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

13 FEDERAL TRADE COMMISSION,

14 Plaintiff,

15 v.

16 GM FUNDING, INC.,

17 ROBERT DAMIAN KUTZNER,

18 GLOBAL MORTGAGE FUNDING,
19 INC.,

20 DAMIAN ROBERT KUTZNER, and

21 UNIVERSAL IT SOLUTIONS, INC.,
and

22 ANTHONY TAMRAZ,

23 Defendants.

CV

**COMPLAINT FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF**

24
25 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its
26 Complaint alleges as follows:

27 1. The Commission brings this action under Section 13(b) of the Federal Trade
28 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 522(a) of the Gramm-

1 Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6822(a), to obtain temporary, preliminary
2 and permanent injunctive relief, rescission of contracts, restitution, redress,
3 disgorgement, and other equitable relief for Defendants’ deceptive and unfair acts or
4 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section
5 521 of the GLB Act, 15 U.S.C. § 6821.

6 **JURISDICTION AND VENUE**

7 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§
8 45(a), 53(b), 5711, and 6105, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9 3. Venue in the United States District Court for the Central District of California
10 is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

11 **PLAINTIFF**

12 4. Plaintiff, the Federal Trade Commission, is an independent agency of the
13 United States Government created by statute. 15 U.S.C. § 41 *et seq.* The
14 Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which
15 prohibits deceptive or unfair acts or practices in or affecting commerce. The FTC
16 also is charged, under Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), with
17 enforcing Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), which prohibits,
18 among other things, any person from using false pretenses to obtain customer
19 information of a financial institution from the customer. The Commission is authorized
20 to initiate federal district court proceedings, by its own attorneys, to enjoin violations
21 of the FTC Act and to secure such other equitable relief as may be appropriate in each
22 case, including redress and disgorgement. 15 U.S.C. § 53(b). The Commission may
23 initiate federal district court proceedings to enjoin violations of the FTC Act to secure
24 such equitable relief as is appropriate in each case, including restitution for injured
25 consumers. 15 U.S.C. §§ 53(b), 5711(c), and 6102(c).

26 **DEFENDANTS**

27 5. Defendant GM Funding, Inc. (“GM”) is a Nevada corporation located at 408
28 E. Balboa Boulevard, Newport Beach, California 92611. GM transacts or has

1 transacted business in the Central District of California and throughout the United
2 States.

3 6. Defendant Robert Kutzner at all times material to this complaint, acting alone
4 or in conjunction with others, has formulated, directed, controlled, or participated in
5 the acts and practices alleged in this complaint. He transacts or has transacted
6 business in the Central District of California and throughout the United States.

7 7. Defendant Global Mortgage Funding, Inc. (“Global Mortgage”) is a
8 California corporation located at 408 E. Balboa Boulevard, Newport, California
9 92661. Global Mortgage transacts or has transacted business in the Central District of
10 California and throughout the United States.

11 8. Defendant Damian Kutzner at all times material to this complaint, acting alone
12 or in conjunction with others, has formulated, directed, controlled, or participated in
13 the acts and practices alleged in this complaint. He transacts or has transacted
14 business in the Central District of California and throughout the United States.

15 9. Defendant Universal IT Solutions, Inc. (“Universal IT”) is a California
16 corporation located at 18017 Sky Park Circle, Suite M, Irvine, California 92614.
17 Universal IT transacts or has transacted business in the Central District of California
18 and throughout the United States.

19 10. Defendant Anthony Tamraz (“Tamraz”), at all times material to this
20 complaint, acting alone or in conjunction with others, has formulated, directed,
21 controlled, or participated in the acts and practices alleged in this complaint. He
22 transacts or has transacted business in the Central District of California and throughout
23 the United States.

24 11. As more fully described in paragraphs 15-24, Defendants jointly participate
25 as a common enterprise in the conduct alleged in this complaint.

26
27 **COMMERCE**

28 12. At all times relevant to this complaint, Defendants have maintained a

1 substantial course of trade in or affecting commerce, as “commerce” is defined in
2 Section 4 of the FTC Act, 15 U.S.C. § 44.

3 **DEFINITIONS**

4 13. “Internet Protocol address” or “IP address” means the unique identifying
5 number for each machine on the Internet. An IP address is typically represented as
6 four numbers separated by periods, such as 64.114.250.172.

