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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DAMIAN KUTZNER, *et al.*,

Defendants.

**Case No. 8:16-cv-00999-BRO
(AFMx)**

**PRELIMINARY
INJUNCTION WITH ASSET
FREEZE, APPOINTMENT
OF RECEIVER, LIMITED
EXPEDITED DISCOVERY,
AND OTHER EQUITABLE
RELIEF AS TO
DEFENDANT JEREMY FOTI**

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 amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010) (“Dodd-Frank Act”), 12 U.S.C. § 5538, has filed a complaint to obtain temporary,

1 preliminary, and permanent injunctive relief, rescission or reformation of contracts,
2 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other
3 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the
4 FTC Act, 15 U.S.C. § 45(a), and the Mortgage Assistance Relief Services Rule
5 (“MARS Rule”), 16 C.F.R. Part 322, recodified as Mortgage Assistance Relief
6 Services, 12 C.F.R. Part 1015 (“Regulation O”), and has applied for a preliminary
7 injunction order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

8 On June 1, 2016, this court issued its *Ex Parte Temporary Restraining Order*
9 *with Asset Freeze, Appointment of Temporary Receiver, Limited Expedited*
10 *Discovery, and Other Equitable Relief, and Order to Show Cause Why Preliminary*
11 *Injunction Should not Issue*. DE 23 (“TRO”). On June 15, 2016, the Court
12 extended the TRO until July 1, 2016. DE 47. Thereafter, the Court entered
13 preliminary injunctions (DEs 56-57, 59) as to each of the defendants named in the
14 original Complaint (DE 1).

15 On June 13, 2016, the Temporary Receiver filed his *Preliminary Report of*
16 *Temporary Receiver*, in which he writes: “[Jeremy] Foti is a key, but elusive,
17 player in the Advantis/Brookstone universe. He operates from a large, and upon
18 our arrival locked, office next to Mr. Kutzner’s office. Although he has adroitly
19 avoided any formal ownership of the Advantis or Brookstone entities, we saw
20 ample confirmation that he was indeed one of the bosses.” DE 41.

21 On July 5, 2016, the FTC filed its *First Amended Complaint for Permanent*
22 *Injunction and Other Equitable Relief*, (“First Amended Complaint”) adding
23 Jeremy Foti as a defendant. DE 61.

24 Having considered the parties’ pleadings, papers, and argument, the Court
25 hereby **GRANTS** the Preliminary Injunction against defendant Jeremy Foti.
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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 (“TRO 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. On June 24, 2016, the Court entered its *Stipulated Preliminary*
19 *Injunction with Asset Freeze, Appointment of Temporary Receiver, Limited*
20 *Expedited Discovery, and Other Equitable Relief As To Vito Torchia, Jr.* (DE 56)
21 *and Stipulated Preliminary Injunction with Asset Freeze, Appointment of*
22 *Temporary Receiver, Limited Expedited Discovery, and Other Equitable Relief As*
23 *To Damian Kutzner, Charles Marshall, Jonathan Tarkowski, Advantis P.C., and*
24 *Advantis Law Group P.C.* (DE 57);

25 6. On June 27, 2016, the Court entered its *Preliminary Injunction with*
26 *Asset Freeze, Appointment of Temporary Receiver, Limited Expedited Discovery,*
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1 *and Other Equitable Relief As To Geoffrey Broderick, Brookstone Law P.C.*
2 *(California) and Brookstone Law P.C. (Nevada)* (DE 59);

3 7. On July 5, 2016, the FTC filed its First Amended Complaint adding
4 Jeremy Foti as a defendant. DE 61. On July 12, 2016, the First Amended
5 Complaint was served on Jeremy Foti by personal service through his counsel
6 pursuant to Rule 4 of the Federal Rules of Civil Procedure. Moreover, Defendant
7 Jeremy Foti's counsel was electronically served with all of the pleadings in this
8 matter on July 13, 2016;

9 8. On July 13, 2016, the FTC filed *Plaintiff's Notice of Application and*
10 *Application for Preliminary Injunction With Asset Freeze, Limited Expedited*
11 *Discovery, and Other Equitable Relief As to Jeremy Foti* and accompanying
12 *Plaintiff's Memorandum In Support Of Application For Preliminary Injunction*
13 *With Asset Freeze, Limited Expedited Discovery, And Other Equitable Relief,*
14 *Against Jeremy Foti;*

15 9. There is good cause to believe that defendant Jeremy Foti has engaged
16 in, and is likely to continue to engage, in acts or practices that violate Section 5(a)
17 of the FTC Act, 15 U.S.C. § 45(a), including but not limited to falsely and
18 misleadingly representing, directly or indirectly, expressly or by implication that:

