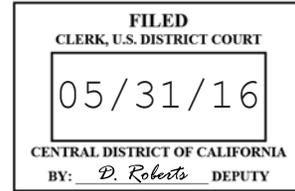


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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 FEDERAL TRADE COMMISSION,
14 Plaintiff,
15 v.

SACV16-00999 BRO (AFMx)

Case No. _____

**COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

16 DAMIAN KUTZNER, individually and as
17 an officer of BROOKSTONE LAW P.C.
18 (California), BROOKSTONE LAW P.C.
19 (Nevada), ADVANTIS LAW P.C., and
20 ADVANTIS LAW GROUP P.C.; VITO
21 TORCHIA, JR., individually and as an
22 officer of BROOKSTONE LAW P.C.
23 (California) and BROOKSTONE LAW
24 P.C. (Nevada); JONATHAN
25 TARKOWSKI, individually and as an
26 officer of BROOKSTONE LAW P.C.
27 (California) and BROOKSTONE LAW
28 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 Nevada

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,

Defendants.

6 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint, alleges:

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

22 **JURISDICTION AND VENUE**

23 2. This Court has subject matter jurisdiction over this matter under 28
24 U.S.C. §§ 1331, 1337(a), and 1345; 15 U.S.C. §§ 45(a), 53(b); and Section 626 of
25 the Omnibus Act, as clarified by Section 511 of the Credit Card Act, and amended
26 by Section 1097 of the Dodd-Frank Act, 12 U.S.C. § 5538.

27 3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2),
28 (c)(1), (c)(2), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

1
2 4. The FTC is an independent agency of the United States Government
3 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC
4 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
5 affecting commerce. Pursuant to the Omnibus Act § 626, 123 Stat. at 678, as
6 clarified by the Credit Card Act, § 511, 123 Stat. at 1763-64, the FTC promulgated
7 the MARS Rule, 16 C.F.R. Part 322. The MARS Rule generally defines mortgage
8 assistance relief services as express or implied assistance in, among other things,
9 stopping or delaying foreclosures, negotiating or obtaining any modification of any
10 term of a mortgage loan, and obtaining forbearance on mortgage payments. The
11 MARS Rule prohibits certain conduct by providers of mortgage assistance relief
12 services, including the collection of advance fees, the making of certain
13 representations, and the failure to make certain disclosures. The Dodd-Frank Act,
14 § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538, transferred rulemaking authority
15 over the MARS Rule to the Consumer Financial Protection Bureau, which
16 recodified the MARS Rule as 12 C.F.R. Part 1015 effective December 30, 2011,
17 and designated it Regulation O. Pursuant to the Dodd-Frank Act, § 1097, 12
18 U.S.C. § 5538, the FTC retains its authority to enforce the MARS Rule and
19 Regulation O.

20 5. The FTC is authorized to initiate federal district court proceedings, by
21 its own attorneys, to enjoin violations of the FTC Act; the Omnibus Act as clarified
22 by the Credit Card Act and amended by the Dodd-Frank Act; the MARS Rule; and
23 Regulation O, and to secure such equitable relief as may be appropriate in each
24 case, including rescission or reformation of contracts, restitution, the refund of
25 monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b),
26 56(a)(2)(A)-(B); § 626, 123 Stat. at 678, as clarified by § 511, 123 Stat. at 1763-64
27 and amended by § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538; and 16 C.F.R.
28 Part 322, recodified as 12 C.F.R. Part 1015.

DEFENDANTS

1
2 6. Defendant Brookstone Law P.C. (California), doing business as
3 Brookstone Law Group (“Brookstone California”), is a California professional
4 corporation. Defendant Brookstone Law P.C. (Nevada), doing business as
5 Brookstone Law Group (“Brookstone Nevada”) (collectively with Brookstone
6 California, “Brookstone”), is a Nevada professional corporation with a business
7 address at 3050 Sirius Ave., Suite 104, Las Vegas, Nevada 89102. Brookstone’s
8 principal places of business are, or were, at 6 Hutton Centre Drive, Santa Ana,
9 California; 1503 South Coast Drive, Costa Mesa, California; 18400 Von Karman
10 Avenue, Suite 1000, Irvine, California; and 18331 Von Karman Avenue, Irvine,
11 California. Brookstone transacts or has transacted business in this district. At
12 times material to this Complaint, acting alone or in concert with others, Brookstone
13 has advertised, marketed, distributed, or sold mortgage assistance relief services to
14 consumers in this district. Brookstone is a “law firm” offering mortgage assistance
15 relief services to consumers by representing them in litigation against their lenders.

