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

9 FEDERAL TRADE COMMISSION,
10 Plaintiff,
11 v.
12 DAMIAN KUTZNER, et al.
13 Defendants.

SACV16-00999-BRO (AFMx)

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF AS
TO DEFENDANT VITO
TORCHIA JR.**

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15 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its
16 Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”),
17 pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15
18 U.S.C. § 53(b), and the 2009 Omnibus Appropriations Act, Public Law 111-8,
19 Section 626, 123 Stat. 524, 678 (Mar. 11, 2009) (“Omnibus Act”), as clarified by
20 the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public
21 Law 111-24, Section 511, 123 Stat. 1734, 1763-64 (Mar. 22, 2009) (“Credit Card
22 Act”), and amended by the Dodd-Frank Wall Street Reform and Consumer
23 Protection Act, Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July
24 21, 2010) (“Dodd-Frank Act”), 12 U.S.C. § 5538. The Commission and Vito
25 Torchia Jr. stipulate to the entry of this Stipulated Order for Permanent Injunction
26 and Other Equitable Relief (“Order”) to resolve all matters in dispute in this action
27 between them.
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- 1 3. formulating or providing, or arranging for the formulation or
2 provision of, any marketing support material or service,
3 including web or Internet Protocol addresses or domain name
4 registration for any Internet websites, affiliate marketing
5 services, or media placement services;
- 6 4. providing names of, or assisting in the generation of, potential
7 customers;
- 8 5. performing marketing, billing, or payment services of any kind;
9 or
- 10 6. acting or serving as an owner, officer, director, manager, or
11 principal of any entity.

12 B. **“Corporate Defendants”** means Brookstone Law P.C. (California),
13 Brookstone Law P.C. (Nevada), Advantis Law P.C., and Advantis Law Group
14 P.C., and their successors and assigns.

15 C. **“Defendants”** means all of the Individual Defendants and the
16 Corporate Defendants, individually, collectively, or in any combination.

17 D. **“Order related product or service”** means any product, service,
18 plan, or program represented, expressly or by implication, to:

- 19 1. provide any consumer, arrange for any consumer to receive, or
20 assist any consumer in receiving, a loan or other extension of
21 credit;
- 22 2. provide any consumer, arrange for any consumer to receive, or
23 assist any consumer in receiving, credit, debit, or stored value
24 cards;
- 25 3. improve, repair, or arrange to improve or repair, any
26 consumer’s credit record, credit history, or credit rating; or
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1 4. provide advice or assistance to improve any consumer’s credit
2 record, credit history, or credit rating.

3 E. **“Individual Defendants”** means Damian Kutzner, Jeremy Foti, Vito
4 Torchia Jr., Jonathan Tarkowski, R. Geoffrey Broderick, and Charles T. Marshall.

5 F. **“Person”** includes a natural person, organization, or other legal entity,
6 including a corporation, partnership, proprietorship, association, cooperative, or
7 any other group or combination acting as an entity.

8 G. **“Secured or unsecured debt relief product or service”** means:

9 1. With respect to any mortgage, loan, debt, or obligation between
10 a person and one or more secured or unsecured creditors or debt
11 collectors, any product, service, plan, or program represented,
12 expressly or by implication, to:

13 a. stop, prevent, or postpone any mortgage or deed of
14 foreclosure sale for a person’s dwelling, any other sale of
15 collateral, any repossession of a person’s dwelling or
16 other collateral, or otherwise save a person’s dwelling or
17 other collateral from foreclosure or repossession;

18 b. negotiate, obtain, or arrange a modification, or
19 renegotiate, settle, or in any way alter any terms of the
20 mortgage, loan, debt, or obligation, including a reduction
21 in the amount of interest, principal balance, monthly
22 payments, or fees owed by a person to a secured or
23 unsecured creditor or debt collector;

24 c. obtain any forbearance or modification in the timing of
25 payments from any secured or unsecured holder or
26 servicer of any mortgage, loan, debt, or obligation;

- 1 d. negotiate, obtain, or arrange any extension of the period
2 of time within which a person may (i) cure his or her
3 default on the mortgage, loan, debt, or obligation, (ii)
4 reinstate his or her mortgage, loan, debt, or obligation,
5 (iii) redeem a dwelling or other collateral, or (iv) exercise
6 any right to reinstate the mortgage, loan, debt, or
7 obligation or redeem a dwelling or other collateral;
8 e. obtain any waiver of an acceleration clause or balloon
9 payment contained in any promissory note or contract
10 secured by any dwelling or other collateral; or
11 f. negotiate, obtain, or arrange (i) a short sale of a dwelling
12 or other collateral, (ii) a deed-in-lieu of foreclosure, or
13 (iii) any other disposition of a mortgage, loan, debt, or
14 obligation other than a sale to a third party that is not the
15 secured or unsecured loan holder.

