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11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14
15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 DAMIAN KUTZNER, et al.,

19 Defendants.

Case No. LACV16-00999 BRO (AFMx)

**PRELIMINARY REPORT OF
TEMPORARY RECEIVER**

JUDGE: Hon. Beverly Reid O’Connell
CTRM: 14

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1 Temporary Receiver team commenced review of the documents and records
2 onsite.¹

3 On Friday, June 3, we provided supervised access to the site to attorneys
4 from the Federal Trade Commission (“FTC”).

5 While on site, we located a sublease agreement indicating that Broad Base
6 Inc., a Kutzner entity identified in the TRO as a common enterprise company, was
7 leasing space at 660 West Baker Street, Suite 317 in Costa Mesa, just a few miles
8 from the 6 Hutton Centre Drive site. We confirmed that this is a small
9 (approximately 1,000 sq. ft.) medical marijuana operation in the name of Cancer
10 Treatment Collective, which subleases the space from Broad Base Inc. Both the
11 lease and the sublease were executed for Broad Base by one Chase Bain, which we
12 believe is a cover name for Mr. Kutzner. We placed the owner of the building on
13 notice that Broad Base was subject to the Receivership. We also found Cancer
14 Treatment Collective release forms at the Advantis receptionist desk at 6 Hutton
15 Centre Drive, suggesting Kutzner’s ownership and participation in the marijuana
16 business. We visited the Cancer Treatment Collective location on Friday morning,
17 but the receptionist reported that her managers were not present and she would not
18 provide their names. We left a business card and asked for a manager to contact
19 us, but have heard nothing.

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21

22

23 ¹ At the outset, we also encountered a group of seven employees from OGI
24 Mortgage. The OGI employees were just beginning their first full day of OGI’s as-
25 yet-unsigned sublease with Advantis for approximately half of the office space. The
26 OGI representative reported that OGI was in the very preliminary stages of a
27 marketing arrangement with Jeremy Foti (who, though not a named defendant turned
28 out to be, as described more fully below, one of the principals of the Receivership
Entities) to generate residential mortgage origination business for OGI. The draft
sublease identified “Advantis Marketing Group” as the sublessor. After confirming
the lack of connection to the mass joinder business, the OGI personnel were
permitted to leave, and they were allowed to remove their computers from the
premises the following morning, after it was confirmed the computers contained no
Receivership Entity data.

1 Defendants Torchia, Broderick, and Tarkowski. (As noted above, Kutzner refused
2 to identify himself and left immediately upon being given a copy of the TRO, so
3 we were unable to copy his smartphone.) In this process, all available electronic
4 data relating to Receivership Entities' operation was secured. We commenced the
5 review of this information in order to reconstruct the operational and financial
6 picture.

7 **D. Cooperation of Individual Defendants**

8 Defendant Damian Kutzner has been overtly uncooperative and
9 obstructionist. Upon our initial arrival, I proceeded to the largest corner office
10 where I encountered who I now know to be Damian Kutzner. I handed Mr.
11 Kutzner a copy of the TRO, explained my role as Temporary Receiver, and told
12 him that the TRO included an asset freeze. He refused to identify himself, but
13 walked me to Defendant Geoffrey Broderick. I presented the TRO to Broderick,
14 explained the situation and asked for Broderick's assistance in gathering the
15 employees (which he did).

16 In the hub of activity and during my conversation with Defendant Broderick,
17 Kutzner snuck out of the office. Realizing that Defendant Kutzner had left, I asked
18 Defendant Broderick to call Kutzner's cell phone. This occurred at about
19 11:00 a.m., less than 15 minutes after entering the office. Kutzner did not answer
20 so I left a voicemail on his cell phone, reiterating that he was subject to the asset
21 freeze and should take no steps to violate the TRO. Defendant Kutzner never
22 returned to the office and has made no effort since to contact me or my staff.²
23 Notably, Kutzner scampered out in such a hurry that he left his keys on his desk,
24 including the key to his brand new Dodge pickup truck parked at the reserved spot

25 _____
26 ² I called Kutzner's cell phone number more than once afterwards but never
27 got an answer. I do have reason to believe that Kutzner received my voicemail and
28 later calls. The FTC attorneys asked me for Kutzner's cell phone number. They
later reported to me that an attorney purporting to represent Kutzner called them and
asked that no further calls be made to Kutzner's cell, as he did not intend to talk with
anyone.