7 14. “Spoofing” means the practice of disguising an email to make the email
8 appear to come from an address from which it actually did not originate. Spoofing
9 involves placing in the “From” or “Reply-to” lines in emails an email address other
10 than the actual sender’s address without the consent or authorization of the user of the
11 email address whose address is spoofed.

12 **DEFENDANTS’ BUSINESS PRACTICES**

13 15. Beginning in December 2001 or January 2002, Defendants, or agents acting
14 on their behalf, began sending to consumers unsolicited commercial emails (“spam”)
15 that purports to be from various well-known financial institutions. For example, in
16 numerous instances, defendants’ spam purports to be from well-known financial
17 entities such as Radian Group, Inc., and Radian Guaranty Inc. (collectively “Radian”),
18 Prudential, Inc. (“Prudential”), and the Fannie Mae corporation (“Fannie Mae”).
19 These businesses, however, do not send the spam to consumers and do not authorize
20 the Defendants’ use of their trademarks or logos.

21 16. Consumers often complain to Radian, Prudential, and Fannie Mae about
22 receiving the spam. In many instances, consumers believe that these financial
23 institutions were responsible for sending them the unsolicited email.

24 17. Prominently displayed in Defendants’ spam emails are the terms “Radian
25 Mortgage Loan Search Corporation,” “Prudential Mortgage Loan Search
26 Corporation,” “Prudential Financial,” “Prudential Real Estate Affiliates,” or “X-Press
27 Mortgage Loan Search Corporation.” Similarly, many spam contain the well-known
28 “Prudential rock” logo, which is a trademark of Prudential. In numerous instances, the

1 spam also contain the phrase “National Bank for Home Loans of the United States of
2 America,” which is located next to the copyright notice and the name of the
3 corporation purportedly sending the email. Further, in numerous instances, the spam
4 contain the term “Fannie Mae” and the Fannie Mae logo.

5 18. Radian offers private mortgage insurance and related services to financial
6 institutions and other corporate entities. In numerous instances, Defendants’ spam
7 purports to be from “Radian Mortgage Loan Search Corporation.” These emails
8 contain a photographic image from Radian’s Web site and consist of a questionnaire
9 entitled “Radian Home Loan Finder.” The spam states that “Radian has helped
10 thousands of homeowners every year advance to financial freedom.” In fact, Radian
11 has no connection with the spam and does not even offer mortgages directly to
12 consumers.

13 19. The questionnaire contained in the spam asks consumers for detailed
14 personal financial information, under the guise that providing such information would
15 help consumers find a home mortgage. The questionnaire seeks the consumer’s name,
16 address, phone number, email address, first and second mortgage balances and rates,
17 home value, yearly income, time with current employment, credit rating, and amount
18 requested.

19 20. When consumers click on a button labeled “Search” or “Submit,” the
20 information in the questionnaire was, at times, transmitted to an IP address registered
21 to Defendant Universal IT. Defendant Tamraz is the sole shareholder and officer of
22 Defendant Universal IT.

23 21. Defendants use the personal financial information they collect to solicit
24 consumers for mortgages or mortgage refinancing. Consumers who submit
25 information pursuant to the spam later receive telemarketing sales calls from
26 Defendants Global Mortgage or GM.

27 22. Beginning in June 2002, the spam began directing consumers to call toll-free
28 telephone numbers that appear in the email messages. In numerous instances, calls to

1 these numbers are answered by representatives from “GM Funding” or “Global
2 Mortgage Funding.” “GM Funding” or “Global Mortgage Funding” representatives
3 then solicit personal information from consumers, stating that they will assist
4 consumers applying for home mortgages.

5 23. In numerous instances, Defendants’ spam contain removal representations,
6 which state that consumers can send a reply email to a particular email address if they
7 wish to stop receiving email messages in the future. In numerous instances, when
8 consumers attempt to respond to these addresses, consumers’ removal emails are
9 returned to them as undeliverable.

10 24. Defendants also practice “spoofing” in their spam by using false “reply-to”
11 or “from” information. The “reply-to” portion of the email address information
12 indicates the email address to which an email will be sent if the “reply” button is
13 clicked. In numerous instances, Defendants, or an agent acting on their behalf, place,
14 or “spoofer,” the email address of an unrelated third-party as the “reply-to” or “from”
15 address in spam. Any replies sent by consumers, or any messages stating that the
16 emails are undeliverable, are then sent to the third-party listed in the “reply-to” portion
17 of the spam. Third parties unrelated to the Defendants receive thousands of email
18 messages as a result of their email addresses being placed in the “reply-to” portion of
19 Defendants’ spam.

