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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DAMIAN KUTZNER, individually and as
an officer of BROOKSTONE LAW P.C.
(California), BROOKSTONE LAW P.C.
(Nevada), ADVANTIS LAW P.C., and
ADVANTIS LAW GROUP P.C., *et al.*,

Defendants.

SACV16-00999-BRO (AFMx)

**STIPULATED
PRELIMINARY
INJUNCTION WITH ASSET
FREEZE, APPOINTMENT
OF RECEIVER, LIMITED
EXPEDITED DISCOVERY,
AND OTHER EQUITABLE
RELIEF AS TO
DEFENDANT VITO
TORCHIA, JR.**

Plaintiff, the Federal Trade Commission (“FTC”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the 2009 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat. 524, 678 (Mar. 11, 2009) (“Omnibus Act”), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24, Section 511, 123 Stat. 1734, 1763-64 (Mar. 22, 2009) (“Credit Card Act”), and

1 amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,
2 Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010)
3 (“Dodd-Frank Act”), 12 U.S.C. § 5538, has filed a complaint to obtain temporary,
4 preliminary, and permanent injunctive relief, rescission or reformation of contracts,
5 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other
6 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the
7 FTC Act, 15 U.S.C. § 45(a), and the Mortgage Assistance Relief Services Rule
8 (“MARS Rule”), 16 C.F.R. Part 322, recodified as Mortgage Assistance Relief
9 Services, 12 C.F.R. Part 1015 (“Regulation O”), and has applied for a preliminary
10 injunction order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

11 On June 1, 2016, this court issued its *Ex Parte Temporary Restraining Order*
12 *with Asset Freeze, Appointment of Temporary Receiver, Limited Expedited*
13 *Discovery, and Other Equitable Relief, and Order to Show Cause Why Preliminary*
14 *Injunction Should not Issue*. DE 23 (“TRO”). Defendants were ordered to appear
15 at a hearing on June 15, 2016 to “show cause, if there is any, why this Court should
16 not enter a preliminary injunction enjoining the violations of law alleged in the
17 FTC’s Complaint, continuing the freeze of their Assets, and imposing such
18 additional relief as may be necessary. *Id.* at 31. Returns of service were filed by
19 Plaintiff via ECF. DEs 30-37 & 39. This Court further ordered Defendants to file
20 with the Court and upon FTC counsel by June 8, 2016, “any answering pleadings,
21 declarations, witness lists with detailed summaries of expected witness testimony,
22 and/or legal memoranda, no later than seven days prior to the hearing.” The only
23 response filed with the Court was Jonathan Tarkowski’s Answer to the Complaint.
24 DE 26. No other Defendant has responded to the Court’s Order as of the date of
25 this filing. On June 15, 2016, the Court extended the TRO until July 1, 2016.

26 Having considered the parties’ pleadings, papers, and argument, the Court
27 hereby **GRANTS** the Preliminary Injunction against defendant Vito Torchia, Jr.
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1 **FINDINGS OF FACT**

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

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

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

9 3. On May 31, 2016, the FTC filed its *Complaint* and *Memorandum in*
10 *Support of Ex Parte Application for a Temporary Restraining Order (“TRO”) with*
11 *Asset Freeze, Appointment of Temporary Receiver, Limited Expedited Discovery,*
12 *and Other Equitable Relief, and Order to Show Cause Why Preliminary Injunction*
13 *Should Not Issue (“Ex Parte Memo”)* and related pleadings. DE 1, 11; DE 1-18;

14 4. On June 1, 2016, the Court entered its *Ex Parte Temporary*
15 *Restraining Order with Asset Freeze, Appointment of Temporary Receiver, Limited*
16 *Expedited Discovery, and Other Equitable Relief, and Order to Show Cause Why*
17 *Preliminary Injunction Should not Issue (“TRO”).* DE 23;

18 5. The TRO, and all of the related pleadings was served on all parties by
19 personal service pursuant to Rule 4 of the Federal Rules of Civil Procedure. DEs
20 30-37, 39. Moreover, Defendant Damian Kutzner, was personally handed the TRO
21 by the Receiver on June 2, 2016, but then left the scene;

