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

11 **Federal Trade Commission,**

12 Plaintiff,

13 v.

14 **National Foreclosure Relief, Inc., et al.**
15 a corporation;

16 Defendants.
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Case No. SACV-09-117-DOC(MLGx)

**STIPULATED FINAL ORDER FOR
PERMANENT INJUNCTION AND
SETTLEMENT OF CLAIMS AS TO
DEFENDANT NATIONAL
FORECLOSURE RELIEF, INC.**

18 Plaintiff Federal Trade Commission (“FTC”) commenced this civil action on
19 February 2, 2009, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to
20 obtain preliminary and permanent injunctive and other equitable relief for
21 Defendants’ violations of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection
22 with the marketing and sale of mortgage loan modification and foreclosure relief
23 services. The FTC and Defendant National Foreclosure Relief, Inc. (“Defendant”)
24 have stipulated to the entry of this Final Order for Permanent Injunction and
25 Settlement of Claims (“Order”).

26 Having reviewed Plaintiff’s and Defendant’s Stipulation to Entry of Final
27 Order as to Defendant National Foreclosure Relief, Inc., and good cause appearing
28 therefor, the Court hereby orders as follows:

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 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Complaint seeks both permanent injunctive relief and consumer redress for Defendant’s 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 Complaint states a claim upon which relief can be granted against Defendant.

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendant. Venue in the Central District of California is proper.

4. 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.

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 Complaint to the date of entry of this Order. This settlement does not settle and resolve any matters not alleged in the Complaint. Defendant does not admit any of the allegations set forth in the Complaint, other than the jurisdictional facts, merely by stipulating and agreeing to the entry of this Order.

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 it 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.

1 3. “*Credit*” means the right granted by a creditor to a debtor to defer
2 payment of debt or to incur debt and defer its payment.

3 4. “*Credit Monitoring Program*” means a program that enables a
4 consumer to access information related to substantive changes in the consumer’s
5 credit record, credit history, or credit rating as recorded in the consumer’s consumer
6 report.

7 5. “*Debt relief service*” means any service, including debt management
8 plans, debt settlement, debt negotiation, and for-profit credit counseling, represented,
9 expressly or by implication, to renegotiate, settle, or in any way alter the terms of
10 payment or other terms of the debt between a consumer and one or more unsecured
11 creditors, servicers, or debt collectors, including but not limited to, a reduction in the
12 balance, interest rate, or fees owed by a consumer to an unsecured creditor, servicer,
13 or debt collector.

14 6. “*Defendant*” means National Foreclosure Relief, Inc. (“NFR”)

15 7. “*Document*” is synonymous in meaning and equal in scope to the usage
16 of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings,
17 graphs, charts, photographs, audio and video recordings, electronic email, computer
18 records, and other data compilations from which information can be obtained and
19 translated, if necessary, through detection devices into reasonably usable form. A
20 draft or non-identical copy is a separate “document” within the meaning of the term.

21 8. “*Financial related good or service*” means any good, service, plan, or
22 program that is represented, expressly or by implication, to (A) provide any
23 consumer, arrange for any consumer to receive, or assist any consumer in receiving,
24 credit, debit, or stored value cards; (B) improve, or arrange to improve, any
25 consumer’s credit record, credit history, or credit rating; (C) provide advice or
26 assistance to any consumer with regard to any activity or service the purpose of
27 which is to improve a consumer’s credit record, credit history, or credit rating; (D)

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1 provide any consumer, arrange for any consumer to receive, or assist any consumer in
2 receiving, a loan or other extension of credit; (E) provide any consumer, arrange for
3 any consumer to receive, or assist any consumer in receiving, debt relief services; (F)
4 provide any consumer, arrange for any consumer to receive, or assist any consumer in
5 receiving any service represented, expressly or by implication, to renegotiate, settle,
6 or in any way alter the terms of payment or other terms of the debt between a
7 consumer and one or more secured creditors, servicers, or debt collectors.