1 for “Damian” in the building parking lot. The truck remained parked in that spot
2 until the next morning when we believe it was removed by a Brookstone
3 employee.

4 Late on Friday, June 3, 2016, we brought in a Brookstone employee to walk
5 us through an internal database called Integrated Legal System (“ILS”). The
6 employee was not, however, able to access ILS, which is hosted on a local server.
7 After a number of efforts to locate and activate ILS on the system, we spoke with
8 Brookstone’s IT consultant, Tudor Cora. We learned from Cora that Kutzner had
9 directed the server hosting ILS be shut off – only hours after Kutzner had been
10 handed the TRO and received the voicemail message regarding the TRO.

11 Cora later provided a text message chain between him and Kutzner. (*See*
12 *Exhibit 2.*) Those messages show that Kutzner began asking that the system be
13 shut down at 1:55 p.m. on Thursday, June 2 – three hours from the time we entered
14 the office – by falsely claiming they were switching accounts and needed the
15 system shut down. When the system was still operational at 5 p.m., Kutzner
16 pleaded it be shut down: “Guys cmon Pleeeeeeasee shut off ILS!!!!!!” Cora turned
17 the system off shortly afterwards.

18 After ferreting out all the above, we were, with the help of our computer
19 forensics staff, able to reactivate the system late Friday. Defendant Kutzner’s
20 actions, in light of the personal notice of the TRO, are in direct violation of the
21 TRO and contempt of this Court’s order.

22 Defendant Geoffrey Broderick was present at our arrival, agreed to be
23 interviewed and has been cooperative, but not always credible. Defendants Vito
24 Torchia and Jonathan Tarkowski were not present at the outset, but arrived within
25 an hour or two of our arrival – both made themselves available for extended
26 interviews and were generally cooperative, although I did not find Torchia totally
27 credible. Defendant Charles Marshall was not present and has not yet met with us.

28 ///

1 I did speak with him briefly, but we have had no contact since he advised he was
2 seeking counsel.

3 **III.**

4 **SUMMARY OF OPERATIONS**

5 The Advantis/Brookstone business we found in Suite 1000 were the
6 surviving components of a bigger “mass joinder” operation. We were told that in
7 the heyday of the business, around 2011-2013, there were 40-50 people. While we
8 found evidence of ongoing direct mail solicitations for mass joinder plaintiffs, the
9 scale was much reduced. The ongoing business appeared to be comprised mostly
10 of the management of previously-filed mass joinder cases and/or their
11 transformation to trustee cases, financed primarily by residual payments from
12 clients, as detailed below.

13 **A. Marketing and Solicitation**

14 We found evidence of sales materials, new and old, with false promises,
15 strong arm tactics, and advance fees, seeking to recruit and/or retain mass joinder
16 plaintiffs:

- 17 • In 2015, Brookstone sent mailers to consumers “to discuss [their]
18 landmark victory against Bank of America in California.” The mailer
19 targeted consumers with upcoming trustee sale dates (non-judicial
20 foreclosure dates), included the specific date, and urged consumers to
21 call to be included in a case against the trustee. The mailer also
22 provided an “update” on Bank of America’s \$16 billion dollar
23 settlement with governmental authorities and stated consumers may
24 accept settlement funds and sue the trustee. (Exhibit 3.)
- 25 • In 2016, Advantis sent mailers entitled “PENDING LEGAL
26 NOTICE” to consumers contending that he or she has been identified
27 as a potential plaintiff. The mailer included the consumer’s property

28 ///

1 address and loan amount and urged consumers to “call today before
2 you lose your rights.” (Exhibit 4.)