22 6. There is good cause to believe that the Court’s ability to grant
23 effective final relief for consumers in the form of monetary restitution and
24 disgorgement of ill-gotten gains will suffer immediate and irreparable damage
25 from Stipulating Defendant Torchia’s transfer, dissipation, or concealment of his
26 Assets or business records unless Stipulating Defendant Torchia continues to be
27 restrained and enjoined by Order of this Court;

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

4 8. Weighing the equities and considering the FTC’s likelihood of
5 ultimate success, a preliminary injunction order with an Asset freeze, limited
6 expedited discovery as to the existence and location of Assets and Documents, and
7 other equitable relief is in the public interest; and

8 9. No security is required of any agency of the United States for the
9 issuance of a preliminary injunction order. Fed. R. Civ. P. 65(c).

10 **DEFINITIONS**

11 For the purposes of this Preliminary Injunction order, the following
12 definitions apply:

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

24 B. **“Asset Freeze Accounts”** includes accounts that are held by or for the
25 benefit of, or controlled by, directly or indirectly, by Stipulating Defendant
26 Torchia, and Vizcayan Corporation. Asset Freeze Accounts also includes the
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1 following accounts, identified by the account holder, the Financial Institution, and
2 last four digits of the account number:

- 3 1. Vito Torchia, JPMorgan Chase, 8371;
- 4 2. Vito Torchia, JPMorgan Chase, 3853;
- 5 3. Vito Torchia, JPMorgan Chase, 7060;
- 6 4. Vito Torchia, JPMorgan Chase, 8993;
- 7 5. Vito Torchia, JPMorgan Chase, 5587;
- 8 6. Vito Torchia, JPMorgan Chase, 7490;
- 9 7. Vito Torchia, JPMorgan Chase, 9320; and
- 10 8. Vizcayan Corporation, JPMorgan Chase, 7307.

11 C. **“Assisting others”** includes but is not limited to: (1) performing
12 customer service functions, including, but not limited to, receiving or responding
13 to consumer complaints; (2) formulating or providing, or arranging for the
14 formulation or provision of, any advertising or marketing material, including but
15 not limited to, any telephone sales script, direct mail solicitation, or the design,
16 text, or use of images of any Internet website, email, or other electronic
17 communications; (3) formulating or providing, or arranging for the formulation or
18 provision of, any marketing support material or service, including but not limited
19 to, web or Internet Protocol addresses or domain name registration for any Internet
20 websites, affiliate marketing services, or media placement services; (4) providing
21 names of, or assisting in the generation of, potential customers; (5) performing or
22 providing marketing, billing, or payment services of any kind; (6) acting or serving
23 as an owner, officer, director, manager, or principal of any entity; (7) providing
24 telemarketing services; or (8) consulting with regard to any of the above.

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

3 E. **“Defendants”** means the Individual Defendants, Corporate
4 Defendants, and their successors, assigns, affiliates, subsidiaries, or agents,
5 individually, collectively, or in any combination, and each of them by whatever
6 names each might be known.

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

16 G. **“Electronic Data Host”** means any person or entity in the business of
17 storing, hosting, or otherwise maintaining electronically stored information. This
18 includes, but is not limited to, any entity hosting a website or server, and any entity
19 providing “cloud based” electronic storage.

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

24 I. **“Individual Defendants”** means, collectively, Damian Kutzner, Vito
25 Torchia, Jonathan Tarkowski, Geoffrey Broderick, Charles Marshall, and any other
26 names they might use, have used, be known by or have been known by.
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1 J. **“Mortgage assistance relief product or service”** or **“MARS”** means
2 any product, service, plan, or program, offered or provided to the consumer in
3 exchange for consideration, that is represented, expressly or by implication, to
4 assist or attempt to assist the consumer with any of the following:

5 1. stopping, preventing, or postponing any mortgage or deed of
6 trust foreclosure sale for the consumer’s dwelling, any repossession of the
7 consumer’s dwelling, or otherwise saving the consumer’s dwelling from
8 foreclosure or repossession;

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

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

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

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

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

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

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

3 L. **“Plaintiff”** means the Federal Trade Commission (“Commission” or
4 “FTC”).

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

11 N. **“Receiver”** means the Receiver appointed in this case. The term
12 “Receiver” also includes any deputy receivers or agents as may be named by the
13 Receiver.