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

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

22 11. ***“Mortgage loan modification or foreclosure relief service”*** means any
23 good, service, plan, or program that is represented, expressly or by implication, to
24 assist a consumer in any manner to (A) stop, prevent, or postpone any residential
25 mortgage or deed of trust foreclosure sale; (B) obtain or arrange a modification of
26 any term of a residential loan, deed of trust, or mortgage; (C) obtain any forbearance
27 from any mortgage loan holder or servicer on any residential loan, deed of trust, or
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1 mortgage; (D) exercise any right of reinstatement of any residential mortgage loan;
2 (E) obtain, arrange, or attempt to obtain or arrange any extension of the period within
3 which the owner of residential property sold at foreclosure may cure his or her
4 default or reinstate his or her obligation; (F) obtain any waiver of an acceleration
5 clause contained in any promissory note or contract secured by a deed of trust or
6 mortgage on a residence in foreclosure or contained in that deed of trust; (G) obtain a
7 loan or advance of funds that is connected to the consumer's home ownership; (H)
8 avoid or ameliorate the impairment of the consumer's credit record, credit history, or
9 credit rating that is connected to the consumer's home ownership; (I) save the
10 consumer's residence from foreclosure; (J) assist the consumer in obtaining proceeds
11 from the foreclosure sale of the consumer's residence; (K) obtain or arrange a
12 pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure of a consumer's
13 residence; (L) obtain or arrange a refinancing, recapitalization, or reinstatement of a
14 residential loan, deed of trust, or mortgage; (M) audit or examine a consumer's
15 mortgage or home loan application; or (N) obtain, arrange, or attempt to obtain or
16 arrange any extension of the period within which the renter of residential property
17 sold at foreclosure may continue to occupy the property. The foregoing shall include
18 any manner of claimed assistance, including, but not limited to, debt, credit, budget,
19 or financial counseling; receiving money for the purpose of distributing it to
20 creditors; contacting creditors or servicers on behalf of the consumer; and giving
21 advice of any kind with respect to filing for bankruptcy.

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

25 13. ***“Receiver”*** or ***“Permanent Receiver”*** means Robb Evans and Robb
26 Evans & Associates, LLC.

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1 **II.**

2 **PROHIBITED REPRESENTATIONS RELATING TO FINANCIAL**
3 **RELATED GOODS AND SERVICES**

4 **IT IS FURTHER ORDERED** that Defendant and its successors, assigns,
5 officers, agents, servants, employees, and attorneys, and those persons or entities in
6 active concert or participation with any of them who receive actual notice of this
7 Order by personal service, facsimile transmission, email, or otherwise, whether acting
8 directly or through any corporation, subsidiary, division, or other device, in
9 connection with the advertising, marketing, promotion, offering for sale or sale of
10 any financial related good or service, are hereby permanently restrained and enjoined
11 from:

12 A. Misrepresenting or assisting others in misrepresenting, expressly or by
13 implication, any material fact, including but not limited to:

14 1. The terms or rates that are available for any loan or other
15 extension of credit, including but not limited to:

- 16 (a) closing costs or other fees;
- 17 (b) the payment schedule, the monthly payment amount(s), or
18 other payment terms, or whether there is a balloon payment; interest rate(s), annual
19 percentage rate(s), or finance charge; the loan amount, the amount of credit, the draw
20 amount, or outstanding balance; the loan term, the draw period, or maturity; or any
21 other term of credit;
- 22 (c) the savings associated with the credit;
- 23 (d) the amount of cash to be disbursed to the borrower out of
24 the proceeds, or the amount of cash to be disbursed on behalf of the borrower to any
25 third parties;
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1 (e) whether the payment of the minimum amount specified
2 each month covers both interest and principal, and whether the credit has or can result
3 in negative amortization;

4 (f) that the credit does not have a prepayment penalty or that
5 no prepayment penalty and/or other fees or costs will be incurred if the consumer
6 subsequently refinances; and

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

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

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

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

20 5. That a consumer will receive legal representation;

21 B. Advertising or assisting others in advertising credit terms other than
22 those terms that actually are or will be arranged or offered by a creditor or lender.

