

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,)	CASE NO. 1:09CV02712
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
vs.)	STIPULATED FINAL ORDER
)	FOR PERMANENT INJUNCTION
THE DEBT ADVOCACY CENTER,)	AND SETTLEMENT OF CLAIMS
LLC, et al.,)	AS TO DEFENDANTS JOHN W.
)	SMITH, GLENN E. GROMANN, AND
Defendants.)	CREDITLAWGROUP, P.A.

Plaintiff Federal Trade Commission ("FTC") commenced this civil action on November 19, 2009, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), to obtain preliminary and permanent injunctive and other equitable relief for Defendants' alleged violations of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the marketing and sale of mortgage loan modification and foreclosure relief services. The FTC filed an Amended Complaint on May 17, 2010 adding Bradford R. Geisen, Maurice Jackson, Patrick Butler and Credit Services Alliance, Inc., as additional defendants and adding counts relating to the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act") 15 U.S.C. § 6101 *et seq.* Defendants John W. Smith, Glenn E. Gromann and CreditLawGroup, P.A. ("Settling Defendants") and the FTC hereby stipulate to this Final Order for Permanent Injunction and Settlement of Claims ("Order").

Having reviewed Plaintiff's and the Settling Defendants' Stipulated Final Order For Permanent Injunction and Settlement of Claims, and good cause appearing therefor, the Court hereby orders as follows:

FINDINGS

1. This is an action by the FTC instituted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Amended Complaint seeks both permanent injunctive relief and consumer redress for the Settling Defendants' alleged deceptive acts or practices in connection with the marketing and sale of mortgage loan modification and foreclosure relief services.

2. The FTC has the authority under Section 13(b) of the FTC Act to seek the relief it has requested, and the Amended Complaint states a claim upon which relief can be granted against the Settling Defendants noted herein.

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the Settling Defendants. Venue in the Northern District of Ohio is proper.

4. The activities of the Settling Defendants, as alleged in the Amended Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. The parties stipulate and agree to entry of this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Amended Complaint to the date of entry of this Order. This settlement does not settle and resolve any matters not alleged in the Amended Complaint. The Settling Defendants do not admit any of the allegations set forth in the Amended Complaint or in any other pleadings or exhibits filed in this case, other than the jurisdictional facts, merely by stipulating and agreeing to the entry of this Order.

6. The Settling Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. The Settling Defendants also waive any claim that they 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 attorneys' fees.

7. This Order is remedial in nature and shall not be construed as the payment of a fine, penalty, punitive assessment, an ethics violation or forfeiture.

8. The Settling Defendants waive any claim that they may hold against the Commission, its employees, representatives or agents.

9. The Settling Defendants waive any claim that they may hold against the Permanent Receiver, his employees, representatives, or agents.

10. 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: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any marketing material; (3) providing names of, or assisting in the generation of lists of, potential customers; (4) performing marketing or billing services of any kind; (5) processing credit and debit card payments; or (6) 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. ***“Credit”*** means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

6. ***“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, including but not limited to a tax 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.

7. ***“Settling Defendants”*** means all of the ***“Individual Settling Defendants”*** (John W. Smith and Glenn E. Gromann) and CreditLawGroup, P.A., and its successors and assigns, individually, collectively, or in any combination.

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;
- E. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving a debt relief product or service; or
- F. 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 the debt or obligation, including but not limited to a tax debt or obligation, between a consumer and one or more secured creditors, servicers, or debt collectors.

9. ***“For-profit”*** means any activity organized to carry on business for the profit of the entity engaging in the activity or that of its members.

10. ***“Material fact”*** means any fact that is likely to affect a person’s choice of, or conduct regarding, goods or services.

11. ***“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, (iii) or 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.

12. **"Person"** means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.

ORDER

I.

BAN ON MORTGAGE ASSISTANCE RELIEF PRODUCTS AND SERVICES

IT IS THEREFORE ORDERED that Settling Defendants, whether acting directly or through any other person, are permanently restrained and enjoined from:

A. Advertising, marketing, promoting, offering for sale, or selling any mortgage loan assistance relief product or service; and

B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any mortgage assistance relief product or service.

Provided, that if any Settling Defendant holds a real estate sales license in good standing from the appropriate state real estate licensing agency, or is employed by a broker that holds a license in good standing from the appropriate state real estate agency, Sections I.A and I.B shall not prohibit such Defendant from doing or negotiating to do one or more of the following acts for another or others: selling or offering to sell, buying or offering to buy, soliciting prospective sellers or purchasers of, soliciting or obtaining listings of, or negotiating the purchase, sale or exchange of real property in a purchase money real estate transaction. This proviso shall not be construed to limit the licensing or regulatory powers of any federal, state, or local government agency or other entity regulating real estate agents.

II.

**PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL
RELATED PRODUCTS AND SERVICES**

IT IS FURTHER ORDERED that the Settling Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active

concert or participation with any of them 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 good 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 other extension of credit, including but not limited to:

- a. closing costs or other fees;
- b. the payment schedule, the monthly payment amount(s), or other payment terms, or whether there is a balloon payment; interest rate(s), annual percentage rate(s), or finance charge(s); the loan amount, the amount of credit, the draw amount, or outstanding balance; the loan term, the draw period, or maturity; or any other term of credit;
- c. the savings associated with the credit;
- d. the amount of cash to be disbursed to the borrower out of the proceeds, or the amount of cash to be disbursed on behalf of the borrower to any third parties;
- e. whether the payment of the minimum amount specified each month covers both interest and principal, and whether the credit has or can result in negative amortization;
- f. that the credit does not have a prepayment penalty or that no prepayment penalty and/or other fees or costs will be incurred if the consumer subsequently refinances; and

g. that the interest rate(s) or annual percentage rate(s) are fixed rather than adjustable or adjustable rather than fixed;

2. Any person's ability to improve or otherwise affect a consumer's credit record, credit history, or credit rating or ability to obtain credit;

3. That any person can improve any consumer's credit record, credit history, or credit rating by permanently removing negative information from the consumer's credit record, credit history, or credit rating, even where such information is accurate and not obsolete;

4. Any aspect of any debt relief product or service, including but not limited to, the amount of savings a consumer will receive from purchasing, using, or enrolling in such debt relief product or service; the amount of time before which a consumer will receive settlement of the consumer's debts; or the reduction or cessation of collection calls; and

5. 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.

III.

SUBSTANTIATION FOR BENEFIT, PERFORMANCE, AND EFFICACY CLAIMS

IT IS FURTHER ORDERED that the Settling Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them 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, such Defendants possess and rely upon competent and reliable evidence that substantiates that the representation is true.

IV.

PROHIBITION ON ENFORCEMENT OF CONTRACTS

IT IS FURTHER ORDERED that the Settling Defendants and/or their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby permanently enjoined from demanding payment on or enforcing or threatening to enforce any contract or agreement with any consumer, in conjunction with the sale of any mortgage loan modification or foreclosure relief service, entered into by the Settling Defendants prior to the effective date of this Order.

V.

PROHIBITION ON SALE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that the Settling Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service 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 any Settling Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promotion, offering for sale or sale of any mortgage assistance relief product or service; and

B. failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. 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.

VI.

COOPERATION WITH FTC

IT IS FURTHER ORDERED that the Settling Defendants 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 Amended Complaint, 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, the Settling Defendants 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 Amended Complaint, without the service of a subpoena, *provided, however*, that the Settling Defendants shall be entitled to receive any witness fees and expenses allowable pursuant to Federal Rule of Civil Procedure 45.

VII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, the Settling Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition, and provide entry during normal business hours to any business location in each such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69; and

2. Having its representatives pose as consumers and suppliers to the Settling Defendants, their employees, or any other entity managed or controlled in whole or in part by any Settling Defendant, without the necessity of identification or prior notice; and

C. Settling Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or

employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VIII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of three (3) years from the date of entry of this Order,
 1. Each Individual Settling Defendant shall notify the Commission of the following:
 - a. Any changes in such Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in such Defendant's employment status (including self-employment), and any change in such Defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and

c. Any changes in such Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change;

2. Individual Settling Defendants shall notify the Commission of any changes in structure of any business entity that any Individual Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, provided that, with respect to any such change in the business entity about which an Individual Settling Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of three (3) years, Individual Settling Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For each Individual Settling Defendant:
 - a. such Defendant's then-current residence address, mailing addresses, and telephone numbers;
 - b. such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the

nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and

c. Any other changes required to be reported under Subsection A of this Section.

2. For all Settling Defendants:

a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and

b. Any other changes required to be reported under Subsection A of this Section.

C. Each Settling Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

D. For the purposes of this Order, Settling Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the Commission that are required by this Order to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: **FTC v. DAC, et al.**
Civil Action No. 1:09CV02712

Provided that, in lieu of overnight courier, Settling Defendants may send such reports or notifications by first-class mail, but only if Settling Defendants contemporaneously send an electronic version of such report or notification to the Commission at: Debrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Settling Defendant.

**IX.
RECORD KEEPING**

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, Individual Settling Defendants for any business for which they, individually or collectively, are the majority owner or directly or indirectly control, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, email address and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests, whether received directly or indirectly, such as through a third-party, and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, websites, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt

of this Order, required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order," and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

X.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, the Individual Settling Defendants shall deliver copies of this Order as directed below:

A. **Individual Settling Defendant as control person:** For any business that an Individual Settling Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, such Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. **Individual Settling Defendant as employee or non-control person:** For any business where an Individual Settling Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, such Defendant must

deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

C. Individual Settling Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Individual Settling Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

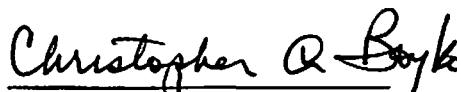
XII.

RETENTION OF JURISDICTION

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

IT IS SO ORDERED.

DATED: 6/5/12



Judge Christopher Boyko
United States District Judge

STIPULATED AND AGREED TO:

Defendant JOHN W. SMITH, individually

By: [Signature]
JOHN W. SMITH

Date: 7-27-11

Defendant GLENN E. GROMANN, individually

By: _____
GLENN E. GROMANN

Date: _____

Defendant CREDITLAWGROUP, P.A.

By: [Signature]

Its: Glenn E. Gromann, Partner

Date: 7-27-11

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

WILLARD D. TOM
General Counsel
Federal Trade Commission

JON MILLER STEIGER
Director - East Central Region
Federal Trade Commission

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Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

STIPULATED AND AGREED TO:

Defendant **JOHN W. SMITH**, individually

By: _____
JOHN W. SMITH

Date: _____

Defendant **GLENN E. GROMANN**, individually

By:  _____
GLENN E. GROMANN

Date: 7-28-2011

Defendant **CREDITLAWGROUP, P.A.**

By: _____

Its: _____

Date: _____

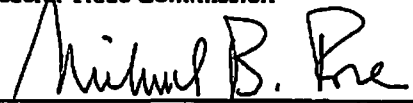
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