16 The foregoing shall include any manner of claimed assistance,
17 including auditing or examining a person's application for the
18 mortgage, loan, debt, or obligation.

- 19 2. With respect to any loan, debt, or obligation between a person
20 and one or more unsecured creditors or debt collectors, any
21 product, service, plan, or program represented, expressly or by
22 implication, to:
- 23 a. repay one or more unsecured loans, debts, or obligations;
24 or
25 b. combine unsecured loans, debts, or obligations into one
26 or more new loans, debts, or obligations.
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1 **ORDER**

2 **I. BAN ON SECURED AND UNSECURED DEBT RELIEF PRODUCTS**
3 **AND SERVICES**

4 **IT IS ORDERED** that Vito Torchia Jr. is permanently restrained and
5 enjoined from advertising, marketing, promoting, offering for sale, or selling, or
6 assisting others in the advertising, marketing, promoting, offering for sale, or
7 selling, of any secured or unsecured debt relief product or service.

8 **II. PROHIBITION AGAINST MISREPRESENTATIONS RELATING**
9 **TO ORDER RELATED PRODUCTS AND SERVICES**

10 **IT IS FURTHER ORDERED** that Vito Torchia Jr., his officers, agents,
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, whether acting directly
13 or indirectly, in connection with the advertising, marketing, promoting, offering for
14 sale, or selling of any order related product or service, are permanently restrained
15 and enjoined from misrepresenting, or assisting others in misrepresenting,
16 expressly or by implication:

17 A. the terms or rates that are available for any loan or other extension of
18 credit, including:

- 19 1. closing costs or other fees;
- 20 2. the payment schedule, monthly payment amount(s), any balloon
21 payment, or other payment terms;
- 22 3. the interest rate(s), annual percentage rate(s), or finance
23 charge(s), and whether they are fixed or adjustable;
- 24 4. the loan amount, credit amount, draw amount, or outstanding
25 balance; the loan term, draw period, or maturity; or any other
26 term of credit;
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- 1 5. the amount of cash to be disbursed to the borrower out of the
2 proceeds, or the amount of cash to be disbursed on behalf of the
3 borrower to any third parties;
4 6. whether any specified minimum payment amount covers both
5 interest and principal, and whether the credit has or can result in
6 negative amortization; or
7 7. that the credit does not have a prepayment penalty or whether
8 subsequent refinancing may trigger a prepayment penalty
9 and/or other fees;

10 B. the ability to improve or otherwise affect a consumer's credit record,
11 credit history, credit rating, or ability to obtain credit, including that a consumer's
12 credit record, credit history, credit rating, or ability to obtain credit can be
13 improved by permanently removing current, accurate negative information from
14 the consumer's credit record or history;

15 C. that a consumer will receive legal representation; or

16 D. any other fact material to consumers concerning any good or service,
17 such as: the total costs; any material restrictions, limitations, or conditions; or any
18 material aspect of its performance, efficacy, nature, or central characteristics.

19 **III. PROHIBITION AGAINST MISREPRESENTATIONS RELATING**
20 **TO ANY PRODUCTS OR SERVICES**

21 **IT IS FURTHER ORDERED** that Vito Torchia Jr., his officers, agents,
22 employees, and attorneys, and all other persons in active concert or participation
23 with any of them, who receive actual notice of this Order, whether acting directly
24 or indirectly, in connection with the advertising, marketing, promoting, offering for
25 sale, or selling of any product, service, plan, or program, are permanently
26 restrained and enjoined from misrepresenting, or assisting others in
27 misrepresenting, expressly or by implication:

28 A. the likelihood of obtaining any relief for consumers;

1 B. that consumers will be added to a lawsuit;

2 C. any material aspect of the nature or terms of any refund, cancellation,
3 exchange, or repurchase policy, including the likelihood of a consumer obtaining a
4 full or partial refund, or the circumstances in which a full or partial refund will be
5 granted to the consumer;

6 D. that any person is affiliated with, endorsed or approved by, or
7 otherwise connected to any other person; government entity; public, non-profit, or
8 other non-commercial program; or any other program;

9 E. the nature, expertise, position, or job title of any person who provides
10 any product, service, plan, or program;

11 F. the person who will provide any product, service, plan, or program to
12 any consumer;

13 G. that any person providing a testimonial has purchased, received, or
14 used the product, service, plan, or program;

15 H. that the experience represented in a testimonial of the product, service,
16 plan, or program represents the person's actual experience resulting from the use of
17 the product, service, plan, or program under the circumstances depicted in the
18 advertisement; or

19 I. any other fact material to consumers concerning any good or service,
20 such as: the total costs; any material restrictions, limitations, or conditions; or any
21 material aspect of its performance, efficacy, nature, or central characteristics.

