

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

E.M.A. NATIONWIDE, INC., *et al.*,

Defendants.

Case No. 1:12-cv-02394-JG

Judge James S. Gwin

Magistrate Judge McHargh

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION
AND SETTLEMENT OF CLAIMS BETWEEN
PLAINTIFF AND DEFENDANT PHILLIP KWON**

Plaintiff Federal Trade Commission (“FTC”) commenced this action on September 25, 2012, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*, 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 (May 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, to obtain preliminary, and permanent injunctive and other equitable relief for Defendants’ alleged violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, and the Mortgage Assistance Relief Services Rule (“MARS

Rule”), 16 C.F.R. Part 322, recodified as Mortgage Assistance Relief Services, 12 C.F.R. Part 1015 (“Regulation O”), in connection with the marketing and sale of debt relief services, and mortgage assistance relief services. On November 27, 2012, the Court entered a preliminary injunction against Defendant Phillip Kwon. The FTC and Defendant Kwon (“Defendant”) hereby stipulate to the entry of this Final Order for Permanent Injunction and Settlement of Claims (“Order”).

FINDINGS

By stipulation of the parties and being advised of the premises, the Court finds:

1. This is an action by the FTC instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, and Section 626 of the Omnibus Act as clarified by Section 511 of the Credit Card Act. The Complaint seeks both permanent injunctive relief and equitable monetary relief for Defendant’s alleged deceptive acts or practices as alleged therein.
2. Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.
3. The FTC has the authority under Sections 13(b) and 19 of the FTC Act to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Defendant.
4. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendant. Venue in the Northern District of Ohio is proper.

5. The activities of Defendant, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant also waives any claim that he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorney's fees.
7. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.
8. Entry of this Order is in the public interest.

DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1. **“Assisting others”** includes, but is not limited to:
 - A. performing customer service functions, including, but not limited to, receiving or responding to consumer complaints;
 - B. formulating or providing, or arranging for the formulation or provision of, any advertising or marketing material, including, but not limited to, any telephone sales script, direct mail solicitation, or the design, text, or use of images of any Internet website, email, or other electronic communication;
 - C. formulating or providing, or arranging for the formulation or provision of, any marketing support material or service, including but not limited to, web or Internet Protocol addresses or domain name registration for any Internet websites, affiliate marketing services, or media placement services;

- D. providing names of, or assisting in the generation of, potential customers;
 - E. performing marketing, billing, or payment services of any kind; and
 - F. acting or serving as an owner, officer, director, manager, or principal of any entity.
2. **“Competent and reliable evidence”** means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
 3. **“Consumer”** means any natural person.
 4. **“Customer”** means any person who has paid, or may be required to pay, for products, services, plans, or programs offered for sale or sold by any other person.
 5. **“Debt relief product or service”** means any product, service, plan, or program represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt or obligation, between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.
 6. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through

detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. **“Federal homeowner relief or financial stability program”** means any program (including its sponsoring agencies, telephone numbers, and Internet websites) operated or endorsed by the United States government to provide relief to homeowners or stabilize the economy, including, but not limited to:
 - A. the Making Home Affordable Program;
 - B. the Financial Stability Plan;
 - C. the Troubled Asset Relief Program and any other program sponsored or operated by the United States Department of the Treasury;
 - D. the HOPE for Homeowners program, any program operated or created pursuant to the Helping Families Save Their Homes Act, and any other program sponsored or operated by the Federal Housing Administration; or
 - E. any program sponsored or operated by the United States Department of Housing and Urban Development (“HUD”), the HOPE NOW Alliance, the Homeownership Preservation Foundation, or any other HUD-approved housing counseling agency.

8. **“Financial related product or service”** means any product, service, plan, or program represented, expressly or by implication, to:
 - A. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, credit, debit, or stored value cards;

- B. improve, or arrange to improve, any consumer's credit record, credit history, or credit rating;
 - C. provide advice or assistance to any consumer with regard to any activity or service the purpose of which is to improve a consumer's credit record, credit history, or credit rating;
 - D. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, a loan or other extension of credit; or
 - E. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving any service represented, expressly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of any debt or obligation (other than a debt or obligation secured by a mortgage on a consumer's dwelling) between a consumer and one or more secured creditors, servicers, or debt collectors.
9. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.
10. **“Mortgage assistance relief product or service”** means any product, service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:
- A. stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer’s dwelling, any repossession of the consumer’s dwelling, or otherwise saving the consumer’s dwelling from foreclosure or repossession;

- B. negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;
- C. obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;
- D. negotiating, obtaining, or arranging any extension of the period of time within which the consumer may (i) cure his or her default on a dwelling loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise any right to reinstate a dwelling loan or redeem a dwelling;
- E. obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or
- F. negotiating, obtaining, or arranging (i) a short sale of a dwelling, (ii) a deed-in-lieu of foreclosure, or (iii) any other disposition of a dwelling loan other than a sale to a third party that is not the dwelling loan holder.