14 O. **“Stipulating Individual Defendants”** means Damian Kutzner,
15 Charles Marshall, and Jonathan Tarkowski and any other names they might use,
16 have used, be known by or have been known by.

17 P. **“Stipulating Corporate Defendants”** means Advantis Law P.C., and
18 Advantis Law Group P.C. and their successors, assigns, affiliates, or subsidiaries,
19 and each of them by whatever names each might be known.

20 Q. **“Stipulating Defendants”** means collectively Stipulating Individual
21 Defendants, Stipulating Corporate Defendants, and Stipulating Defendant Torchia
22 and their successors, assigns, affiliates, subsidiaries, or agents, individually,
23 collectively, or in any combination, and each of them by whatever names each
24 might be known.

25 R. **“Stipulating Defendant Torchia”** means Vito Torchia, Jr., and any
26 other names he might use, have used, be known by or have been known by.

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I. PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that Stipulating Defendant Torchia, his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with him, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any service or product, are restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

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

B. Defendants will seek to void consumers’ mortgages;

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

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

II. DISCLOSURES REQUIRED BY AND REPRESENTATIONS PROHIBITED BY THE MARS RULE

IT IS FURTHER ORDERED that Stipulating Defendant Torchia, his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with him, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or provision of any mortgage assistance relief product or service, are hereby restrained and enjoined from engaging in, or assisting others in engaging in, the following conduct:

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

B. Failing to make the following disclosure in all general and consumer-specific commercial communications: “[Name of Company] is not associated with

1 the government, and our service is not approved by the government or your
2 lender,” as required by 12 C.F.R. § 1015.4(a)(1) & 1015.4(b)(2);

3 C. Failing to make the following disclosure in all general and consumer-
4 specific commercial communications: “Even if you accept this offer and use our
5 service, your lender may not agree to change your loan,” as required by 12 C.F.R.
6 § 1015.4(a)(2) & 1015.4(b)(3); and

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

17 **III. MARS RULE ADVANCE FEE PROHIBITION**

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

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

2 **IT IS FURTHER ORDERED** that Stipulating Defendant Torchia, his
3 officers, agents, servants, employees, and attorneys, and all other persons in active
4 concert or participation with him, who receive actual notice of this Order, whether
5 acting directly or indirectly, in connection with the advertising, marketing,
6 promotion, offering for sale, sale, or provision of any product or service, are
7 hereby restrained and enjoined from destroying, erasing, mutilating, concealing,
8 altering, transferring, or otherwise disposing of, in any manner, directly or
9 indirectly, any Documents or records that relate to the business practices, or
10 business and personal finances, of Defendants, or an entity directly or indirectly
11 under the control of Defendants.

12 **V. DISABLEMENT OF WEBSITES AND PRESERVATION OF**
13 **ELECTRONICALLY STORED INFORMATION**

14 **IT IS FURTHER ORDERED** that, immediately upon service of the Order
15 upon them, (1) any Electronic Data Host and (2) Stipulating Defendant Torchia, his
16 officers, agents, servants, employees, and attorneys, and all other persons in active
17 concert or participation with him, who receive actual notice of this Order, whether
18 acting directly or indirectly, shall:

19 A. Immediately take all necessary steps to ensure that any Internet
20 website used by Stipulating Defendant Torchia for the advertising, marketing,
21 promotion, offering for sale, sale, or provision of services or products relating to
22 consumers' mortgages or containing statements or representations prohibited by
23 Section I of this Order cannot be accessed by the public; and

24 B. Prevent the alteration, destruction or erasure of any (1) Internet
25 website used by Stipulating Defendant Torchia for the advertising, marketing,
26 promotion, offering for sale, sale, or provision of services or products relating to
27 consumers' mortgages by preserving such websites in the format in which they are
28 maintained currently and (2) any electronically stored information stored on behalf

1 of Stipulating Defendant Torchia, or entities in active concert or participation with
2 any of them.