22 **IV. MONETARY JUDGMENT AND PARTIAL SUSPENSION**

23 **IT IS FURTHER ORDERED** that:

24 A. Judgment in the amount of Eighteen Million, Three Hundred Seventy-
25 Six Thousand, Four Hundred Ninety-Nine Dollars and Fifteen Cents
26 (\$18,376,499.15) is entered in favor of the Commission against Vito Torchia Jr.,
27 jointly and severally, as equitable monetary relief.

1 B. Vito Torchia Jr. is ordered to pay to the Commission seven hundred
2 and forty Dollars (\$740.00). Such payment must be made within 7 days of entry of
3 this Order by electronic fund transfer in accordance with instructions previously
4 provided by a representative of the Commission. Upon such payment, the
5 remainder of the judgment is suspended, subject to the Subsections below.

6 C. The Commission’s agreement to the suspension of part of the
7 judgment is expressly premised upon the truthfulness, accuracy, and completeness
8 of Vito Torchia Jr.’s sworn financial statements and related documents
9 (collectively, “financial representations”) submitted to the Commission, namely:
10 the Financial Statement of Individual Defendant Vito Torchia Jr. signed on June 8,
11 2016, including the attachments.

12 D. The suspension of the judgment will be lifted as to Vito Torchia Jr. if,
13 upon motion by the Commission, the Court finds that he failed to disclose any
14 material asset, materially misstated the value of any asset, or made any other
15 material misstatement or omission in the financial representations identified above.

16 E. If the suspension of the judgment is lifted, the judgment becomes
17 immediately due as to Vito Torchia Jr. in the amount specified in Subsection A.
18 above (which the parties stipulate only for purposes of this Section represents the
19 consumer injury alleged in the Complaint), less any payment previously made
20 pursuant to this Section, plus interest computed from the date of entry of this
21 Order.

22 **V. ADDITIONAL MONETARY PROVISIONS**

23 **IT IS FURTHER ORDERED** that:

24 A. Vito Torchia Jr. relinquish dominion and all legal and equitable right,
25 title, and interest in all assets transferred pursuant to this Order and may not seek
26 the return of any assets.

1 B. The facts alleged in the Complaint will be taken as true, without
2 further proof, in any subsequent civil litigation by or on behalf of the Commission,
3 including in a proceeding to enforce its rights to any payment or monetary
4 judgment pursuant to this Order, such as a nondischargeability complaint in any
5 bankruptcy case.

6 C. The facts alleged in the Complaint establish all elements necessary to
7 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
8 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
9 estoppel effect for such purposes.

10 D. Vito Torchia Jr. acknowledges that his Taxpayer Identification
11 Number (Social Security Numbers or Employer Identification Numbers), which he
12 previously submitted to the Commission, may be used for collecting and reporting
13 on any delinquent amount arising out of this Order, in accordance with 31 U.S.C.
14 §7701.

15 E. All money paid to the Commission pursuant to this Order may be
16 deposited into a fund administered by the Commission or its designee to be used
17 for equitable relief, including consumer redress and any attendant expenses for the
18 administration of any redress fund. If a representative of the Commission decides
19 that direct redress to consumers is wholly or partially impracticable or money
20 remains after redress is completed, the Commission may apply any remaining
21 money for such other equitable relief (including consumer information remedies)
22 as it determines to be reasonably related to Defendants' practices alleged in the
23 Complaint. Any money not used for such equitable relief is to be deposited to the
24 U.S. Treasury as disgorgement. Defendants have no right to challenge any actions
25 the Commission or its representatives may take pursuant to this Subsection.
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1 F. The asset freeze in force against Vito Torchia Jr. is modified to permit
2 the payment identified in the Monetary Judgment and Partial Suspension Section.
3 Upon completion of this payment, the asset freeze is dissolved.

4 **VI. CUSTOMER INFORMATION**

5 **IT IS FURTHER ORDERED** that Vito Torchia Jr., his officers, agents,
6 employees, and attorneys, and all other persons in active concert or participation
7 with any of them, who receive actual notice of this Order, are permanently
8 restrained and enjoined from directly or indirectly:

9 A. failing to provide sufficient customer information to enable the
10 Commission to efficiently administer consumer redress. If a representative of the
11 Commission requests in writing any information related to redress, Vito Torchia Jr.
12 must provide it, in the form prescribed by the Commission, within 14 days.