The foregoing shall include any manner of claimed assistance, including, but not limited to, auditing or examining a consumer's mortgage or home loan application.

- 11. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.
- 12. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more

telephones and which involves more than one interstate telephone call, whether inbound or outbound.

ORDER

BAN ON DEBT RELIEF AND MORTGAGE ASSISTANCE RELIEF PRODUCTS OR SERVICES

I. IT IS THEREFORE ORDERED that Defendant, whether acting directly or through any other person, is permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any debt relief product or service, or mortgage assistance relief product or service; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any debt relief product or service, or mortgage assistance relief product or service.

Provided, however, that nothing in this Section I shall prohibit Defendant from providing debt relief services or mortgage assistance relief services if:

- A. Defendant is: providing such services to clients as part of the authorized practice of law; licensed to practice law in the state in which his client resides or in which the client's dwelling is located; and in compliance with state laws and regulations that cover the provision of such services; or
- B. Defendant holds a real estate broker's license in good standing from the appropriate real estate licensing agency, and is engaged in conduct that requires a real estate broker's license and such conduct is authorized by the appropriate state or local real estate licensing agency or applicable statutes regulating real estate brokers.

This proviso shall not be construed to limit the licensing or regulatory powers of any federal, state, or local government agency, state bar, or other entity regulating real estate brokers.

PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL RELATED PRODUCTS OR SERVICES

II. IT IS FURTHER ORDERED that Defendant and his agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any financial related product or service, are hereby permanently restrained and enjoined from:

- A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:
 - 1. The terms or rates that are available for any loan or extension of credit;
 - 2. Any person's ability to improve or otherwise affect a consumer's credit record, credit history, credit rating, or ability to obtain credit;
 - 3. That any person can improve any consumer's credit record, credit history, or credit rating, even where such information is accurate and not obsolete; and
 - 4. That a consumer will receive legal representation;
- B. Advertising or assisting others in advertising credit terms other than those terms that actually are or will be arranged or offered by a creditor or lender.

PROHIBITED MISREPRESENTATIONS RELATING TO ANY PRODUCTS OR SERVICES

III. IT IS FURTHER ORDERED that Defendant and his agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, service, plan, or program, are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- B. The total cost to purchase, receive, or use, or the quantity of the product, service, plan, or program;
- C. Any material restriction, limitation, or condition on purchasing, receiving, or using the product, service, plan, or program;
- D. That any person is affiliated with, endorsed or approved by, or otherwise connected to any other person, government entity, any federal homeowner relief or financial stability program, public, non-profit, or other non-commercial program, or any other program;
- E. That they themselves provide the product, service, plan, or program;

- F. That the United States government or any Federal Homeowner relief or financial stability program has researched, monitored, or vetted, and subsequently approved as legitimate, any product or service; or
- G. Any material aspect of the performance, efficacy, nature, or characteristics of the product, service, plan, or program.

SUBSTANTIATION FOR FINANCIAL BENEFIT, PERFORMANCE, AND EFFICACY CLAIMS

IV. IT IS FURTHER ORDERED that Defendant and his agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any financial related product or service, are hereby permanently restrained and enjoined from making any representation or assisting others in making any representation, expressly or by implication, about the benefits, performance, or efficacy of any financial related product or service, unless at the time such representation is made, Defendant possesses and relies upon competent and reliable evidence that substantiates that the representation is true.

PROHIBITED TELEMARKETING ACTIVITIES

V. IT IS FURTHER ORDERED that Defendant and his successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any

corporation, subsidiary, division, or other device, in connection with the telemarketing, advertising, marketing, promotion, offering for sale, or sale of any good or service, are hereby permanently restrained and enjoined from:

- A. Misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristic of any good or service in violation of Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii);
- B. Misrepresenting, directly or by implication, affiliation with, or endorsement by, any government or third-party organization in violation of Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii); and
- C. Violating, or assisting others in violating, any other provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310.

PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

VI. IT IS FURTHER ORDERED that Defendant and his officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, Social Security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which Defendant obtained prior to the date of entry of this Order in connection

with the marketing or promotion of debt relief, tax relief, or mortgage assistance relief products or services; and

- B. Disposing of such customer information without written authorization from the Commission; and
- C. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written authorization from the Commission. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

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

COOPERATION WITH FTC

VII. IT IS FURTHER ORDERED that Defendant shall, in connection with this action or any subsequent investigation or litigation related to or associated with the transactions or the occurrences that are the subject of the Complaint:

- A. Cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena, *provided, however,* that Defendant shall be entitled to receive any witness fees and expenses allowable pursuant to Federal Rule of Civil Procedure 45.
- B. Within five days of entry of this order, Defendant shall provide counsel for the FTC with a written notice setting forth his current residence address, mailing addresses, email address, fax number (if any), and telephone numbers, where he may be contacted for the purpose of receiving notices under this Section. Defendant shall provide written notice to counsel for the FTC within five days of any change of this information. This Section shall apply in addition to, and not in lieu of, the Compliance Reporting requirements in Section IX below; *provided, however,* that this Subpart B shall cease to apply upon entry of final orders regarding all of the defendants in this action.

ORDER ACKNOWLEDGMENTS

VIII. IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this

Order:

- A. Defendant, within seven (7) days of entry of this Order, must submit to the FTC an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For three (3) years after entry of this Order, Defendant for any business that Defendant, individually or collectively with any other defendant, is the majority owner or directly or indirectly controls, must deliver a copy of this Order to:
(1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the marketing of any financial good or service, the telemarketing of any good or service, or the acquisition or sale of marketing leads for any good or service; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Defendant delivered a copy of this Order, he must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

COMPLIANCE REPORTING

IX. IT IS FURTHER ORDERED that Defendant make timely submissions to the FTC:

- A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury.
1. Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the FTC may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the FTC;
 2. Additionally, Defendant must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest; and (c) describe in detail Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

- B. For 20 years following entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Defendant must report any change in: (a) any designated point of contact; (b) the structure of any entity that Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
 2. Additionally, Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant performs services whether as an employee or otherwise and any entity in which Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.
- C. Defendant must submit to the FTC notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against Defendant within 14 days of its filing.
- D. Any submission to the FTC required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United

States of America that the foregoing is true and correct. Executed on:_____” and supplying the date, signatory’s full name, title (if applicable), and signature.

- E. Unless otherwise directed by a FTC representative in writing, all submissions to the FTC pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. E.M.A. Nationwide, Inc., et al.*, Case No. 1:12-cv-02394-JG (N.D. Ohio) [FTC File No. X120055].

RECORDKEEPING

- X. IT IS FURTHER ORDERED** that Defendant must create certain records for 20 years after entry of the Order, and retain each such record for five (5) years. Specifically, Defendant for any business in which Defendant is a majority owner or directly or indirectly controls, must maintain the following records:
- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
 - B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
 - C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the FTC; and
- E. A copy of each advertisement or other marketing material related to the marketing of any financial good or service, the telemarketing of any good or service, or the acquisition or sale of marketing leads for any good or service.

COMPLIANCE MONITORING

XI. IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order:

- A. Within 14 days of receipt of a written request from a representative of the FTC, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The FTC is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the FTC is authorized to communicate directly with Defendant. Defendant must permit representatives of the FTC to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The FTC may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to

Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

RETENTION OF JURISDICTION

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

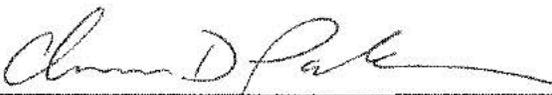
SO STIPULATED AND AGREED:

FOR DEFENDANT:



PHILLIP HEE MIN KWON, *Individually*

FOR PLAINTIFF FEDERAL TRADE COMMISSION:



CHRISTOPHER D. PANEK (OH Bar 0080016)
Sara C. DePaul (OH Bar 0077829)
Marci A. Fredrick (OH Bar 0087299)
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114
Phone: (216) 263-3406
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IT IS SO ORDERED this 14th day of May, 2013.

s/ James S. Gwin
James S. Gwin
United States District Judge