16 7. Defendants Advantis Law P.C. and Advantis Law Group P.C.
17 (collectively, “Advantis”) are California professional corporations. Advantis’
18 principal places of business are, or were, at 6 Hutton Centre Drive, Santa Ana,
19 California; 18400 Von Karman Avenue, Suite 1000, Irvine, California; and 18331
20 Von Karman Avenue, Irvine, California. Advantis transacts or has transacted
21 business in this district. At times material to this Complaint, acting alone or in
22 concert with others, Advantis has advertised, marketed, distributed, or sold
23 mortgage assistance relief services to consumers in this district. Advantis is a “law
24 firm” offering mortgage assistance relief services to consumers by representing
25 them in litigation against their lenders.

26 8. Defendant Damian Kutzner (“Kutzner”) is a founder and the Chief
27 Operating Officer of Brookstone and a principal or controlling person of Advantis.
28 Kutzner and Vito Torchia, Jr. founded Brookstone after their prior business, United

1 Law Group, a mortgage assistance “law firm,” was dissolved following an
2 investigation and raid by multiple federal and local agencies. Although not an
3 attorney, Kutzner controls the marketing and sales at both Brookstone and
4 Advantis. At all times material to this Complaint, acting alone or in concert with
5 others, he formulated, directed, controlled, had the authority to control, or
6 participated in the acts and practices set forth in this Complaint. Defendant
7 Kutzner, in connection with the matters alleged herein, transacts or has transacted
8 business in this district.

9 9. Defendant Vito Torchia, Jr. (“Torchia”) was the managing attorney of
10 Brookstone. Torchia co-founded both Brookstone and Advantis. Torchia was the
11 counsel of record for all of Brookstone’s mass joinder cases. In August 2014, the
12 California Bar found Torchia violated his ethical duties to his clients with respect
13 to the provision of mortgage-related services, and declared him indefinitely
14 ineligible to practice law in California. At all times material to this Complaint,
15 acting alone or in concert with others, he formulated, directed, controlled, had the
16 authority to control, or participated in the acts and practices set forth in this
17 Complaint. Defendant Torchia, in connection with the matters alleged herein,
18 transacts or has transacted business in this district.

19 10. Defendant Jonathan Tarkowski (“Tarkowski”) was, or is, the
20 managing attorney of Brookstone and is or was an attorney with Advantis.
21 Tarkowski was admitted to practice law in June 2014 in California. Brookstone
22 hired Tarkowski in July 2015, and Tarkowski was Brookstone’s sole attorney at
23 that time. At times material to this Complaint, acting alone or in concert with
24 others, he formulated, directed, controlled, had the authority to control, or
25 participated in the acts and practices set forth in this Complaint. Defendant
26 Tarkowski, in connection with the matters alleged herein, transacts or has
27 transacted business in this district.

28

1 participated in the acts and practices of the Corporate Defendants that constitute
2 the common enterprise.

3 **COMMERCE**

4 14. At all times material to this Complaint, Defendants maintained a
5 substantial course of trade in or affecting commerce, as “commerce” is defined in
6 Section 4 of the FTC Act, 15 U.S.C. § 44.

7 **DEFENDANTS’ BUSINESS ACTIVITIES**

8 15. Since at least 2011, Defendants have advertised, marketed, promoted,
9 sold, and/or offered to sell mortgage assistance relief services. Defendants present
10 themselves as experienced lawyers and law firms that include experienced
11 litigators who would quickly, or without delay, file and actively pursue lawsuits
12 against lenders on consumers’ behalf. Defendants target distressed homeowners,
13 many of whom have fallen behind on their mortgage payments, and convince them
14 to purchase legal services by telling them that they are likely to prevail in lawsuits
15 against their lenders. Often Defendants tell consumers they will receive at least
16 \$75,000 by suing their lender. They then extract thousands of dollars in upfront
17 fees. In return, they provide little or nothing.

18 **Defendants Target Vulnerable Homeowners With Mass Mailers Hawking**
19 **Their Mortgage Assistance Relief Services**

20 16. Defendants prey on distressed homeowners, often identifying people
21 who are at risk of foreclosure to send individualized marketing materials. These
22 materials advertise mortgage assistance relief services, including mass joinder
23 lawsuits to void mortgage notes and other actions to stop foreclosures.