13 B. disclosing, using, or benefitting from customer information, including
14 the name, address, telephone number, email address, social security number, other
15 identifying information, or any data that enables access to a customer's account
16 (including a credit card, bank account, or other financial account), that any
17 Defendant obtained prior to entry of this Order in connection with any product or
18 service related to consumers' mortgages; and

19 C. failing to destroy such customer information in all forms in their
20 possession, custody, or control within 30 days after entry of this Order.

21 *Provided, however,* that customer information need not be disposed of, and
22 may be disclosed, to the extent requested by a government agency or required by
23 law, regulation, or court order.

24 **VII. COOPERATION**

25 **IT IS FURTHER ORDERED** that Vito Torchia Jr. must fully cooperate
26 with representatives of the Commission in this case and in any investigation related
27 to or associated with the transactions or the occurrences that are the subject of the
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1 Complaint. Vito Torchia Jr. must provide truthful and complete information,
2 evidence, and testimony. Vito Torchia Jr. must appear for interviews, discovery,
3 hearings, trials, and any other proceedings that a Commission representative may
4 reasonably request upon 5 days written notice, or other reasonable notice, at such
5 places and times as a Commission representative may designate, without the
6 service of a subpoena.

7 **VIII. ORDER ANCKNOWLEDGMENTS**

8 **IT IS FURTHER ORDERED** that Vito Torchia Jr. obtain
9 acknowledgments of receipt of this Order:

10 A. Vito Torchia Jr., within 7 days of entry of this Order, must submit to
11 the Commission an acknowledgment of receipt of this Order sworn under penalty
12 of perjury.

13 B. For 5 years after entry of this Order, for any business that Vito
14 Torchia Jr., individually or collectively with any other Defendants, is the majority
15 owner or controls directly or indirectly, must deliver a copy of this Order to: (1)
16 all principals, officers, directors, and LLC managers and members; (2) all
17 employees, agents, and representatives who participate in conduct related to the
18 subject matter of the Order; and (3) any business entity resulting from any change
19 in structure as set forth in the Section titled Compliance Reporting. Delivery must
20 occur within 7 days of entry of this Order for current personnel. For all others,
21 delivery must occur before they assume their responsibilities.

22 C. From each individual or entity to which Vito Torchia Jr. delivered a
23 copy of this Order, he must obtain, within 30 days, a signed and dated
24 acknowledgment of receipt of this Order.

25 **IX. COMPLIANCE REPORTING**

26 **IT IS FURTHER ORDERED** that Vito Torchia Jr. make timely
27 submissions to the Commission:
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1 A. One year after entry of this Order, Vito Torchia Jr. must submit a
2 compliance report, sworn under penalty of perjury:

- 3 1. Vito Torchia Jr. must: (a) identify the primary physical, postal,
4 and email address and telephone number, as designated points
5 of contact, which representatives of the Commission may use to
6 communicate with Defendant; (b) identify all of that
7 Defendant's businesses by all of their names, telephone
8 numbers, and physical, postal, email, and Internet addresses; (c)
9 describe the activities of each business, including the goods and
10 services offered, the means of advertising, marketing, and sales,
11 and the involvement of any other Defendant (which Individual
12 Defendants must describe if they know or should know due to
13 their own involvement); (d) describe in detail whether and how
14 that Defendant is in compliance with each Section of this
15 Order; and (e) provide a copy of each Order Acknowledgment
16 obtained pursuant to this Order, unless previously submitted to
17 the Commission.
- 18 2. Additionally, Vito Torchia Jr. must: (a) identify all telephone
19 numbers and all physical, postal, email and Internet addresses,
20 including all residences; (b) identify all business activities,
21 including any business for which such Defendant performs
22 services whether as an employee or otherwise and any entity in
23 which such Defendant has any ownership interest; and (c)
24 describe in detail such Defendant's involvement in each such
25 business, including title, role, responsibilities, participation,
26 authority, control, and any ownership.

1 B. For 15 years after entry of this Order, Vito Torchia Jr. must submit a
2 compliance notice, sworn under penalty of perjury, within 14 days of any change
3 in the following:

4 1. Vito Torchia Jr. must report any change in: (a) any designated
5 point of contact; or (b) the structure of any entity that
6 Defendant has any ownership interest in or controls directly or
7 indirectly that may affect compliance obligations arising under
8 this Order, including: creation, merger, sale, or dissolution of
9 the entity or any subsidiary, parent, or affiliate that engages in
10 any acts or practices subject to this Order.