- 3 • After the Advantis “PENDING LEGAL NOTICE” mailers failed to
4 generate sufficient response, Kutzner directed the direct marketing
5 company to prepare a similar mailer based on the Brookstone trustee
6 mailer. Kutzner’s email noted that the “[o]ther mailers isn’t [sic]
7 getting the numbers we had with the trustee mailer.” (Exhibit 5.)
8 Advantis later sent trustee mailers that were similar to the Brookstone
9 trustee mailers, but with the Advantis logo. (Exhibit 6.)
- 10 • We located scripts for both Brookstone and Advantis, which guided
11 the intake employees on how to respond to consumers calling in
12 response to the mailers:
 - 13 ○ Brookstone Law Main Floor Script (Inbound) – The script
14 includes various misleading statements including “all of our
15 landmark cases are still going through the court system.” After
16 reviewing certain questions with the consumers, the intake
17 employee schedules an in office appointment or a phone
18 appointment. The script notes that phone appointments “close
19 at a smaller percentage in comparison to in office appointments.
20 If a client is within our service area and refuses to come in to
21 save their home then do not waste the Banking Specialists time
22 or the attorney’s time. If someone wants to save their home
23 then make them get off the couch and drive in here.”
24 (Exhibit 7.)
 - 25 ○ Advantis Law Main Floor Script (Inbound) – This script
26 contains the same misleading statements as the Brookstone Law
27 Main Floor Script. (Exhibit 8.)

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- 1 ○ Objection Techniques – In preparation for potential objections
- 2 by consumers, Brookstone scripted responses designed to
- 3 convince consumers to schedule an appointment. (Exhibit 9.)
- 4 ○ Follow Up Guidelines – After the consumer’s appointment,
- 5 intake employees called the consumer to follow up and
- 6 convince him or her to join the lawsuit. Intake employees were
- 7 directed to “inform [consumers] that the banks are in
- 8 accelerated talks with the federal government in regards to
- 9 seeking immunity from any further civil litigation suits moving
- 10 forward. If this happens and you are not protected by our
- 11 lawsuit, you will be at the mercy of what the banks want to do
- 12 with your loan.” (Exhibit 10.)
- 13 ○ Accounting Inbound Script – When consumers called regarding
- 14 an “Accounting Hold” placed on their account, the intake
- 15 employees collected information to reorganize the *Wright v.*
- 16 *Bank of America* plaintiffs and scheduled an appointment for
- 17 the accounting department to discuss the status of the
- 18 consumer’s payment. (Exhibit 11.)
- 19 ○ Scripts were also prepared in Spanish (Exhibit 12.)
- 20 ● After the Superior Court dismissed the *Wright v. Bank of America*
- 21 complaint in January 2013, Brookstone dispatched a letter to the
- 22 plaintiffs warning them that the statute of limitations was running out
- 23 and offered these plaintiffs the option to join the appeal or pursue an
- 24 individual case. In doing so, Brookstone also touted the ultimate
- 25 merits of the mass joinder strategy. (Exhibit 13.)
- 26 ● After the Court of Appeal decision in the *Wright* case in December
- 27 2014 (reversing the dismissal below on the ground that the joinder of
- 28 800 plaintiffs was procedurally possible), Brookstone pivoted to a

1 new strong arm tactic. Brookstone sent “Account Due” statements to
2 the *Wright* plaintiffs to remit another \$5,000 to get off “Accounting
3 Hold” so Brookstone “can continue to represent you as a plaintiff on
4 this case.” These Account Due statements included preposterous time
5 allocation for previous work (e.g., 1,237 hours to prepare the opening
6 brief, 175 hours for the responding brief, and 453 hours for the reply
7 brief). (Exhibit 14.) We found boxes of the Account Due letters,
8 some ready to be mailed and some having been returned due to a bad
9 address.

- 10 • Many consumers responded to these Account Due statements saying
11 they were shocked to find out that they had an “overdue” balance after
12 making regular payments. (Exhibit 15.)
- 13 • Several of these consumer complaints were circulated internally by
14 Jeffrey Foti and/or Damian Kutzner, who directed other employees to
15 follow up. (Exhibit 16.)
- 16 • While the numbers varied somewhat over time, the standard
17 Brookstone/Advantis pricing to consumers was \$895 or \$1,250 for the
18 initial legal analysis and \$3,000 or \$4,500 for the litigation and
19 monthly fees. The monthly fees varied from \$250 per month for the
20 first year and \$60 per month for the subsequent months or \$650 per
21 month in the most recent agreements. The retainer agreements that
22 we found on site reflected this range of fees and onerous provisions:
 - 23 ○ Brookstone Law Legal Analysis Attorney/Client Fee
24 Agreement - \$1,250 “up-front, fully earned one-time fee”
25 (Exhibit 17).
 - 26 ○ Advantis Law Group/Brookstone Law Legal Analysis
27 Attorney/Client Fee Agreement - \$1,250 “up-front, fully earned
28 one-time fee” (Exhibit 18).