24 17. One letter, sent to consumers around May 2012, says, “You may
25 become a joined named plaintiff in a significant lawsuit that will seek, among other
26 things, to void your note(s).”

27 18. Another letter, sent to consumers around August 2015, states,
28 “Brookstone Law is preparing to sue the trustee assigned to foreclose on your

1 property for wrongful foreclosure and demand that they immediately cancel your
2 auction date.”

3 19. During the relevant time period, Defendants sent potential victims
4 additional, similar letters.

5 20. Defendants’ marketing materials portray Defendants as legal
6 practitioners with the resources and experience to successfully litigate complicated
7 mass joinder cases. For example, in a May 2012 letter, Brookstone claimed that its
8 “team of lawyers . . . has substantial experience in lender fraud and related claims.”
9 It also claimed that “our team of experienced lawyers offers you a superior
10 alternative for recovery.”

11 21. Defendants further promote their litigation experience by telling
12 consumers “[i]t may be necessary to litigate your claims against your lender to get
13 the help you need and our lawyers know how to do so.”

14 22. Defendants tell consumers that they can become a plaintiff in a
15 significant litigation seeking “to void your note(s), to give you your home free and
16 clear, and/or to award you relief and monetary damages.”

17 23. Defendants’ marketing materials urge homeowners to act quickly and
18 call Defendants in order to preserve their legal options.

19 24. For example, the May 2012 letter reads, “You should act now!
20 Waiting may eliminate or reduce the many options you have available.” The letter
21 goes on to say, “We encourage you to take prompt action by contacting us before
22 05/12/2012.”

23 25. Similarly, an August 2015 letter identifies a recent California
24 Supreme Court decision and tells consumers, “**URGENT the above decision will**
25 **NOT stop the sale of your home so you MUST contact us now . . . Your home**
26 **will be sold at Auction unless you take immediate action.**” Further, below the
27 letter emphasizes “*Scheduled Trustee Auction Date: 8/26/2015*”.

28

1 26. Both the May 2012 and August 2015 letters are individually tailored
2 for specific consumers. For example, the May 2012 letter is addressed to the
3 homeowner by name, and contains at the bottom a table with the homeowner's
4 name, a "Client Case ID#," the homeowner's total loan amount, the homeowner's
5 parcel ID, and the property zip code. The August 2015 letter is also addressed to
6 the homeowner by name, followed by a "Client ID #." The letter includes the
7 name of the homeowner's mortgage lender, followed by the homeowner's name
8 and address.

9 27. Nowhere in the May 2012 or August 2015 letters did Defendants
10 include any of the following disclaimers:

11 A. "You may stop doing business with us at any time. You may
12 accept or reject the offer of mortgage assistance we obtain from
13 your lender [or servicer]. If you reject the offer, you do not
14 have to pay us. If you accept the offer, you will have to pay us
15 [amount or method for calculating the amount] for our
16 services";

17 B. "[Brookstone or Advantis] is not associated with the
18 government, and our service is not approved by the government
19 or your lender"; or

20 C. "Even if you accept this offer and use our service, your lender
21 may not agree to change your loan."

22 28. Defendants likewise did not include such disclaimers in the other,
23 similar letters that they sent to homeowners.

24 29. In addition to consumer-specific communications, Defendants also
25 solicited business from distressed homeowners through websites advertising
26 Brookstone and Advantis. www.brookstonelaw.com, www.advantislaw.com.

27 30. For example, the Brookstone website trumpets its experience, stating
28 "This is an important announcement for anyone in America who currently is in

1 danger of losing their home due to foreclosure or other related action of their
2 lender. There is help available for you now. Brookstone Law has a team of
3 experienced litigation attorneys that can help people victimized by violations
4 where banks, loan servicers, or others have taken advantage of honest
5 homeowners.”

6 31. Although purportedly separate law firms, both Brookstone and
7 Advantis advertise the same services on their websites, in many instances using
8 identical language.

9 32. Both the Brookstone and Advantis websites use identical language in
10 describing their real estate legal services, each claiming: “Every transaction in the
11 world of real estate is essentially a contract negotiation and a business transaction.
12 At the same time there is often a strong element of emotion involved in real estate
13 ownership and possession. . . . We proceed with decisiveness while exercising
14 caution as necessary to avoid litigation and resolve disputes in the most
15 expeditious, beneficial way for our clients.”