11 2. Additionally, Vito Torchia Jr. must report any change in: (a)
12 name, including aliases or fictitious name, or residence address;
13 or (b) title or role in any business activity, including any
14 business for which such Defendant performs services whether
15 as an employee or otherwise and any entity in which such
16 Defendant has any ownership interest, and identify the name,
17 physical address, and any Internet address of the business or
18 entity.

19 C. Vito Torchia Jr. must submit to the Commission notice of the filing of
20 any bankruptcy petition, insolvency proceeding, or similar proceeding by or
21 against such Defendant within 14 days of its filing.

22 D. Any submission to the Commission required by this Order to be
23 sworn under penalty of perjury must be true and accurate and comply with 28
24 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
25 the laws of the United States of America that the foregoing is true and correct.
26 Executed on: _____” and supplying the date, signatory’s full name, title (if
27 applicable), and signature.
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1 E. Unless otherwise directed by a Commission representative in writing,
2 all submissions to the Commission pursuant to this Order must be emailed to
3 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
4 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
5 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
6 subject line must begin: FTC v. Damian Kutzner, X030002.

7 **X. RECORDKEEPING**

8 **IT IS FURTHER ORDERED** that Vito Torchia Jr. must create certain
9 records for 15 years after entry of the Order, and retain each such record for 5
10 years. Specifically, for any business that Vito Torchia Jr., individually or
11 collectively with any other Defendants, is a majority owner or controls directly or
12 indirectly, must create and retain the following records:

13 A. accounting records showing the revenues from all goods or services
14 sold;

15 B. personnel records showing, for each person providing services,
16 whether as an employee or otherwise, that person's: name; addresses; telephone
17 numbers; job title or position; dates of service; and (if applicable) the reason for
18 termination;

19 C. records of all consumer complaints and refund requests, whether
20 received directly or indirectly, such as through a third party, and any response;

21 D. all records necessary to demonstrate full compliance with each
22 provision of this Order, including all submissions to the Commission; and

23 E. a copy of each unique advertisement or other marketing material.

24 **XI. COMPLIANCE MONITORING**

25 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Vito
26 Torchia Jr.'s compliance with this Order, including the financial representations
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1 upon which part of the judgment was suspended and any failure to transfer any
2 assets as required by this Order:

3 A. Within 14 days of receipt of a written request from a representative of
4 the Commission, Vito Torchia Jr. must: submit additional compliance reports or
5 other requested information, which must be sworn under penalty of perjury; appear
6 for depositions; and produce documents for inspection and copying. The
7 Commission is also authorized to obtain discovery, without further leave of court,
8 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
9 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

10 B. For matters concerning this Order, the Commission is authorized to
11 communicate directly with Vito Torchia Jr. Vito Torchia Jr. must permit
12 representatives of the Commission to interview any employee or other person
13 affiliated with him who has agreed to such an interview. The person interviewed
14 may have counsel present.

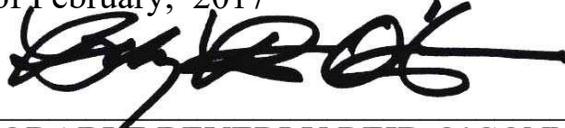
15 C. The Commission may use all other lawful means, including posing,
16 through its representatives as consumers, suppliers, or other individuals or entities,
17 to Vito Torchia Jr. or any individual or entity affiliated with him, without the
18 necessity of identification or prior notice. Nothing in this Order limits the
19 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
20 the FTC Act, 15 U.S.C. §§ 49, 57b-1.

21 D. Upon written request from a representative of the Commission, any
22 consumer reporting agency must furnish consumer reports concerning Vito Torchia
23 Jr., pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
24 §1681b(a)(1).

1 **XII. RETENTION OF JURISDICTION**

2 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this
3 matter for purposes of construction, modification, and enforcement of this Order.

4 **SO ORDERED**, this 15th day of February, 2017

5 

6
7 HONORABLE BEVERLY REID O'CONNELL
8 UNITED STATES DISTRICT JUDGE

9 **SO STIPULATED AND AGREED:**

10 **FOR THE FEDERAL TRADE COMMISSION:**

11
12 _____ Date: _____
13 Benjamin J. Theisman, Attorney
14 Federal Trade Commission
15 600 Pennsylvania Ave., NW
16 Washington, D.C. 20580
17 (202) 326-2223 (phone)
18 (202) 326-3197 (fax)
19 btheisman@ftc.gov

20 **FOR DEFENDANTS:**

21 _____ Date: _____
22 Vito Torchia Jr.