- 1 ○ Brookstone Law Attorney-Client Contingency Fee Agreement -
- 2 \$3,000 “fully earned, non-refundable fee,” \$150 monthly legal
- 3 fee, and 35% of the “gross recovery (Exhibit 19).
- 4 ○ Advantis Law Group Attorney-Client Contingency Fee
- 5 Agreement – \$4,500 “initial fully earned, non-refundable
- 6 retainer fee,” \$650 monthly legal fee, and 35% of the “gross
- 7 recovery” (Exhibit 20).

8 **B. Mass Joinder Cases**

9 Except for a very few minor matters related to Kutzner’s other business and
10 personal matters, the only substantive legal practice being conducted here is the
11 management of mass joinder cases and their spinoff trustee cases. We identified
12 the following active cases:

- 13 • *Montes, et al. v. Wells Fargo Bank*, California Superior Court, County
- 14 of Los Angeles, Case No. BC556821.
- 15 • *Randall, et al. v. Citigroup Inc., et al.*, California Superior Court,
- 16 County of Los Angeles, Case No. 526888.
- 17 • *Lawley, et al. v. Bank of America, et al.*, California Superior Court,
- 18 County of San Diego, Case No. 37-2016-00011715-CU-OR-CTL.
- 19 • *Bradford* case (dismissed for misjoinder, but reinstated because
- 20 almost identical to *Wright*, removed to federal court) – First of 4 is
- 21 Lawley (B of A response to complaint). Response due June 15, wants
- 22 30 day extension.
- 23 • *Wright, et al. v. Bank of America, et al.*, California Superior Court,
- 24 County of Orange, Case No. 30-2011-00449059-CU-MT-CXC.
- 25 • *Aslami v. National Default Servicing Corp., et al.*, California Superior
- 26 Court, County of Orange, Case No. 30-2016-00844390-CU-OR-CJC.

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- 1 • *Curtis, et al. v. MTC Financial, et al.* (extension to Chase), California
2 Superior Court, County of Orange, Case No. 30-2016-00841019-CU-
3 OR-CJC.
- 4 • *Salgado, et al. v. Western Progressive LLC, et al.*, California Superior
5 Court, County of Orange, Case No. 30-2016-00854281-CU-OR-CJC.
- 6 • *Wasniak, et al. v. Quality Loan Service Corp., et al.*, California
7 Superior Court, County of Riverside, Case No. RIC1601230.
- 8 • *Chan Lee v. JP Morgan Chase Bank, et al.*, U.S. District Court,
9 Northern District of California, San Jose Division, Case No. 5:15-cv-
10 05215-RMW.

11 We estimate that, in the aggregate, these cases include approximately 1,300
12 plaintiffs purportedly represented by Advantis/Brookstone.

13 It did appear that some plaintiffs whose homes were lost to foreclosure were
14 moved into cases against the foreclosure trustees.

15 **C. Other Business**

16 We saw limited evidence of preliminary efforts to move into other areas of
17 law (immigration, environmental, personal injury, and criminal), but we could
18 identify no paying clients. Damian Kutzner and Jeremy Foti also appeared to
19 operate various other ventures.

20 **D. Who's in Charge?**

21 The current iteration of the Advantis/Brookstone operation reflects an
22 evolution over time, 2010–present, with different players having different roles.
23 Many things changed – office size, office location, “law firm” name, staff levels,
24 attorneys, and bank relationships. But, the business remained the same – unlawful
25 solicitation for mass joinder plaintiffs – and the primary drivers of the business,
26 non-lawyers Damian Kutzner and Jeremy Foti, continued to drive the bus.

