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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

GM FUNDING INC., et al.

Defendants.

Case No. SACV 02-1026 DOC (MLGx)

**STIPULATED ORDER
MODIFYING THE STIPULATED
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AS TO
DEFENDANTS GM FUNDING INC.,
ROBERT D. KUTZNER, GLOBAL
MORTGAGE FUNDING INC., AND
DAMIAN R. KUTZNER [95]**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and sections 521(a) and 522(a) of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. §§ 6821(a) 6822(a).

On May 5, 2003, the Court entered the Stipulated Judgment and Order for Permanent Injunction as to Defendants GM Funding Inc., Robert D. Kutzner, Global Mortgage Funding Inc., and Damian R. Kutzner. DE 36 (the “2003 Order”).

On May 31, 2016, the Commission filed a new Complaint against Damian R. Kutzner pursuant to Section 13(b) of the Federal Trade Commission (“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

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FINDINGS

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2 1. This Court has jurisdiction over this matter.

3 2. The Contempt Application alleges that Damian R. Kutzner violated
4 the 2003 Order by, directly or indirectly, misrepresenting to consumers that they
5 could expect to receive \$75,000 each or to have their mortgages voided by being
6 added to a mass joinder case to be litigated by lawyers with sufficient expertise to
7 handle complex lender fraud matters.

8 3. Only for purposes of this action, Damian R. Kutzner admits the facts
9 necessary to establish jurisdiction.

10 4. For purposes of any proceeding in which the FTC is a party, Damian
11 R. Kutzner does not contest that the FTC could submit sufficient evidence to
12 demonstrate by clear and convincing evidence the following:

13 a. Damian R. Kutzner owned or controlled Brookstone Law P.C., a
14 California corporation; Brookstone Law P.C., a Nevada corporation;
15 Advantis Law P.C.; and Advantis Law Group P.C. (collectively, “the
16 law firms”).

17 b. Damian R. Kutzner managed and controlled the sales and marketing
18 for the law firms, including hiring and firing sales personnel and
19 drafting or editing sales scripts.

20 c. At least from January 1, 2011 to June 2, 2016, Damian R. Kutzner,
21 acting alone or in concert with others, formulated, directed,
22 controlled, had the authority to control, or participated in the acts and
23 practices set forth in the Contempt Application.

24 d. The law firms made the following misrepresentations to consumers to
25 convince them to sign up for litigation against their lenders:
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- i. The law firms were likely to obtain relief for consumers, including in some instances “at least \$75,000” or consumers’ homes free and clear;
 - ii. The law firms would seek to void consumers’ mortgages;
 - iii. The law firms had a team of experienced lawyers and personnel to litigate mass joinder cases alleging lender fraud and related claims on behalf of hundreds or thousands of clients simultaneously.
 - iv. The law firms would file lawsuits on behalf of all consumers that paid for lender litigation services.
- e. Damian R. Kutzner managed the sales personnel that made the representations identified in paragraph 4.d, knew that the sales personnel were making these representations, and knew the representations were false.
- f. In 2016, Damian R. Kutzner helped formulate and send past due

~~notices to clients of the law firms, less than \$100,000 in 2016. The law firms would file lawsuits on behalf of all consumers that paid for lender litigation services. Each~~

1 action and the 2016 FTC Case through the date of this Order, and agrees to bear his
2 own costs and attorney fees in this action and the 2016 FTC Case.

3 6. Damian R. Kutzner and the Commission waive all rights to appeal or
4 otherwise challenge or contest

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

4 **IV. MONETARY JUDGMENT**

5 **IT IS FURTHER ORDERED** that judgment in the amount of Eighteen
6 Million, Three Hundred Seventy-Six Thousand, Four Hundred Ninety-Nine
7 Dollars and Fifteen Cents (\$18,376,499.15) is entered in favor of the Commission
8 against Damian R. Kutzner, as compensatory contempt relief. Damian R. Kutzner
9 is ordered to pay the FTC this amount immediately upon the entry of this Order.

10 **V.**

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1 reporting on any delinquent amount arising out of this Order, in accordance with
2 31 U.S.C. §7701.