20 **VIOLATIONS OF THE FTC ACT**

21 25. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or
22 deceptive acts or practices affecting commerce. Misrepresentations or omissions of
23 material fact constitute deceptive acts or practices pursuant to Section 5(a) of the FTC
24 Act. Under Section 5(n) of the FTC Act, an act or practice is unfair if it causes or is
25 likely to cause substantial injury to consumers that is not outweighed by countervailing
26 benefits to consumers or to competition and that is not reasonably avoidable by
27 consumers. 15 U.S.C. § 45(n).

28 **COUNT ONE**

1 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2 **GRAMM-LEACH-BLILEY ACT**

3 35. Section 521 of the Gramm-Leach-Bliley (“GLB”) Act, 15 U.S.C. § 6821,
4 became effective on November 12, 1999, and has since remained in full force and
5 effect. Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), prohibits any person
6 from “obtain[ing] or attempt[ing] to obtain customer information of a financial
7 institution relating to another person . . . 2) by making a false, fictitious, or fraudulent
8 statement or representation to a customer of a financial institution.”

9 36. Section 527(2) of the GLB Act, 15 U.S.C. § 6827(2), defines *customer*
10 *information of a financial institution* as “any information maintained by or for a
11 financial institution which is derived from the relationship between the financial
12 institution and a customer of the financial institution and is identified with the
13 customer.”

14 37. Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), empowers the
15 Commission to enforce Section 521 of the GLB Act, 15 U.S.C. § 6821, “in the same
16 manner and with the same power and authority as the Commission has under the Fair
17 Debt Collection Practices Act [“FDCPA”] to enforce compliance with such Act.”
18 Section 814 of the FDCPA, 15 U.S.C. § 16921, provides that “[a]ll the functions and
19 powers of the Commission under the [FTC Act] are available to the Commission to
20 enforce compliance with” the FDCPA. Section 814 of the FDCPA also provides that
21 a violation of the FDCPA “shall be deemed to be an unfair or deceptive act or practice
22 in violation of” the FTC Act. Therefore, violations of Section 521 of the GLB Act
23 constitute unfair or deceptive acts or practices in violation of Section 5(a) of the FTC
24 Act, 15 U.S.C. § 45(a).

25
26
27 **COUNT FOUR**

28 38. In numerous instances, in connection with the marketing of home

1 mortgages, Defendants induce consumers to divulge their personal financial
2 information by representing that they are affiliated with certain financial institutions by
3 using the company names and logos of these financial institutions.

4 39. In truth and in fact, Defendants have no affiliation with the financial
5 institutions whose company names and logos Defendants use.

6 40. By engaging in this false representation, Defendants fraudulently obtain
7 “customer information of a financial institution,” including mortgage amount, rate, and
8 type.

9 41. Therefore, Defendants’ acts or practices violate Section 521 of the GLB
10 Act, 15 U.S.C. § 6821.

11 42. Therefore, Defendants’ acts or practices are false and misleading and
12 constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15
13 U.S.C. § 45(a).

14 **CONSUMER INJURY**

15 43. Defendants’ violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as
16 set forth above, have caused and continue to cause substantial injury to consumers
17 across the United States. Absent injunctive relief by this Court, Defendants are likely
18 to continue to injure consumers and harm the public interest.

19 **THIS COURT’S POWER TO GRANT RELIEF**

20 44. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
21 grant injunctive and other ancillary relief, including consumer redress, disgorgement,
22 and restitution to prevent and remedy any violations of any provision of law enforced
23 by the Commission.

24 45. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is
25 authorized to issue a preliminary injunction against Defendants’ violations of the FTC
26 Act, as well as such ancillary relief as rescission of contracts, restitution, disgorgement
27 of ill-gotten gains, and the refund of monies paid to redress the injury to consumers or
28 others resulting from Defendants’ violations of Section 5 of the FTC Act.

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6. Award Plaintiff such additional relief as the Court may deem just and proper.

Dated: November ____, 2002

Respectfully submitted,
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