16 33. Both the Brookstone and Advantis websites tout the mass joinder suit
17 *Wright v. Bank of America* as their own. Both websites use the same description
18 for the case: “This lawsuit arises from: (1) Defendants’ deception in inducing
19 Plaintiffs to enter into mortgages from 2003 through 2008 with the Countrywide
20 Defendants; (2) Defendants’ breach of Plaintiffs’ Constitutionally and statutorily
21 protected rights of privacy; and (3) Defendants’ continuing tortious conduct
22 intended to deprive Plaintiffs of their rights and remedies for the foregoing acts.”

23 34. Nowhere on their websites did Defendants include any of the
24 following disclaimers:

25 A. “[Brookstone or Advantis] is not associated with the
26 government, and our service is not approved by the government
27 or your lender”; or
28

1 B. “Even if you accept this offer and use our service, your lender
2 may not agree to change your loan.”

3 35. In all of these communications, Defendants encouraged homeowners
4 to contact them through one of their toll-free numbers.

5 **When Consumers Respond to the Mass Mailers, Defendants Promise**
6 **Consumers Lawsuits and Favorable Results**

7 36. Once homeowners call Defendants, sales representatives convince
8 them that they are signing up for lawsuits, and that by so doing they will achieve
9 favorable results.

10 37. Defendants’ main products are “mass joinder” lawsuits against the
11 homeowners’ mortgage lender. These lawsuits join dozens, or even hundreds, of
12 individual plaintiffs in a single action against a particular lender. These are not
13 class action lawsuits. Each individual plaintiff’s claim must be separately proven
14 and, in the event of a trial, each individual plaintiff would have a separate trial.
15 For example, Defendants filed *Wright v. Bank of America* on behalf of over 900
16 plaintiffs asserting unique claims. As alleged, they share some factual overlap,
17 such as the alleged fraud on the market to drive up home prices, but do not share
18 any other particulars that would need to be proven for a specific plaintiff to prevail.
19 Defendants filed similar suits against a number of other banks, including
20 CitiGroup, JP Morgan Chase, Wells Fargo, Ally Bank, OneWest Bank, and Ocwen
21 Financial Corporation.

22 38. On numerous occasions, Defendants presented these lawsuits as,
23 among other things, ways to delay foreclosures, negotiate loan modifications, or
24 obtain forbearance on mortgage payments. For example, one consumer was told
25 that because his claim was worth \$75,000 the bank would seek to renegotiate the
26 loan amount.

27 39. Defendants’ offers include unsupported assessments about the
28 likelihood of success. Such assessments start with a homeowner’s very first

1 conversation with one of Defendants’ telemarketers—non-lawyers charged with
2 collecting the homeowner’s information.

3 40. For example, one of Defendants’ telemarketers told an undercover
4 FTC investigator, during his initial call, that Brookstone could stop a foreclosure
5 and renegotiate his loan to lower his monthly payments, even though the
6 investigator did not provide any information about his house, the size of his
7 mortgage, or his income.

8 41. Once telemarketers convince homeowners to come into Defendants’
9 offices for in-person meetings, Defendants give the homeowners further
10 assessments of their likelihood of success in the mass joinder cases.

11 42. During these initial meetings, Defendants tell consumers they need to
12 perform a “legal analysis” to evaluate the viability of a claim against their
13 mortgage holder. Consumers pay Defendants \$895, sometimes more, before
14 Defendants’ conduct their “legal analysis.”

15 43. On numerous occasions, Defendants then provide homeowners a
16 “legal analysis,” stating that the fraud in their mortgage paperwork was obvious.
17 Defendants told such homeowners that they were likely, or even certain, to prevail,
18 if they retained the Defendants for a mass joinder suit against their lender. On
19 numerous occasions, Defendants told homeowners that they would recover “at
20 least \$75,000.”

21 44. Additionally, Defendants told consumers they would quickly file a
22 lawsuit and actively litigate on their behalf.

23 **Defendants Request and Receive Advance Fees**

24 45. Based on their promises, Defendants request and receive advance
25 fees—payments that come before homeowners receive any benefit from their
26 services—in two steps.

27 46. First, as described above in paragraph 42, consumers pay an advance
28 fee for the “legal analysis.”