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1 1. Damian Kutzner

2 Due to his complete lack of cooperation, we do not have Kutzner’s version
3 of his role in the business. But, documents and emails recovered onsite confirm
4 his role as the non-lawyer quarterback who, in close collaboration with Jeremy
5 Foti, concealed his ownership and control through the various “managing
6 attorneys,” many of whom ended up disciplined or disbarred by the State Bar:

- 7 • Employment Agreements in 2010 and 2011 (Exhibit 21) identified
8 Kutzner as “Chief Operations Manager” and later as “Real Estate
9 Industry Consultant” with a salary of \$350,000 and assorted fringe
10 benefits.
- 11 • Until mid-2015, the signature line in Kutzner’s emails identified him
12 as COO. Afterwards, he stopped including a title. We also found
13 Kutzner’s various business cards, including Campaign Manager of
14 Vote Managers, COO of MultiMedRx, Business Development of
15 Newport Criminal Defense. (Exhibit 22.)
- 16 • Like Foti, he had an email account at Brookstone which was included
17 in the office Directory on our arrival. (Earlier directories identified
18 him as “Management” and “COO.” (Exhibit 23.)
- 19 • He regularly reviewed and approved scripts. (Exhibit 24.)
- 20 • By an email of March 4, 2016 to Jeremy Foti, he laid out his plan to
21 restart the emergency postponement of trustee sales portion of the
22 business. Previously, in 2011, Brookstone offered trustee sale
23 postponement services and charged consumers \$2,500 for the initial
24 payment, which included the first postponement, and \$250 for each
25 subsequent postponement. (Exhibit 25.)
- 26 • He often circulated emails that assigned tasks and made executive
27 decisions about the business. (Exhibit 26.)

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- 1 • When the internal bookkeeper circulated “Daily Cash Position
2 Reports” they went to Kutzner, Foti, and Torchia. (Exhibit 27.)
- 3 • For most of the period 2010-2014, Kutzner, Foti, and Torchia
4 received equal monthly draws of approximately \$11,000, with
5 payments to Foti and Kutzner directed to their controlled entities
6 (DND Consulting for Foti; Doheny Development Corporation for
7 Kutzner). A monthly compensation report from June, 2011 confirms
8 these salaries. It also identifies both Kutzner and Foti as “Executive.”
9 (Exhibit 28.)
- 10 • When Brookstone started cutting salaries in 2015, which included
11 cutting in half the monthly salary of “Managing Attorney” Defendant
12 Geoffrey Broderick, from \$5,000 to \$2,500, it was Kutzner and Foti
13 who made the cuts. (Exhibit 29.) Defendant Broderick did not appear
14 to have any role in this “law firm” decision.

15 2. Jeremy Foti

16 Mr. Foti is a key, but elusive, player in the Advantis/Brookstone universe.
17 He operates from a large, and upon our arrival locked, office next to Mr. Kutzner’s
18 office. Although he has adroitly avoided any formal ownership of the Advantis or
19 Brookstone entities, we saw ample confirmation that he was indeed one of the
20 bosses:

- 21 • In October, 2011, Foti joined Kutzner and Torchia in signing a one-
22 page “Deal Memo” as to Brookstone’s hiring of a senior attorney to
23 work with Torchia as a prelude to securing a \$50,000 business loan.
24 That Deal Memo confirms the reality that the non-lawyers were
25 decision makers – it recites that there will be a majority rule in the
26 voting decisions amongst the shareholders of the firm and the non-
27 attorneys (Employees) Jeremy Foti and Damian Kutzner.
28 (Exhibit 30.)

- 1 • Foti maintained an on-going email account at Brookstone
2 (Jfoti@brookstone law) which was included in the Office Directory at
3 reception on our arrival. He was also included in earlier iterations of
4 the Directory – 2014, he was classified as “Management” along with
5 Kutzner. An earlier Directory identified him as VP of Marketing.
6 (Exhibit 23.)
- 7 • The part-time bookkeeper explained that Foti was in charge of
8 calculating bonuses. He would provide her the bonus numbers, then
9 she would generate an Invoice from Financial Management Systems,
10 a Kutzner entity, to Brookstone and when Brookstone funded the
11 FMS account, she would issue checks accordingly. The bookkeeper
12 also reported that when decisions had to be made, she consulted “all
13 three” (Kutzner, Foti, Torchia).
- 14 • We found on his desk a copy of the register from Brookstone’s Bank
15 of America account for May, 2016 with handwritten calculations
16 indicating that Foti and Kutzner were splitting profits. (Exhibit 31.)
- 17 • Foti had on his desk a large box of unopened Chargeback Statements
18 to Brookstone from Bank of America Merchant Services.
19 (Exhibit 32.)
- 20 • Based on his email traffic, Foti was calling and running meetings
21 about the future of the business. (Exhibit 33.)
- 22 • Apparently, he was not too proud of his Brookstone connection. In
23 developing a personal marketing piece in February 2011, he declined
24 to identify his title at Brookstone and he suggested it be omitted from
25 his biography – “I would not mention Brookstone. I would keep it
26 limited to business development that currently is consulting for
27 multiple law firms that is [sic] taking action against predatory
28 lending.” (Exhibit 34.)

