orders in Items 26 - 27).

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_

Docket No. \_\_\_\_\_ Relief Requested \_\_\_\_\_ Nature of Lawsuit \_\_\_\_\_

\_\_\_\_\_ Status \_\_\_\_\_

**Item 15. Bankruptcy Information**

List all state insolvency and federal bankruptcy proceedings involving the corporation.

Commencement Date \_\_\_\_\_ Termination Date \_\_\_\_\_ Docket No. \_\_\_\_\_

If State Court: Court & County \_\_\_\_\_ If Federal Court: District \_\_\_\_\_

Disposition \_\_\_\_\_

**Item 16. Safe Deposit Boxes**

List all safe deposit boxes, located within the United States or elsewhere, held by the corporation, or held by others for the benefit of the corporation. *On a separate page, describe the contents of each box.*

<u>Owner's Name</u>	<u>Name &amp; Address of Depository Institution</u>	<u>Box No.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**FINANCIAL INFORMATION**

**REMINDER:** When an Item asks for information about assets or liabilities “held by the corporation,” include **ALL** such assets and liabilities, located within the United States or elsewhere, held by the corporation or held by others for the benefit of the corporation.

**Item 17. Tax Returns**

List all federal and state corporate tax returns filed for the last three complete fiscal years. *Attach copies of all returns.*

<u>Federal/ State/Both</u>	<u>Tax Year</u>	<u>Tax Due Federal</u>	<u>Tax Paid Federal</u>	<u>Tax Due State</u>	<u>Tax Paid State</u>	<u>Preparer's Name</u>
_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____

**Item 18. Financial Statements**

List all financial statements that were prepared for the corporation's last three complete fiscal years and for the current fiscal year-to-date. *Attach copies of all statements, providing audited statements if available.*

<u>Year</u>	<u>Balance Sheet</u>	<u>Profit &amp; Loss Statement</u>	<u>Cash Flow Statement</u>	<u>Changes in Owner's Equity</u>	<u>Audited?</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

**Item 19. Financial Summary**

For each of the last three complete fiscal years and for the current fiscal year-to-date for which the corporation has not provided a profit and loss statement in accordance with Item 18 above, provide the following summary financial information.

	<u>Current Year-to-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>3 Years Ago</u>
<u>Gross Revenue</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Expenses</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Net Profit After Taxes</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Payables</u>	\$ _____			
<u>Receivables</u>	\$ _____			

**Item 20. Cash, Bank, and Money Market Accounts**

List cash and all bank and money market accounts, including but not limited to, checking accounts, savings accounts, and certificates of deposit, held by the corporation. The term "cash" includes currency and uncashed checks.

Cash on Hand \$ \_\_\_\_\_ Cash Held for the Corporation's Benefit \$ \_\_\_\_\_

<u>Name &amp; Address of Financial Institution</u>	<u>Signator(s) on Account</u>	<u>Account No.</u>	<u>Current Balance</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

**Item 21. Government Obligations and Publicly Traded Securities**

List all U.S. Government obligations, including but not limited to, savings bonds, treasury bills, or treasury notes, held by the corporation. Also list all publicly traded securities, including but not limited to, stocks, stock options, registered and bearer bonds, state and municipal bonds, and mutual funds, held by the corporation.

Issuer \_\_\_\_\_ Type of Security/Obligation \_\_\_\_\_

No. of Units Owned \_\_\_\_\_ Current Fair Market Value \$ \_\_\_\_\_ Maturity Date \_\_\_\_\_

Issuer \_\_\_\_\_ Type of Security/Obligation \_\_\_\_\_

No. of Units Owned \_\_\_\_\_ Current Fair Market Value \$ \_\_\_\_\_ Maturity Date \_\_\_\_\_

**Item 22. Real Estate**

List all real estate, including leaseholds in excess of five years, held by the corporation.

Type of Property \_\_\_\_\_ Property's Location \_\_\_\_\_

Name(s) on Title and Ownership Percentages \_\_\_\_\_

Current Value \$ \_\_\_\_\_ Loan or Account No. \_\_\_\_\_

Lender's Name and Address \_\_\_\_\_

Current Balance On First Mortgage \$ \_\_\_\_\_ Monthly Payment \$ \_\_\_\_\_

Other Loan(s) (describe) \_\_\_\_\_ Current Balance \$ \_\_\_\_\_

Monthly Payment \$ \_\_\_\_\_ Rental Unit? \_\_\_\_\_ Monthly Rent Received \$ \_\_\_\_\_

Type of Property \_\_\_\_\_ Property's Location \_\_\_\_\_

Name(s) on Title and Ownership Percentages \_\_\_\_\_

Current Value \$ \_\_\_\_\_ Loan or Account No. \_\_\_\_\_

Lender's Name and Address \_\_\_\_\_

Current Balance On First Mortgage \$ \_\_\_\_\_ Monthly Payment \$ \_\_\_\_\_

Other Loan(s) (describe) \_\_\_\_\_ Current Balance \$ \_\_\_\_\_

Monthly Payment \$ \_\_\_\_\_ Rental Unit? \_\_\_\_\_ Monthly Rent Received \$ \_\_\_\_\_

**Item 23. Other Assets**

List all other property, by category, with an estimated value of \$2,500 or more, held by the corporation, including but not limited to, inventory, machinery, equipment, furniture, vehicles, customer lists, computer software, patents, and other intellectual property.