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

4 **IT IS FURTHER ORDERED** that any domain name registrar shall
5 suspend the registration of any Internet website used by Stipulating Defendant
6 Torchia for the advertising, marketing, promotion, offering for sale, sale, or
7 provision of services or products relating to consumers' mortgages or containing
8 statements or representations prohibited by Section I of this Order and provide
9 immediate notice to counsel for the FTC of any other Internet domain names
10 registered by Stipulating Defendant Torchia, his officers, agents, servants,
11 employees, and attorneys, and all other persons in active concert or participation
12 with any of them who receive actual notice of this Order by personal service or
13 otherwise.

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

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

4 **VIII. ASSET FREEZE**

5 **IT IS FURTHER ORDERED** that Stipulating Defendant Torchia, and his
6 officers, agents, servants, and employees, and all other persons or entities directly
7 or indirectly under the control of him, and all other persons or entities in active
8 concert or participation with him who receive actual notice of this Order are hereby
9 restrained and enjoined from directly or indirectly:

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

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

3 B. Opening or causing to be opened any safe deposit boxes titled in the
4 name of Stipulating Defendant Torchia, or subject to access by Stipulating
5 Defendant Torchia;

6 C. Incurring charges or cash advances on any credit card, debit card, or
7 checking card issued in the name, singly or jointly, of Stipulating Defendant
8 Torchia;

9 D. Obtaining a personal or secured loan;

10 E. Incurring liens or encumbrances on real property, personal property or
11 other Assets in the name, singly or jointly, of Stipulating Defendant Torchia; and

12 F. Cashing any checks or depositing any money orders or cash received
13 from consumers, clients, or customers of Stipulating Defendant Torchia.

14 **IT IS FURTHER ORDERED** that the Assets affected by this Section shall
15 include: (1) all Assets of Stipulating Defendant Torchia as of the time the TRO
16 was entered; and (2) for Assets obtained after the time the TRO was entered, those
17 Assets of Stipulating Defendant Torchia that are derived, directly or indirectly,
18 from the Defendants' activities as described in the Commission's Complaint,
19 including the activities of any Receivership Entity. This Section does not prohibit
20 transfers to the Receiver, as specifically required in the Section titled "Transfer of
21 Funds to the Receiver by Financial Institutions and Other Third Parties," nor does
22 it prohibit the repatriation of foreign Assets, as specifically required in the Section
23 titled "Repatriation of Foreign Assets" of this Order.

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

25 **IT IS FURTHER ORDERED** that any Financial Institution, business
26 entity, Electronic Data Host, or person served with a copy of this Order that holds,
27 controls, or maintains custody of any account, Document, or Asset of, on behalf of,
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1 in the name of, for the benefit of, subject to withdrawal by, subject to access or use
2 by, or under the signatory power of Stipulating Defendant Torchia, or other party
3 subject to the Asset Freeze above, or has held, controlled, or maintained any such
4 account, Document, or Asset, shall:

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

10 B. Provide the Receiver immediate access to electronically stored
11 information stored, hosted, or otherwise maintained on behalf of Stipulating
12 Defendant Torchia for forensic imaging;

13 C. Deny access to any safe deposit boxes that are either titled in the name
14 of, individually or jointly, or subject to access by, Stipulating Defendant Torchia or
15 other party subject to the Asset Freeze above; and

16 D. Provide to counsel for the FTC, within one (1) business day of
17 service, a sworn statement setting forth:

18 1. the identification of each account or Asset titled in the name,
19 individually or jointly, or held on behalf of or for the benefit of, subject to
20 withdrawal by, subject to access or use by, or under the signatory power of any
21 Stipulating Defendant Torchia or other party subject to the Asset Freeze above;

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

26 3. the identification of any safe deposit box that is either titled in
27 the name of, individually or jointly, or is otherwise subject to access or control by,
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1 Stipulating Defendant Torchia or other party subject to the Asset Freeze above;
2 and

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

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

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

14 **IT IS FURTHER ORDERED** that this Section shall apply to (a) all Assets
15 as of the time the TRO was entered; and (b) for Assets obtained after the TRO was
16 entered, those Assets that are derived, directly or indirectly, from the Defendants'
17 activities as described in the Commission's Complaint, including the activities of
18 any Receivership Entity. This Section does not prohibit transfers to the Receiver,
19 as specifically required in the Section titled "Transfer of Funds to the Receiver by
20 Financial Institutions and Other Third Parties," nor does it prohibit the repatriation
21 of foreign Assets, as specifically required in the Section titled "Repatriation of
22 Foreign Assets" of this Order.