1 47. Second, Defendants’ “legal analysis” almost invariably results in
2 Defendants telling consumers they have a really good case against their lender.
3 Defendants then charge homeowners thousands of dollars for the opportunity to
4 sign up for one of their mass joinder lawsuits.

5 48. Although Defendants’ mass joinder litigations are purportedly
6 “contingency fee” actions, Defendants collect both upfront fees and continuing
7 payments from consumers. Defendants charge homeowners a recurring monthly
8 fee to maintain their status as named plaintiffs.

9 49. Defendants received at least \$15 million through 2014.

10 50. Defendants do not deposit payments in client trust accounts, as
11 required by law. Instead, they treat these funds as if they were fully earned, and
12 use them for expenses as they receive them.

13 51. On numerous occasions, homeowners asked for refunds for amounts
14 paid because they had received no service or benefit. On many of these occasions,
15 Defendants refused homeowners’ requests.

16 **Defendants Do Not Deliver Promised Outcomes or Quickly File Lawsuits**

17 52. Defendants’ promise to quickly file lawsuits that will provide
18 homeowners substantial monetary awards, lower mortgages, or voided notes have
19 no reasonable relationship with any actual services they provide or outcomes they
20 achieve for homeowners.

21 53. Defendants have not won a single mass joinder lawsuit on the merits.

22 54. Far from the certainty of winning “at least \$75,000,” and possibly
23 obtaining their homes free and clear of any mortgage, Defendants did not even
24 seek such relief. In fact, as early as February 2012, Defendants tried to avoid
25 federal court jurisdiction by arguing on their clients’ behalf that they were, in fact,
26 **not** seeking to void their clients’ notes or obtain their clients’ homes free and clear.
27 *See* Pltf. Reply in Support of Motion to Remand, at 15-16, (DE 24), *Potter v. JP*
28 *Morgan Chase Bank N.A.*, No. 11-10255 (C.D. Cal.) (“Plaintiffs do not seek to set

1 aside Defendants' loans, nor rescind them but rather seek loss of equity damages
2 resulting from Defendants' wrongful conduct.")

3 55. Eleven of the twelve Brookstone mass joinder cases filed before
4 2016 have been dismissed. In March and April 2016 defendants filed three more
5 mass joinder cases.

6 56. Brookstone's mass joinder cases have been dismissed for varied
7 reasons, including for lack of prosecution, for misjoinder, on demurrer, and on
8 voluntary dismissal. Of their original cases, the only surviving case is *Wright v.*
9 *Bank of America*, No. 30-2011-449059 (Sup. Ct. Cal. Orange County). No court
10 has spoken to the merits of the claims in that lawsuit. Initially dismissed for
11 misjoinder, the California Court of Appeal allowed it to proceed in spite of its
12 "desultory and scattered allegations," but required Defendants to replead the
13 Complaint into an intelligible pleading. *Wright v. Bank of America*, 232 Cal. App.
14 4th 238, 254 (2014), *review denied* (Mar. 25, 2015). It then took Defendants
15 almost ten months to file their fourth amended complaint in January 2016;
16 Brookstone has now told the court it will again need to amend its complaint.
17 Brookstone Nevada has filed only one mass joinder lawsuit, which was removed to
18 federal court and dismissed for misjoinder. *Garner v. Bank of America*, No. 12-
19 02076, D.E. 35 (D. Nev. May 29, 2013).

20 57. Defendants do not take affirmative steps to prosecute these cases.
21 Instead, they do minimal work, only sometimes responding to demurrers, while
22 filing amended complaints adding additional consumers they have signed up.
23 They have not pursued discovery in their cases, either not seeking discovery or
24 agreeing to stays of discovery. In several instances they voluntarily dismissed the
25 cases without prejudice and have not since refiled the cases to pursue their paying
26 clients' claims.

27 58. Defendants do not perform the tasks that they promise their clients
28 they will undertake. For example, on numerous occasions, Defendants told

1 homeowners that they would add them as plaintiffs to mass joinder cases, but
2 never did so. On numerous other occasions, Defendants tell homeowners they
3 will be added to lawsuits shortly, but months pass before they are added.

4 59. Defendants do not communicate with clients or respond to client
5 requests about how they are litigating the clients' case. Numerous clients
6 repeatedly asked for updates regarding how their case was proceeding and received
7 no response whatsoever. When Brookstone vacated its offices in late 2014,
8 Defendants refused to tell clients the location of its new office; then, when pressed,
9 lied to its clients about where its offices were located.