23 **III.**

24 **PROHIBITED REPRESENTATIONS RELATING TO ANY GOODS OR**
25 **SERVICES**

26 **IT IS FURTHER ORDERED** that Defendant and its successors, assigns,
27 officers, agents, servants, employees, and attorneys, and those persons or entities in
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1 from demanding payment on or enforcing or threatening to enforce any contract or
2 agreement with any consumer, in conjunction with the sale of any mortgage loan
3 modification or foreclosure relief service, entered into by Defendant prior to the
4 effective date of this Order.

5 **V.**

6 **PROHIBITION ON SALE OF CUSTOMER INFORMATION**

7 **IT IS FURTHER ORDERED** that Defendant and its agents, servants,
8 employees, and attorneys, and those persons or entities in active concert or
9 participation with any of them who receive actual notice of this Order by personal
10 service or otherwise, whether acting directly or through any corporation, subsidiary,
11 division, or other device, are permanently restrained and enjoined from:

12 A. disclosing, using, or benefitting from customer information, including
13 the name, address, telephone number, email address, social security number, other
14 identifying information, or any data that enables access to a customer's account
15 (including a credit card, bank account, or other financial account), of any person
16 which any Defendant obtained prior to entry of this Order in connection with the
17 advertising, marketing, promotion, offering for sale or sale of any mortgage loan
18 modification or foreclosure relief service; and

19 B. failing to dispose of such customer information in all forms in their
20 possession, custody, or control within thirty (30) days after entry of this Order.
21 Disposal shall be by means that protect against unauthorized access to the customer
22 information, such as by burning, pulverizing, or shredding any papers, and by erasing
23 or destroying any electronic media, to ensure that the customer information cannot
24 practicably be read or reconstructed.

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

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1 **VI.**

2 **MONETARY RELIEF**

3 **IT IS FURTHER ORDERED** that:

4 A. Judgment is hereby entered against Defendant in the amount of
5 \$12,000,000.00 (TWELVE MILLION DOLLARS);

6 B. All funds paid pursuant to this Paragraph shall be deposited into a fund
7 administered by the Commission or its agent to be used for equitable relief, including
8 but not limited to restitution and any attendant expenses for the administration of any
9 restitution fund. In the event that direct restitution to consumers is wholly or partially
10 impracticable or funds remain after restitution is completed, the Commission may
11 apply any remaining funds for such other equitable relief (including consumer
12 information remedies) as it determines to be reasonably related to the practices
13 alleged in the Complaint. Any funds not used for such equitable relief shall be
14 deposited to the Department of the Treasury as disgorgement and not as a fine or
15 penalty. The Commission shall have full and sole discretion to:

- 16 1. Determine the criteria for participation by individual claimants in
17 any consumer restitution program implemented pursuant to this
18 Order;
- 19 2. Determine the manner and timing of any notices to be given to
20 consumers regarding the existence and terms of such programs,
21 and
- 22 3. Delegate any and all tasks connected with such restitution
23 program to any individual, partnerships, or corporations; and pay
24 reasonable fees, salaries, and expenses incurred thereby from the
25 payments made pursuant to this Order;

26 C. Defendant expressly waives any rights it may possess to litigate the issue
27 of monetary relief. Defendant acknowledges and agrees that all money paid pursuant
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1 to this Order is irrevocably paid to the Commission for purposes of settlement
2 between Plaintiff and Defendant;

3 D. Defendant shall have no right to challenge the Commission's choice of
4 remedies under this Paragraph;

5 E. Defendants relinquish all dominion, control, and title to the funds paid to
6 the fullest extent permitted by law. Defendants shall make no claim to or demand for
7 return of the funds, directly or indirectly, through counsel or otherwise; and