23 **IT IS FURTHER ORDERED** that in addition to the information and
24 documents required to be produced pursuant to other provisions herein, the FTC is
25 granted leave, pursuant to Fed. R. Civ. P. 45, to subpoena documents immediately
26 from any financial or brokerage institution, business entity, electronic data host, or
27 person served with a copy of this Order that holds, controls, or maintains custody
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1 of any account, document, electronically stored information, or asset of, on behalf
2 of, in the name of, for the benefit of, subject to withdrawal by, subject to access or
3 use by, or under the signatory power of Stipulating Defendant Torchia, or other
4 party subject to Section VIII above, or has held, controlled, or maintained any such
5 account, document, electronically stored information, or asset, and such financial
6 or brokerage institution, business entity, electronic data host or person shall
7 respond to such subpoena within three (3) business days after service. The FTC
8 may effect service by electronic mail.

9 **X. FINANCIAL STATEMENTS AND ACCOUNTING**

10 **IT IS FURTHER ORDERED** that any Stipulating Defendant that has not
11 yet provided Financial Statements to the FTC in accordance with Section VIII of
12 the TRO, within (1) business days of entry of this Order, shall prepare and deliver
13 to counsel for the FTC:

14 A. For Stipulating Individual Defendants, a completed financial
15 statement, accurate as of the date of service of this Order upon such Defendant, in
16 the form of Attachment A to this Order captioned “Financial Statement of
17 Individual Defendant.”

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

22 **XI. CREDIT REPORTS**

23 **IT IS FURTHER ORDERED** that the FTC may obtain credit reports
24 concerning Stipulating Defendant Torchia pursuant to Section 604(a)(1) of the
25 Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request,
26 any credit reporting agency from which such reports are requested shall provide
27 them to the FTC.
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XII. REPATRIATION OF FOREIGN ASSETS

IT IS FURTHER ORDERED that, within one (1) day following entry of this Order on the docket, to the extent not already done so in accordance with the TRO, Stipulating Defendant Torchia shall:

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

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

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

C. Provide the FTC access to all records of accounts or Assets of Stipulating Defendant Torchia held by any Financial Institution or other person located outside the territorial United States by signing any Documents required by any person, including any Financial Institution, or other person holding any such Asset.

XIII. NON-INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Stipulating Defendant Torchia, and his successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby restrained and enjoined from taking any action, directly or indirectly, that

1 may result in the encumbrance or dissipation of foreign Assets, or in the hindrance
2 of the repatriation required by the preceding “Repatriation of Assets” Section of
3 this Order, including, but not limited to:

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

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

15 **XIV. RECORDKEEPING AND BUSINESS OPERATIONS**

16 **IT IS FURTHER ORDERED** that Stipulating Defendant Torchia is
17 hereby restrained and enjoined from:

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

21 B. Creating, operating, or exercising any control over any business
22 entity, including any partnership, limited partnership, joint venture, sole
23 proprietorship, limited liability company or corporation, without first providing the
24 Commission with a written statement disclosing: (1) the name of the business
25 entity; (2) the address and telephone number of the business entity; (3) the names
26 of the business entity’s officers, directors, principals, managers, and employees;
27 and (4) a detailed description of the business entity’s intended activities; and
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1 C. Affiliating with, becoming employed by, or performing any work for
2 any business that is not a named Defendant in this action without first providing
3 the Commission with a written statement disclosing: (1) the name of the business;
4 (2) the address and telephone number of the business; and (3) a detailed description
5 of the nature of the business or employment and the nature of Stipulating
6 Defendant Torchia's duties and responsibilities in connection with that business or
7 employment.