10 60. Defendants do not tell clients that their lawsuits have been dismissed
11 and continue collecting monthly fees. Often clients determine on their own that
12 their cases have been dismissed.

13 61. In August 2014, the California Bar court found Defendant Torchia
14 had violated his ethical duties to his clients with respect to provision of mortgage-
15 related services, including 16 counts of misconduct, such as failure to perform
16 legal services with competence, failure to maintain records of client funds and
17 render appropriate accounts to the client, failure to return unearned funds, and
18 failure to return client papers/property.

19 62. During his ethics trial, Torchia testified he did not have the experience
20 to be lead counsel on the mass joinder cases. He further conceded that Brookstone
21 failed to provide the most basic elements of legal representation, including
22 properly communicating with clients, adequately explaining what consumers
23 should expect from the representation, and returning unearned fees.

24 63. Confirming Torchia's own admissions, the California Bar court found
25 that Defendant Torchia "lacked and continue[d] to lack the law-office-management
26 skills and **basic knowledge of mortgage lending law and bankruptcy law**
27 necessary to adequately and properly represent some 4,000 mortgage loan clients."
28 (Emphasis supplied.)

1 loan holder, the servicer of a dwelling loan, or any agent or contractor of such
2 individual or entity. 16 C.F.R. § 322.2, recodified as 12 C.F.R. § 1015.2.

3 74. Defendants are “mortgage assistance relief service provider[s]”
4 engaged in the provision of “mortgage assistance relief services” as those terms are
5 defined in the MARS Rule and Regulation O, 16 C.F.R. § 322.2, recodified as 12
6 C.F.R. § 1015.2.

7 75. The MARS Rule and Regulation O prohibit any mortgage assistance
8 relief service provider from misrepresenting, expressly or by implication, the
9 likelihood of negotiating, obtaining, or arranging any represented service or result.
10 16 C.F.R. § 322.3(b)(1), recodified as 12 C.F.R. § 1015.3(b)(1).

11 76. The MARS Rule and Regulation O prohibit any mortgage assistance
12 relief service provider from requesting or receiving payment of any fee or other
13 consideration until the consumer has executed a written agreement between the
14 consumer and the consumer’s loan holder or servicer that incorporates the offer
15 that the provider obtained from the loan holder or servicer. 16 C.F.R. § 322.5(a),
16 recodified as 12 C.F.R. § 1015.5(a).

17 77. The MARS Rule and Regulation O require any mortgage assistance
18 relief service provider to place a statement in every general commercial
19 communication disclosing that (i) the provider is not associated with the
20 government and its service is not approved by the government or any lender, and
21 (ii) in certain cases, a statement disclosing that the lender may not agree to modify
22 a loan, even if the consumer uses the provider’s service. 16 C.F.R. §§ 322.4(a)(1)-
23 (2), recodified as 12 C.F.R. §§ 1015.4(a)(1)-(2).

24 78. The MARS Rule and Regulation O require any mortgage assistance
25 relief service provider to place a statement in every consumer-specific commercial
26 communication (i) confirming that the consumer may stop doing business with the
27 provider or reject an offer of mortgage assistance without having to pay for the
28 services, (ii) disclosing that the provider is not associated with the government and

1 its service is not approved by the government or any lender, and (iii) in certain
2 cases, a statement disclosing that the lender may not agree to modify a loan, even if
3 the consumer uses the provider's service. 16 C.F.R. §§ 322.4(b)(1)-(3), recodified
4 as 12 C.F.R. §§ 1015.4(b)(1)-(3).

5 79. Pursuant to the Omnibus Act, § 626, 123 Stat. at 678, as clarified by
6 the Credit Card Act, § 511, 123 Stat. at 1763-64 and amended by the Dodd-Frank
7 Act, § 1097, 124 Stat. at 2102-03, 12 U.S.C. § 5538, and pursuant to Section
8 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the MARS Rule or
9 Regulation O constitutes an unfair or deceptive act or practice in or affecting
10 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11 **COUNT II**

12 80. In numerous instances, in connection with the offering or provision of
13 mortgage assistance relief services, Defendants, either acting alone or in concert
14 with others, ask for, or receive, payment before consumers have executed a written
15 agreement with their loan holder or servicer that incorporates the offer obtained by
16 Defendants, in violation of the MARS Rule and Regulation O, 16 C.F.R. §
17 322.5(a), 12 C.F.R. § 1015.5(a).