- 1 • When Defendant Geoffrey Broderick wanted a commission bonus for
2 his efforts collecting from clients, he emailed Foti. (Exhibit 35.)
- 3 • Foti communicated with staff about collection efforts. (Exhibit 36.)
- 4 • Foti communicated with Kutzner and vendors on the content of
5 mailers. (Exhibit 37.)
- 6 • Foti and Kutzner often argued via email about each other's
7 responsibilities and criticized each other openly about the inequity of
8 work efforts. (Exhibit 38.)

9 Mr. Foti was not present at our arrival. His first contact with the Receiver's
10 office did not occur until June 7, 2016 when he called our offices. In that call, he
11 falsely claimed to be a member of the OGI sublease group which had just moved
12 in. He inquired about rent going forward and requested access to the office to
13 retrieve personal items. As we knew that Mr. Foti was one of the principals of the
14 illegal Advantis/Brookstone operations, we quickly confronted him. He then
15 dissembled, softened his claim and deflected questions. In a subsequent call, he
16 modified his approach but was just as dishonest. He claimed he did have a
17 relationship with OGI, but acknowledged that he has had an office at
18 Advantis/Brookstone for two years. We advised Mr. Foti that his revised story still
19 was not credible, but he made no effort to correct it.

20 3. Vito Torchia, Jr.

21 We met with Vito Torchia on Thursday, June 2, when he arrived shortly
22 after we entered the 6 Hutton Centre Drive offices.³ We spoke at length with
23 Torchia on Thursday and then again briefly on Friday. He was cooperative and
24 helpful, though at times we did not find some statements credible.

25 Torchia admitted to profound alcohol problems. He was disbarred in late
26 May 2016, which he claims was largely the result of his alcoholism. He claims he

27 _____
28 ³ Notably, Defendant Kutzner called Torchia just as he entered the offices. When Kutzner learned that Torchia was on site, Kutzner hung up.

1 became completely disabled in May of 2015 as a result of a long binge which
2 ended with his hospitalization. He claims he has been sober since.

3 In the first hour of our conversation, Torchia explained that he was in the
4 midst of drafting a lawsuit against Defendants Kutzner, Foti, and Broderick and
5 many others. The gravamen of his claim is that Kutzner and Foti deceptively froze
6 him out of the Brookstone income stream beginning in the fall of 2014 – Torchia
7 went to great lengths and substantial detail about the wrongs allegedly inflicted.
8 He included Broderick, but portrayed him as a puppet of Kutzner. Despite this
9 falling out with Kutzner and Foti, Torchia nonetheless continued to come to the
10 office, health permitting.

11 When we were able to get him to focus on the issues raised by the FTC
12 complaint, Torchia was less gregarious and more defensive. Torchia
13 acknowledged Kutzner’s and Foti’s significant roles, but claimed it was
14 appropriate that since they were involved in the business of the law firm and not
15 the practice of law. Torchia was unapologetic about the merits of mass joinder
16 litigation. He claimed Brookstone secured the opinion of ethics counsel and the
17 mailers they used to solicit clients were blessed by the State Bar.

