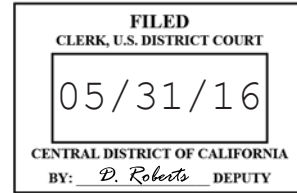


1 DAVID C. SHONKA, Acting General Counsel  
2 BENJAMIN J. THEISMAN, *pro hac vice*  
3 btheisman@ftc.gov  
4 GREGORY J. MADDEN, *pro hac vice*  
5 gmadden@ftc.gov  
6 FEDERAL TRADE COMMISSION  
7 600 Pennsylvania Ave. NW, CC-9528  
8 Washington, DC 20580  
9 Tel: (202) 326-2223, -2426; Fax: (202) 326-3197



6 THOMAS SYTA, Cal. Bar No. 116286  
7 tsyta@ftc.gov  
8 FEDERAL TRADE COMMISSION  
9 10877 Wilshire Blvd., Suite 700  
10 Los Angeles, CA 90024  
11 Tel: (310) 824-4343; Fax: (310) 824-4380

11 Attorneys for Plaintiff  
12 FEDERAL TRADE COMMISSION

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

13 FEDERAL TRADE COMMISSION,

14 Plaintiff,

15 v.

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

SACV16-00999 BRO (AFMx)

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

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

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 11. Defendant R. Geoffrey Broderick (“Broderick”) is a director and  
2 Chief Financial Officer of Advantis. Although an attorney, Broderick is not  
3 licensed to practice law in California. In 2015, Broderick’s company, Resolution  
4 Law Group (“RLG”), was closed after the Connecticut and Florida Attorneys  
5 General filed a joint action alleging RLG and Broderick were falsely promising  
6 consumers mortgage relief through the filing of mass joinder actions. At times  
7 material to this Complaint, acting alone or in concert with others, he formulated,  
8 directed, controlled, had the authority to control, or participated in the acts and  
9 practices set forth in this Complaint. Defendant Broderick, in connection with the  
10 matters alleged herein, transacts or has transacted business in this district.

11 12. Defendant Charles T. Marshall (“Marshall”) is a director, Chief  
12 Executive Officer, and Secretary of Advantis. Marshall has also appeared as  
13 counsel in Brookstone’s *Wright v. Bank of America* mass joinder case. In 2015,  
14 Marshall was disciplined by the California Bar for violations related to mortgage  
15 assistance relief services, receiving a 90-day suspension from the practice of law in  
16 November 2015 for his ethical violations. At times material to this Complaint,  
17 acting alone or in concert with others, he formulated, directed, controlled, had the  
18 authority to control, or participated in the acts and practices set forth in this  
19 Complaint. Defendant Marshall, in connection with the matters alleged herein,  
20 transacts or has transacted business in this district.

21 **COMMON ENTERPRISE**

22 13. Defendants Brookstone and Advantis (collectively, “Corporate  
23 Defendants”) have operated as a common enterprise while engaging in the  
24 unlawful acts and practices alleged below. Corporate Defendants are under  
25 common control, with common employees and a common address while marketing  
26 the same product. Defendants have used the names Brookstone and Advantis  
27 interchangeably. Defendants Kutzner, Torchia, Tarkowski, Broderick, and  
28 Marshall have formulated, directed, controlled, had the authority to control, or

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](http://www.brookstonelaw.com), [www.advantislaw.com](http://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**

1  
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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**CONSUMER INJURY**

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

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

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

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

**PRAYER FOR RELIEF**

86. Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the Omnibus Act, and the Court’s own equitable powers, requests that the Court:



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 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



BENJAMIN THEISMAN  
DC Bar; btheisman@ftc.gov  
GREGORY J. MADDEN  
Maryland Bar; gmadden@ftc.gov



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Federal Trade Commission  
600 Washington, DC 20580  
202-326-2223 (Theisman); -2426  
(Madden); -3197 (facsimile)

THOMAS SYTA,  
Cal. Bar No. 116286; tsyta@ftc.gov  
FEDERAL TRADE COMMISSION  
10877 Wilshire Blvd., Suite 700  
Los Angeles, CA 90024  
Tel: (310) 824-4343; Fax: (310) 824-  
4380

Attorneys for Plaintiff  
FEDERAL TRADE COMMISSION