<u>Property Category</u>	<u>Property Location</u>	<u>Acquisition Cost</u>	<u>Current Value</u>
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

**Item 24. Trusts and Escrows**

List all persons and other entities holding funds or other assets that are in escrow or in trust for the corporation.

<u>Trustee or Escrow Agent's Name &amp; Address</u>	<u>Description and Location of Assets</u>	<u>Present Market Value of Assets</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____



**Item 25. Monetary Judgments and Settlements Owed To the Corporation**

List all monetary judgments and settlements, recorded and unrecorded, owed to the corporation.

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_ Docket No. \_\_\_\_\_

Nature of Lawsuit \_\_\_\_\_ Date of Judgment \_\_\_\_\_ Amount \$ \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_ Docket No. \_\_\_\_\_

Nature of Lawsuit \_\_\_\_\_ Date of Judgment \_\_\_\_\_ Amount \$ \_\_\_\_\_

**Item 26. Monetary Judgments and Settlements Owed By the Corporation**

List all monetary judgments and settlements, recorded and unrecorded, owed by the corporation.

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_ Docket No. \_\_\_\_\_

Nature of Lawsuit \_\_\_\_\_ Date \_\_\_\_\_ Amount \$ \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_ Docket No. \_\_\_\_\_

Nature of Lawsuit \_\_\_\_\_ Date of Judgment \_\_\_\_\_ Amount \$ \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_ Docket No. \_\_\_\_\_

Nature of Lawsuit \_\_\_\_\_ Date of Judgment \_\_\_\_\_ Amount \$ \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_ Docket No. \_\_\_\_\_

Nature of Lawsuit \_\_\_\_\_ Date of Judgment \_\_\_\_\_ Amount \$ \_\_\_\_\_

Opposing Party's Name & Address \_\_\_\_\_

Court's Name & Address \_\_\_\_\_ Docket No. \_\_\_\_\_

Nature of Lawsuit \_\_\_\_\_ Date of Judgment \_\_\_\_\_ Amount \$ \_\_\_\_\_

**Item 27. Government Orders and Settlements**

List all existing orders and settlements between the corporation and any federal or state government entities.

Name of Agency \_\_\_\_\_ Contact Person \_\_\_\_\_

Address \_\_\_\_\_ Telephone No. \_\_\_\_\_

Agreement Date \_\_\_\_\_ Nature of Agreement \_\_\_\_\_

**Item 28. Credit Cards**

List all of the corporation's credit cards and store charge accounts and the individuals authorized to use them.

Name of Credit Card or Store

Names of Authorized Users and Positions Held

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**Item 29. Compensation of Employees**

List all compensation and other benefits received from the corporation by the five most highly compensated employees, independent contractors, and consultants (other than those individuals listed in Items 5 and 6 above), for the two previous fiscal years and current fiscal year-to-date. "Compensation" includes, but is not limited to, salaries, commissions, consulting fees, bonuses, dividends, distributions, royalties, pensions, and profit sharing plans. "Other benefits" include, but are not limited to, loans, loan payments, rent, car payments, and insurance premiums, whether paid directly to the individuals, or paid to others on their behalf.

<u>Name/Position</u>	<u>Current Fiscal Year-to-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>Compensation or Type of Benefits</u>
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____

**Item 30. Compensation of Board Members and Officers**

List all compensation and other benefits received from the corporation by each person listed in Items 5 and 6, for the current fiscal year-to-date and the two previous fiscal years. "Compensation" includes, but is not limited to, salaries, commissions, consulting fees, dividends, distributions, royalties, pensions, and profit sharing plans. "Other benefits" include, but are not limited to, loans, loan payments, rent, car payments, and insurance premiums, whether paid directly to the individuals, or paid to others on their behalf.

<u>Name/Position</u>	<u>Current Fiscal Year-to-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>Compensation or Type of Benefits</u>
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____

**Item 31. Transfers of Assets Including Cash and Property**

List all transfers of assets over \$2,500 made by the corporation, other than in the ordinary course of business, during the previous three years, by loan, gift, sale, or other transfer.

<u>Transferee's Name, Address, &amp; Relationship</u>	<u>Property Transferred</u>	<u>Aggregate Value</u>	<u>Transfer Date</u>	<u>Type of Transfer (e.g., Loan, Gift)</u>
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____

**Item 32. Documents Attached to the Financial Statement**

List all documents that are being submitted with the financial statement.

<u>Item No.</u>	<u>Document Relates To</u>	<u>Description of Document</u>

I am submitting this financial statement with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Corporate Position

**CONSENT TO RELEASE OF FINANCIAL RECORDS**

I, \_\_\_\_\_, residing at \_\_\_\_\_, in the United States of America, do hereby direct any bank, trust company, or financial institution, at which I have an account of any kind or at which a corporation or natural person has a bank account of any kind upon which I am authorized to draw, and its officers, employees, and agents, to disclose all information and deliver copies of all documents of every nature in their possession or control that relate to any such account to any attorney or representative of the Federal Trade Commission, and to give evidence relevant thereto, in the matter of the *Federal Trade Commission v. Damian Kutzner et al.*, before the United States District Court for the Central District of California, and this shall be irrevocable authority for so doing.

This direction is intended to apply to the laws of countries other than the United States that restrict or prohibit the disclosure of financial information without the consent of the holder of the account, or its officers, and shall be construed as consent with respect thereto, and the same shall apply to any of the accounts for which I may be a relevant principal.

Dated: \_\_\_\_\_, 2016

Name (print): \_\_\_\_\_

Signature: \_\_\_\_\_