3 E. All money paid to the Commission pursuant to this Order may be
4 deposited into a fund administered by the Commission or its designee to be used
5 for equitable relief, including consumer redress and any attendant expenses for the
6 administration of any redress fund. If a representative of the Commission decides
7 that direct redress to consumers is wholly or partially impracticable or money
8 remains after redress is completed, the Commission may apply any remaining
9 money for such other equitable relief (including consumer information remedies)
10 as it determines to be reasonably related to Damian R. Kutzner's practices alleged
11 in the Contempt Application. Any money not used for such equitable relief is to be
12 deposited to the U.S. Treasury as disgorgement. Damian R. Kutzner has no right
13 to challenge any actions the Commission or its representatives may take pursuant
14 to this Subsection.

15 **VI. CUSTOMER INFORMATION**

16 **IT IS FURTHER ORDERED** that Damian R. Kutzner, his officers, agents,
17 employees, and attorneys, and all other persons in active concert or participation
18 with any of them, who receive actual notice of this Order, are permanently
19 restrained and enjoined from directly or indirectly:

20 A. failing to provide sufficient customer information to enable the
21 Commission to efficiently administer consumer redress. If a representative of the
22 Commission requests in writing any information related to redress, Damian R.
23 Kutzner must provide it, in the form prescribed by the Commission, within 14
24 days.

25 B. disclosing, using, or benefitting from customer information, including
26 the name, address, telephone number, email address, social security number, other
27 identifying information, or any data that enables access to a customer's account
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1 (including a credit card, bank account, or other financial account), that any
2 defendant from this case or the 2016 FTC Case obtained prior to entry of this
3 Order in connection with any product or service related to consumers' mortgages;
4 and

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

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

10 **VII. COOPERATION**

1 describe in detail whether and how he is in compliance with
2 each Section of this Order; and (e) provide a copy of each Order
3 Acknowledgment obtained pursuant to this Order, unless
4 previously submitted to the Commission.

- 5 2. Additionally, Damian R. Kutzner must: (a) identify all
6 telephone numbers and all physical, postal, email and Internet
7 addresses, including all residences; (b) identify all business
8 activities, including any business for which he performs
9 services whether as an employee or otherwise and any entity in
10 which he has any ownership interest; and (c) describe in detail
11 his involvement in each such business, including title, role,
12 responsibilities, participation, authority, control, and any
13 ownership.

14 B. For 20 years after entry of this Order, he must submit a compliance
15 notice, sworn under penalty of perjury, within 14 days of any change in the
16 following:

- 17 1. Damian R. Kutzner must report any change in: (a) any
18 designated point of contact; or (b) the structure of any entity
19 that he has any ownership interest in or controls directly or
20 indirectly that may affect compliance obligations arising under
21 this Order, including: creation, merger, sale, or dissolution of
22 the entity or any subsidiary, parent, or affiliate that engages in securities

1 employee or otherwise and any entity in which he has any
2 ownership interest, and identify the name, physical address, and
3 any Internet address of the business or entity.

4 C. Damian R. Kutzne
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1 B. personnel records showing, for each person providing services,
2 whether as an employee or otherwise, that person's: name; addresses; telephone
3 numbers; job title or position; dates of service; and (if applicable) the reason for
4 termination;

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

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

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

10 **XI. COMPLIANCE MONITORING**

11 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Damian
12 R. Kutzner's compliance with this Order and enforcement of the monetary
13 sanction:

14 A. Within 14 days of receipt of a written request from a representative of
15 the Commission, Damian R. Kutzner must: submit additional compliance reports
16 or other requested information, which must be sworn under penalty of perjury;
17 appear for depositions; and produce documents for inspection and copying. The
18 Commission is also authorized to obtain discovery, without further leave of court,
19 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
20 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

21 B. For matters concerning this Order, the Commission is authorized to
22 communicate directly with Damian R. Kutzner. Damian R. Kutzner must permit
23 representatives of the Commission to interview any employee or other person
24 affiliated with him or any company he owns, controls, or performs services for
25 who has agreed to such an interview. The person interviewed may have counsel
26 present.