18 **COUNT III**

19 81. In numerous instances, in connection with the offering or provision of
20 mortgage assistance relief services, Defendants, in violation of the MARS Rule
21 and Regulation O, 16 C.F.R. § 322.3(b), 12 C.F.R. § 1015.3(b), either acting alone
22 or in concert with others, misrepresent, expressly or by implication, material
23 aspects of their services, including but not limited to:

- 24 A. Defendants' likelihood of obtaining relief for consumers, such
25 as consumers' homes free and clear;
- 26 B. Defendants would seek to void consumers' mortgages.
- 27
- 28

COUNT IV

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2 82. In numerous instances, in connection with the offering or provision of
3 mortgage assistance relief services, Defendants, either acting alone or in concert
4 with others, fail to make the following disclosures:

5 A. In general commercial communications:

6 i. “[Brookstone or Advantis] is not associated with the
7 government, and our service is not approved by the
8 government or your lender,” in violation of the MARS
9 Rule and Regulation O, 16 C.F.R. § 322.4(a)(1), 12
10 C.F.R. § 1015.4(a)(1); and

11 ii. “Even if you accept this offer and use our service, your
12 lender may not agree to change your loan,” in violation
13 of the MARS Rule and Regulation O, 16 C.F.R. §
14 322.4(a)(2), 12 C.F.R. § 1015.4(a)(2).

15 B. In consumer-specific commercial communications:

16 iii. “You may stop doing business with us at any time. You
17 may accept or reject the offer of mortgage assistance we
18 obtain from your lender [or servicer]. If you reject the
19 offer, you do not have to pay us. If you accept the offer,
20 you will have to pay us [amount or method for
21 calculating the amount] for our services,” in violation of
22 the MARS Rule and Regulation O, 16 C.F.R. §
23 322.4(b)(1), 12 C.F.R. § 1015.4(b)(1);

24 iv. “[Brookstone or Advantis] is not associated with the
25 government, and our service is not approved by the
26 government or your lender,” in violation of the MARS
27 Rule and Regulation O, 16 C.F.R. § 322.4(b)(2), 12
28 C.F.R. § 1015.4(b)(2); and

1 v. “Even if you accept this offer and use our service, your
2 lender may not agree to change your loan,” in violation
3 of the MARS Rule and Regulation O, 16 C.F.R. §
4 322.4(b)(3), 12 C.F.R. § 1015.4(b)(3).

5 **CONSUMER INJURY**

6 83. Consumers have suffered and will continue to suffer substantial injury
7 as a result of Defendants’ violations of the FTC Act and the MARS Rule, including
8 payment of thousands of dollars to Defendants. In addition, Defendants have been
9 unjustly enriched as a result of their unlawful acts or practices. Absent injunctive
10 relief by this Court, Defendants are likely to continue to injure consumers, reap
11 unjust enrichment, and harm the public interest.

12 **THIS COURT’S POWER TO GRANT RELIEF**

13 84. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
14 to grant injunctive and such other relief as the Court may deem appropriate to halt
15 and redress violations of any provision of law enforced by the FTC. The Court, in
16 the exercise of its equitable jurisdiction, may award ancillary relief, including
17 rescission or reformation of contracts, restitution, the refund of monies paid, and
18 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any
19 provision of law enforced by the FTC.

20 85. Section 626 of the Omnibus Act authorizes the Court to grant such
21 relief as the Court finds necessary to redress consumer injury resulting from
22 Defendants’ violations of the MARS Rule, including rescission and reformation of
23 contracts and the refund of money.

24 **PRAYER FOR RELIEF**

25 86. Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act,
26 15 U.S.C. § 53(b), the Omnibus Act, and the Court’s own equitable powers,
27 requests that the Court:
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- A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to:
 - i. A preliminary injunction that prohibits Defendants from soliciting business, requesting payments, or receiving payments;
 - ii. An order freezing Defendants’ assets; and
 - iii. Appointment of a receiver for Brookstone and Advantis.
- B. Enter a permanent injunction to prevent future violations of the FTC Act and the MARS Rule by Defendants;
- C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants’ violations of the FTC Act and the MARS Rule, including but not limited to rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;
- D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,
 DAVID C. SHONKA
 Acting General Counsel

Dated: May 26, 2016


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