8 **XV. COOPERATION WITH THE RECEIVER**

9 **IT IS FURTHER ORDERED** that Stipulating Defendant Torchia shall
10 fully cooperate with and assist the Receiver. Stipulating Defendant Torchia's
11 cooperation and assistance shall include, but not be limited to, providing any
12 information to the Receiver that the Receiver deems necessary to exercise the
13 authority and discharge the responsibilities of the Receiver under this Order;
14 providing any login, password, or biometric identifier required to access any
15 computer or electronic files or information in or on any medium; and advising all
16 persons who owe money to the Receivership Entities that all debts should be paid
17 directly to the Receiver. Stipulating Defendant Torchia is hereby restrained and
18 enjoined from directly or indirectly:

- 19 A. Transacting any of the business of the Receivership Entities;
20 B. Excusing debts owed to the Receivership Entities;
21 C. Destroying, secreting, defacing, transferring, or otherwise altering or
22 disposing of any Documents of the Receivership Entities;
23 D. Transferring, receiving, altering, selling, encumbering, pledging,
24 assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or
25 in the possession or custody of, or in which an interest is held or claimed by, the
26 Receivership Entities, or the Receiver;

1 E. Failing to provide any assistance or information requested by the
2 Receiver in connection with obtaining possession, custody, or control of any
3 Assets within the receivership estate that the Receiver or the FTC has identified; or

4 F. Doing any act or thing whatsoever to interfere with the Receiver's
5 taking and keeping custody, control, possession, or managing of the Assets or
6 Documents subject to this receivership; or to harass or interfere with the Receiver
7 in any way; or to interfere in any manner with the exclusive jurisdiction of this
8 Court over the Assets or Documents of the Receivership Entities; or to refuse to
9 cooperate with the Receiver or the Receiver's duly authorized agents in the
10 exercise of their duties or authority under any Order of this Court.

11 **XVI. TRANSFER OF FUNDS TO THE RECEIVER BY FINANCIAL**
12 **INSTITUTIONS AND OTHER THIRD PARTIES**

13 **IT IS FURTHER ORDERED** that, upon service of a copy of this Order,
14 any Financial Institution shall cooperate with all reasonable requests of counsel for
15 the FTC and the Receiver relating to implementation of this Order, including
16 transferring funds at the Receiver's direction and producing records related to the
17 Assets and sales of the Receivership Entities.

18 **XVII. RECEIVER'S ACCESS TO BUSINESS PREMISES AND RECORDS**

19 **IT IS FURTHER ORDERED** that:

20 A. If Stipulating Defendant Torchia possesses a smartphone or tablet on
21 receivership premises, they will turn over the device to the Receiver for imaging.
22 Within two business days, the Receiver will return the device; and

23 B. If any Documents, computers, smartphones, tablets, or electronic data
24 storage devices containing information related to the business practices or finances
25 of the Receivership Entities are at a location other than those listed herein,
26 including but not limited to, the personal residence(s) of Stipulating Defendant
27 Torchia, then, immediately upon notice of this Order, Stipulating Defendant
28 Torchia shall produce to the Receiver all such Documents, computers,

1 smartphones, tablets, or electronic data storage devices. To prevent the destruction
2 of electronic data, upon service of this Order upon any Receivership Entity, any
3 computers, smartphones, tablets, or electronic data storage devices containing such
4 information shall be powered down (turned off) in the normal course for the
5 operating systems used on such devices and shall not be used until produced for
6 copying and inspection, along with any codes needed for access. For any
7 smartphone or tablet that contains information related to the business practices or
8 finances of the Receivership Entities that is in the personal possession of
9 Stipulating Defendant Torchia, the Receiver shall image that device and return it to
10 Stipulating Defendant Torchia within two business days.

11 **XVIII. PARTIES' ACCESS TO BUSINESS PREMISES AND**
12 **RECORDS**

13 **IT IS FURTHER ORDERED** that the Receiver shall allow the FTC,
14 Stipulating Defendant Torchia, and their representatives reasonable access to the
15 premises of the Receivership Entities. The purpose of this access shall be to
16 inspect, inventory, and copy any Documents and other property owned by, or in
17 the possession of, the Receivership Entities, provided that those Documents and
18 property are not removed from the premises without the permission of the
19 Receiver. The Receiver shall have the discretion to determine the time, manner,
20 and reasonable conditions of such access. The Receiver will segregate all
21 materials subject to an attorney-client privilege held by a Receivership Entity's
22 clients and shall not make these materials available to either the FTC or Stipulating
23 Defendant Torchia without the clients' consent. The FTC's access to any
24 Documents pursuant to this provision shall not provide grounds for any Defendant
25 to object to any subsequent request for Documents served by the FTC.