18 Torchia’s role at Brookstone/Advantis ran somewhat parallel to the progress
19 of the business. From 2010-2014, he was the titular President and Managing
20 Attorney with 100% of the stock and Foti and Kutzner (who joined in January
21 2011 and March 2011, respectively) were the de facto business operators. As the
22 business declined so did Torchia: most of his shares were diluted and/or transferred
23 to other attorneys (Geoffrey Broderick, Charles Marshall, John Mortimer, and
24 ultimately Jonathan Tarkowski) and he was given a token interest in Advantis
25 (Exhibit 39); he experienced escalating problems with the State Bar resulting in
26 disbarment in May, 2016; he was moved from his big corner office to a cubicle in
27 the back; his compensation shrank; and Kutzner and Foti froze him out and
28 withheld financial information.

1 Torchia has never tried a case or taken a deposition. He has argued motions.
2 He readily admitted that he did not have the expertise or background to lead the
3 mass joinder cases as counsel, but claimed they brought in other competent counsel
4 to assist in the prosecution of the cases.

5 4. Charles Marshall

6 Marshall is a San Diego-based attorney who, along with Geoffrey Broderick,
7 was one of the two “Initial Partners” (each with 15%) of Advantis Law Group,
8 formed in February, 2015 (Exhibit 40). Given our inability to interview him, we
9 do not otherwise have a clear picture of his role and involvement other than as
10 another attorney recruited to replace Torchia.

11 5. Geoffrey Broderick

12 Broderick is a licensed attorney in Connecticut and D.C. He is not licensed
13 in California. He admitted to past legal troubles in regard to a mass joinder
14 operation he was previously with in Florida, which was sued by regulatory
15 authorities. But, Broderick blamed those troubles on his former associates in that
16 business.

17 He was recruited to Brookstone by Kutzner in 2015 and was awarded a
18 percentage interest in the law firm (6%, which later increased to 45%) transferred
19 out of Torchia’s interest (Exhibit 39). He was later identified as one of the initial
20 partners of Advantis, along with Charles Marshall (Exhibit 40). In his interview
21 with us, he depicted himself as a glorified office manager with purely
22 administrative duties at Advantis, which excluded actual operations, the practice of
23 law, or any real estate litigation. He stated his only legal activities were in trying,
24 unsuccessfully, to start practice areas in other non-real estate areas of law, as well
25 as limited actions regarding Kutzner’s other businesses.

26 Our initial investigation indicated that Broderick worked with Kutzner and
27 Foti to control the overall “law firm” operation in the last year. Kutzner and Foti
28 held the real power, but Broderick appeared to operate as their lawyer in obtaining

1 lawyers for the business and overseeing the legal operations. It appears that the
2 bulk of his time as “Managing Attorney” was devoted to client collections.
3 (Exhibit 41.)

4 Broderick was making some effort to expand the practice to other areas,
5 including personal injury, and sought the approval of Kutzner and Foti to his
6 efforts with internal emails directed to and/or copied to Kutzner and/or Foti.
7 (Exhibit 42.)

8 6. Jonathan Tarkowski

9 Tarkowski is just two years out of law school. We found him to be the most
10 credible of the Defendants interviewed. He initially worked for a “lemon law” law
11 firm, but was laid off in late 2014. He joined Advantis as an unpaid intern in
12 Spring of 2015 after he answered a Craigslist add. He was interviewed by
13 Kutzner, Foti, and Broderick and was told he would have the opportunity to earn
14 full-time employment after several months.

15 Broderick was his initial onsite legal supervisor, but it was clear Kutzner and
16 Foti held the real power. He had no contact with Torchia and some phone contact
17 with Marshall, who was not onsite. Broderick apparently knew little about the
18 practice of law and therefor was not a resource. Tarkowski did later secure some
19 assistance with the hiring of an associate attorney.

20 Around a month after he started, Tarkowski was approached by Kutzner,
21 Foti, and Broderick, who told him that Torchia had been suspended, and offered
22 him the managing attorney position, which he accepted. His pay was bi-weekly,
23 and within a few months reached the equivalent of \$48,000 per year. He was also
24 offered a small ownership interest, but claims that was never finalized.

25 Between the summer of 2015 and our entry, Tarkowski appeared to have
26 two primary tasks: (i) revive a number of Brookstone’s mass joinder cases,
27 including the *Wright* case and several matters that had been dismissed when

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1 Torchia failed to attend hearings; and (ii) initiate new trustee lawsuits, consistent
2 with a new business model.