- 19 a. Defendants are likely to obtain relief for consumers, including in
20 some instances "at least \$75,000" or consumers' homes free and
21 clear;
 - 22 b. Defendants will seek to void consumers' mortgages;
 - 23 c. Defendants have a team of experienced lawyers and personnel to
24 litigate mass joinder cases alleging lender fraud and related claims
25 on behalf of hundreds or thousands of clients simultaneously; and
 - 26 d. Defendants will file lawsuits on particular consumers' behalf.
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1 The FTC is therefore likely to prevail on the merits of its action under Section 5(a)
2 of the FTC Act, 15 U.S.C. § 45(a);

3 10. There is good cause to believe that immediate and irreparable harm
4 will result from defendant Jeremy Foti's ongoing violations of Section 5(a) of the
5 FTC Act restrained and enjoined by Order of this Court;

6 11. There is good cause to believe that the Court's ability to grant
7 effective final relief for consumers in the form of equitable monetary relief and
8 disgorgement of ill-gotten gains will suffer immediate and irreparable damage
9 from defendant Jeremy Foti's transfer, dissipation, or concealment of his Assets or
10 business records unless he is restrained and enjoined by Order of this Court;

11 12. Good cause exists to permit the FTC to take limited expedited
12 discovery from third parties as to the existence and location of Assets and
13 Documents;

14 13. Weighing the equities and considering the FTC's likelihood of
15 ultimate success, a preliminary injunction order with an Asset freeze, limited
16 expedited discovery as to the existence and location of Assets and Documents, and
17 other equitable relief is in the public interest; and

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

20 **DEFINITIONS**

21 For the purposes of this Preliminary Injunction order, the following
22 definitions apply:

23 A. "Asset" or "Assets" means any legal or equitable interest in, right to,
24 or claim to, any and all real and personal property of Defendant Foti or held for his
25 benefit, wherever located, whether in the United States or abroad, including but
26 not limited to chattel, goods, instruments, equipment, fixtures, general intangibles,
27 effects, leaseholds, contracts, mail or other deliveries, inventory, checks, notes,
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1 accounts, credits, receivables (as those terms are defined in the Uniform
2 Commercial Code), shares of stock, futures, all cash or currency, and trusts,
3 including but not limited to a trust held for the benefit of Defendant Foti, his minor
4 children, or his spouse, and shall include both existing Assets and Assets acquired
5 after the date this order is signed, or any interest therein.

6 B. “**Asset Freeze Accounts**” includes accounts that are held by or for the
7 benefit of, or controlled by, directly or indirectly, by Defendant Foti, Time Out
8 Management LTD LLC, Taphouse LLC, GAMC Services Inc., GAMC Limo
9 Leasing Inc., and DND consulting Inc. Asset Freeze Accounts also includes the
10 following accounts, identified by the account holder, the Financial Institution, and
11 last four digits of the account number:

- 12 1. Time Out Management LTD LLC, Bank of America, 2464;
- 13 2. GAMC Services Inc., Bank of America, 6849;
- 14 3. Taphouse LLC, Bank of America, 0031; and
- 15 4. DND Consulting Inc., Bank of America, 0095.

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

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

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

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

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

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

1 I. **“Individual Defendants”** means, collectively, Damian Kutzner, Vito
2 Torchia, Jonathan Tarkowski, Geoffrey Broderick, Charles Marshall, Jeremy Foti,
3 and any other names they might use, have used, be known by or have been known
4 by.

5 J. **“Person”** means any individual, group, unincorporated association,
6 limited or general partnership, corporation or other business entity.

7 K. **“Plaintiff”** means the Federal Trade Commission (“Commission” or
8 “FTC”).

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

15 M. **“Receiver”** means the Receiver appointed in this case. The term
16 “Receiver” also includes any deputy receivers or agents as may be named by the
17 Receiver.

18 N. **“Stipulating Individual Defendants”** means Damian Kutzner,
19 Charles Marshall, and Jonathan Tarkowski and any other names they might use,
20 have used, be known by or have been known by.

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

24 P. **“Stipulating Defendants”** means collectively Stipulating Individual
25 Defendants, Stipulating Corporate Defendants, Vito Torchia Jr., and their
26 successors, assigns, affiliates, subsidiaries, or agents, individually, collectively, or
27 in any combination, and each of them by whatever names each might be known.
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1 Q. “**Defendant Foti**” means Jeremy Foti, and any other names he might
2 use, have used, be known by or have been known by.