26 **XIX. LIMITED EXPEDITED DISCOVERY**

27 **IT IS FURTHER ORDERED** that the Receiver and the FTC are granted
28 leave to conduct certain expedited discovery and that in lieu of the time periods,

1 notice provisions, and other requirements of the applicable Local Rules for this
2 District and Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, the
3 Receiver and the FTC are granted leave to:

4 A. Depose, on three (3) days' notice, any party or non-party for the
5 purpose of discovering: (1) the nature, location, status, and extent of Assets of
6 Stipulating Defendant Torchia or his affiliates or subsidiaries; (2) the nature and
7 location of Documents and business records of Stipulating Defendant Torchia or
8 his affiliates or subsidiaries; and (3) compliance with this Order. Any such
9 depositions shall not be counted toward any deposition limit set forth in the Federal
10 Rules of Civil Procedure or this Court's Local rules and shall not preclude the FTC
11 from subsequently deposing the same person during discovery on the merits in this
12 case. Depositions may be taken by telephone, video conference, or other remote
13 means. Any deposition taken pursuant to this Section that has not been reviewed
14 and signed by the deponent may be used by any party for purposes of any
15 preliminary injunction hearing;

16 B. Serve upon parties interrogatories or requests for production of
17 Documents or inspection that require a response, production or inspection within
18 four (4) days of service, and may serve subpoenas upon non-parties that direct
19 production or inspection within seven (7) days of service, for the purpose of
20 discovering: (1) the nature, location, status, and extent of Assets of Stipulating
21 Defendant Torchia or his affiliates or subsidiaries; (2) the nature and location of
22 Documents and business records of Stipulating Defendant Torchia or his affiliates
23 or subsidiaries; and (3) compliance with this Order; provided, however, that forty-
24 eight (48) hours' notice shall be deemed sufficient for the production of any such
25 Documents that are maintained or stored as electronic data. Any such
26 interrogatories or requests for production or inspection shall not count toward any
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1 limit on discovery set forth in the Federal Rules of Civil Procedure or this Court's
2 Local Rules;

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

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

16 **XX. PRE-EXISTING ORDERS**

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

25 **XXI. STAY OF ACTIONS**

26 **IT IS FURTHER ORDERED** that:

27 A. This Section does not stay:
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- 1 1. The commencement or continuation of a criminal action or
2 proceeding;
- 3 2. The commencement or continuation of an action or proceeding
4 by a governmental unit to enforce such governmental unit's police or regulatory
5 power;
- 6 3. The enforcement of a judgment, other than a money judgment,
7 obtained in an action or proceeding by a governmental unit to enforce such
8 governmental unit's police or regulatory power, including but not limited to any
9 actions (including discovery) taken by the FTC in enforcing the Orders in the
10 related matters, *FTC v. GM Funding, Inc.*, SACV02-1026 DOC (C.D. Cal.), *U.S. v.*
11 *Global Mortgage Funding, Inc.*, SACV07-1275 DOC (C.D. Cal.); or
- 12 4. The issuance to the Receivership Entities of a notice of tax
13 deficiency.

14 **XXII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY**
15 **STIPULATING DEFENDANTS**

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

19 **XXIII. CORRESPONDENCE WITH PLAINTIFF**

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

24 Benjamin Theisman
25 Gregory Madden
26 Federal Trade Commission
27 600 Pennsylvania Ave., NW, Mail Drop CC-9528
28 Washington, DC 20580
 Telephone: (202) 326-2223, -2426

btheisman@ftc.gov, gmadden@ftc.gov

XXIV. SERVICE OF THIS ORDER

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

XXV. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that within three (3) calendar days after service of this Order, Stipulating Defendant Torchia shall provide a copy of this Order to each of his agents, employees, directors, officers, subsidiaries, affiliates, attorneys, independent contractors, representatives, franchisees, affiliates, and all persons in active concert or participation with them. Within five (5) calendar days following this Order, Stipulating Defendant Torchia shall provide the FTC with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons that Stipulating Defendant Torchia has served with a copy of this Order in compliance with this provision.

XXVI. RETENTION OF JURISDICTION

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

IT IS HEREBY ORDERED

Dated: June 24, 2016



HONORABLE BEVERLY REID O'CONNELL
UNITED STATES DISTRICT COURT JUDGE