3 Tarkowski reported, and the legal assistant confirmed, that many Brookstone
4 clients had not been contacted by the firm in years and nearly all of the firm's
5 cases were in a state of severe neglect. When clients came in, they met solely with
6 non-attorneys, and there was no compliance or other scheme in place to ensure that
7 representations were lawful. Over a period of six months, it appears that
8 Tarkowski was able to reinstate several cases, improve the internal process by
9 meeting with clients, and secure the termination of two sales people who were
10 repeatedly misleading consumers.

11 We did see evidence that Tarkowski was well aware of the most common
12 prohibitions relevant to the practice and made an effort to highlight these to the
13 staff, including Kutzner and Foti – i.e., no modifications; never recommend
14 bankruptcy; and give no guarantees. (Exhibit 43.)

15 Tarkowski was candid in admitting that this was a “law firm” where the
16 ultimate power rested with two non-lawyers, Kutzner and Foti. While he may have
17 sought to clean up the sales techniques, Kutzner and Foti controlled the firm's
18 advertising and initial client intake Tarkowski's cautionary email (Exhibit 43),
19 however, does confirm his concern that the older clients of the firm – on which the
20 business rested – were the product of past fraudulent and deceptive practices. His
21 energetic efforts to revive the mass joinder cases and to start new trustee cases had
22 the consequence, possibly unintended by Tarkowski, of giving Kutzner/ Foti/
23 Broderick a pre-text for reviving monthly charges against old customers, and/or
24 enlisting them for new “trustee” cases after paying a new retainer and agreeing to
25 new monthly charges.

26 Tarkowski did appear to be making an effort to manage the law practice,
27 although internal memos to the staff were cc'd to Kutzner and Foti. (Exhibit 44.)

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IV.

FINANCIAL INFORMATION

We have not performed any sort of audit and the financial records are generally incomplete or in disarray. Based on the available filed tax returns (2010-2013) and other internal financial records, we estimate that aggregate revenues into the Brookstone/Advantis entities, 2010-2014 were approximately \$15 million, although we must clarify that is an estimate based on incomplete records.

The available tax returns show revenues and income as follows: \$606,694/\$165,374 (2010), \$5.2 million/\$80,295 (2011), \$5.4 million/- \$5,393 (2012), and \$2.7 million/- \$5,480 (2013). We have been unable to confirm the status of tax returns for 2014–2015. We do not have details, but revenues in 2014 and 2015 were likely much smaller than prior years.

According to internal compensation reports, there were initially three executives – Torchia, Kutzner, and Foti. Torchia was identified as the Owner/Attorney and Kutzner and Foti as Executives. According to the April 2011 version of that report (Exhibit 28), each received compensation as W-2 employees (\$2,600 per month to Torchia and Foti and \$3,250 to Kutzner) and as an independent contractor (\$8,667 to each with Foti payments made to his entity DND Consulting and Kutzner’s to Doheny Development Corporation). In June 2011, the salaries for Foti and Torchia were increased to match Kutzner’s \$3,250 and Torchia’s independent contractor pay was converted to W-2 payroll. It appears that when Torchia became incapacitated, Kutzner and Foti simply replaced him with other attorneys. But these attorneys did not share in the profits of the “law firm,” those profits were split between Kutzner and Foti.

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V.

**CAN THE BUSINESSES BE OPERATED
LAWFULLY AND PROFITABLY?**

Section XV(H), of the TRO authorizes and directs the Temporary Receiver to “[c]ontinue and conduct the businesses of the Defendants in such manner, to such extent, and for such duration as the Temporary Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably, using the Assets of the receivership estate, and lawfully, if at all.”

While the underlying mass joinder cases may or may not offer a potential remedy to distressed homeowners, the process by which Defendants “sold” these supposed seats at that table is terminally infected by the taking of improper advance fees in exchange for promised or guaranteed results, and deceptions in the sales pitch. I need not and do not take any position as to the ultimate merit of the mass joinder cases themselves because the businesses that initiated them were unlawful.

Dated: June 13, 2016

By: S/ Thomas W. McNamara
Thomas W. McNamara
Receiver

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CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2016, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all participants in the case who are registered CM/ECF users.

S/ Andrew W. Robertson
Andrew W. Robertson