3 **I. PROHIBITED REPRESENTATIONS**

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

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

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

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

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

17 **II. PRESERVATION OF RECORDS AND TANGIBLE THINGS**

18 **IT IS FURTHER ORDERED** that Defendant Foti, his officers, agents,
19 servants, employees, and attorneys, and all other persons in active concert or
20 participation with him, who receive actual notice of this Order, whether acting
21 directly or indirectly, in connection with the advertising, marketing, promotion,
22 offering for sale, sale, or provision of any product or service, are hereby restrained
23 and enjoined from destroying, erasing, mutilating, concealing, altering,
24 transferring, or otherwise disposing of, in any manner, directly or indirectly, any
25 Documents or records that relate to the business practices, or business and personal
26 finances, of Defendants, or an entity directly or indirectly under the control of
27 Defendants.

1 **V. PROHIBITION ON USE OF CUSTOMER INFORMATION**

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

17 **VI. ASSET FREEZE**

18 **IT IS FURTHER ORDERED** that Defendant Foti, and his officers, agents,
19 servants, and employees, and all other persons or entities directly or indirectly
20 under the control of him, and all other persons or entities in active concert or
21 participation with him who receive actual notice of this Order are hereby restrained
22 and enjoined from directly or indirectly:

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

- 28 1. Asset Freeze Accounts;

1 2. owned or controlled, directly or indirectly, by Defendant Foti,
2 in whole or in part, or held, in whole or in part, for the benefit of Defendant Foti;

3 3. in the actual or constructive possession of Defendant Foti; or

4 4. owned, controlled by, or in the actual or constructive possession
5 of any corporation, partnership, or other entity directly or indirectly owned,
6 managed, or controlled by, or under common control with Defendant Foti,
7 including any entity acting under a fictitious name owned by or controlled by
8 Defendant Foti, and any Assets held by, for, or under the name of Defendant Foti
9 at any bank or savings and loan institution, or with any broker-dealer, escrow
10 agent, title company, commodity trading company, payment processing company,
11 precious metal dealer, or other Financial Institution or depository of any kind;

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

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

16 D. Obtaining a personal or secured loan;

17 E. Incurring liens or encumbrances on real property, personal property or
18 other Assets in the name, singly or jointly, of Defendant Foti; and

19 F. Cashing any checks or depositing any money orders or cash received
20 from consumers, clients, or customers of Defendant Foti.

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

4 **VII. RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES**

5 **IT IS FURTHER ORDERED** that any Financial Institution, business
6 entity, Electronic Data Host, or person served with a copy of this Order that holds,
7 controls, or maintains custody of any account, Document, or Asset of, on behalf of,
8 in the name of, for the benefit of, subject to withdrawal by, subject to access or use
9 by, or under the signatory power of Defendant Foti, or other party subject to the
10 Asset Freeze above, or has held, controlled, or maintained any such account,
11 Document, or Asset, shall:

12 A. Hold, preserve, and retain within such entity’s or person’s control, and
13 prohibit the withdrawal, removal, alteration, assignment, transfer, pledge,
14 hypothecation, encumbrance, disbursement, dissipation, conversion, sale,
15 liquidation, or other disposal of such account, Document, or Asset held by or under
16 such entity’s or person’s control, except as directed by further order of the Court;

17 B. Provide the Receiver immediate access to electronically stored
18 information stored, hosted, or otherwise maintained on behalf of Defendant Foti
19 for forensic imaging;

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

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

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

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

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

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

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

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

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

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

16 **VIII. FINANCIAL STATEMENTS AND ACCOUNTING**

17 **IT IS FURTHER ORDERED** that Defendant Foti must provide Financial
18 Statements to the FTC in accordance with Section VIII of the TRO, within (1)
19 business days of entry of this Order. He shall complete the “Financial Statement of
20 Individual Defendant” in the form of Attachment A to the TRO.

21 **IX. CREDIT REPORTS**

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

27 **X. REPATRIATION OF FOREIGN ASSETS**

1 **IT IS FURTHER ORDERED** that, within one (1) day following entry of
2 this Order on the docket, , Defendant Foti shall:

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

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

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

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

18 **XI. NON-INTERFERENCE WITH REPATRIATION**

19 **IT IS FURTHER ORDERED** that Defendant Foti, and his successors,
20 assigns, members, officers, agents, servants, employees, and attorneys, and those
21 persons in active concert or participation with him who receive actual notice of this
22 Order by personal service or otherwise, whether acting directly or through any
23 entity, corporation, subsidiary, division, affiliate or other device, are hereby
24 restrained and enjoined from taking any action, directly or indirectly, that may
25 result in the encumbrance or dissipation of foreign Assets, or in the hindrance of
26 the repatriation required by the preceding “Repatriation of Assets” Section of this
27 Order, including, but not limited to:
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1 A. Sending any statement, letter, fax, email or wire transmission, or
2 telephoning or engaging in any other act, directly or indirectly, that results in a
3 determination by a foreign trustee or other entity that a “duress” event has occurred
4 under the terms of a foreign trust agreement until such time that all Assets have
5 been fully repatriated pursuant to the “Repatriation of Assets” Section of this
6 Order; or

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

12 **XII. RECORDKEEPING AND BUSINESS OPERATIONS**

13 **IT IS FURTHER ORDERED** that Defendant Foti is hereby restrained and
14 enjoined from:

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

18 B. Creating, operating, or exercising any control over any business
19 entity, including any partnership, limited partnership, joint venture, sole
20 proprietorship, limited liability company or corporation, without first providing the
21 Commission with a written statement disclosing: (1) the name of the business
22 entity; (2) the address and telephone number of the business entity; (3) the names
23 of the business entity’s officers, directors, principals, managers, and employees;
24 and (4) a detailed description of the business entity’s intended activities; and

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

4 **XIII. COOPERATION WITH THE RECEIVER**

5 **IT IS FURTHER ORDERED** that Defendant Foti shall fully cooperate
6 with and assist the Receiver. Defendant Foti's cooperation and assistance shall
7 include, but not be limited to, providing any information to the Receiver that the
8 Receiver deems necessary to exercise the authority and discharge the
9 responsibilities of the Receiver under this Order; providing any login, password, or
10 biometric identifier required to access any computer or electronic files or
11 information in or on any medium; and advising all persons who owe money to the
12 Receivership Entities that all debts should be paid directly to the Receiver.

13 Defendant Foti is hereby restrained and enjoined from directly or indirectly:

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

5 **XIV. TRANSFER OF FUNDS TO THE RECEIVER BY FINANCIAL**
6 **INSTITUTIONS AND OTHER THIRD PARTIES**

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

12 **XV. RECEIVER'S ACCESS TO BUSINESS PREMISES AND RECORDS**

13 **IT IS FURTHER ORDERED** that:

14 A. If Defendant Foti possesses a smartphone or tablet on receivership
15 premises, they will turn over the device to the Receiver for imaging. Within two
16 business days, the Receiver will return the device; and

17 B. If any Documents, computers, smartphones, tablets, or electronic data
18 storage devices containing information related to the business practices or finances
19 of the Receivership Entities are at a location other than those listed herein,
20 including but not limited to, the personal residence(s) of Defendant Foti, then,
21 immediately upon notice of this Order, Defendant Foti shall produce to the
22 Receiver all such Documents, computers, smartphones, tablets, or electronic data
23 storage devices. To prevent the destruction of electronic data, upon service of this
24 Order upon any Receivership Entity, any computers, smartphones, tablets, or
25 electronic data storage devices containing such information shall be powered down
26 (turned off) in the normal course for the operating systems used on such devices
27 and shall not be used until produced for copying and inspection, along with any
28 codes needed for access. For any smartphone or tablet that contains information

1 related to the business practices or finances of the Receivership Entities that is in
2 the personal possession of Defendant Foti, the Receiver shall image that device and
3 return it to Defendant Foti within two business days.

4 **XVI. PARTIES' ACCESS TO BUSINESS PREMISES AND RECORDS**

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

18 **XVII. LIMITED EXPEDITED DISCOVERY**

19 **IT IS FURTHER ORDERED** that the Receiver and the FTC are granted
20 leave to conduct certain expedited discovery and that in lieu of the time periods,
21 notice provisions, and other requirements of the applicable Local Rules for this
22 District and Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, the
23 Receiver and the FTC are granted leave to:

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

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

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

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

6 **XVIII. PRE-EXISTING ORDERS**

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

15 **XIX. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY**
16 **STIPULATING DEFENDANTS**

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

20 **XX. CORRESPONDENCE WITH PLAINTIFF**

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

25 Benjamin Theisman
26 Gregory Madden
27 Federal Trade Commission
28 600 Pennsylvania Ave., NW, Mail Drop CC-9528

1 Washington, DC 20580
2 Telephone: (202) 326-2223, -2426
3 btheisman@ftc.gov, gmadden@ftc.gov

4 **XXI. SERVICE OF THIS ORDER**

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

13 **XXII. DISTRIBUTION OF ORDER**

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