8 F. Defendants agree that the facts as alleged in the Complaint filed in this
9 action shall be taken as true without further proof in any bankruptcy case or
10 subsequent civil litigation pursued by the Commission to enforce its rights to any
11 payment or money judgment pursuant to this Order, including but not limited to a
12 nondischargeability complaint in any bankruptcy case. Defendants further stipulate
13 and agree that the facts alleged in the Complaint establish all elements necessary to
14 sustain an action pursuant to, and that this Order shall have collateral estoppel effect
15 for purposes of Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.
16 § 523(a)(2)(A).

17 **VII.**

18 **RECEIVERSHIP**

19 **IT IS FURTHER ORDERED** that:

20 A. Robb Evans, and Robb Evans & Associates, shall continue serving as
21 Receiver until further order of this Court, with all of the same rights, duties and
22 powers as set forth in the stipulated Preliminary Injunction which appointed Robb
23 Evans and Robb Evans & Associates as Permanent Receiver over Defendant.

24 B. The Receiver is further expressly authorized and directed to liquidate
25 any and all assets of the Defendant.
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1 C. In addition to liquidating assets and collecting debts owed to Defendant,
2 the Receiver shall finalize the affairs of the receivership estate as expeditiously as
3 possible.

4 D. Upon finalization of all business of the receivership estate, including
5 collection of all debts and liquidation of all assets, the Receiver shall submit a final
6 report to the Court, including a final accounting and request for payment, together
7 with a request for termination of the receivership and discharge.

8 E. After (1) satisfaction of all receivership duties, including filing of the
9 Receiver's final report and the Court's approval of the same, and (2) final
10 payment of the Receiver's fees and expenses, the Receiver shall turnover to the FTC
11 all remaining funds in the Receivership estate. Funds turned over to the FTC shall be
12 applied to the amount owing under the Judgment in Paragraph VI of this Order.

13 **VIII.**

14 **COMPLIANCE MONITORING**

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

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

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

- 25 1. Obtaining discovery from any person, without further leave of court,
26 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45,
27 and 69; and
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1 B. One hundred eighty (180) days after the date of entry of this Order and
2 annually thereafter for a period of five (5) years, Defendant shall provide a written
3 report to the FTC, which is true and accurate and sworn to under penalty of perjury,
4 setting forth in detail the manner and form in which Defendant has complied and is
5 complying with this Order. This report shall include, but not be limited to:

- 6 1. A copy of each acknowledgment of receipt of this Order, obtained
7 pursuant to Paragraph XI.B, below; and
- 8 2. Any other changes required to be reported under part A of this
9 Paragraph;

10 *Provided, however,* that this requirement shall not apply to the Receiver if the
11 receivership has not been terminated as of 180 days after the date of entry of this
12 Order;

13 C. Defendant shall notify the Commission of the filing of a bankruptcy
14 petition by Defendant within fifteen (15) days of filing;

15 D. For the purposes of this Order, Defendant shall, unless otherwise
16 directed by the Commission's authorized representatives, send all reports and
17 notifications required by this Order to the Commission by overnight courier, using
18 the following address:

19 Associate Director of Enforcement
20 Federal Trade Commission
21 600 Pennsylvania Ave., N.W., Room NJ2122
22 Washington, D.C. 20580

23 Re: **FTC v. National Foreclosure Relief, Inc.**
24 Civil Action No. SACV-09-117 DOC

25 *Provided that,* in lieu of overnight courier, Defendant may send such reports or
26 notifications by first-class mail, but only if Defendant contemporaneously sends an
27 electronic version of such report or notification to the Commission at:
28 DEBrief@ftc.gov; and

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

3 **X.**

4 **RECORD KEEPING PROVISIONS**

5 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the
6 date of entry of this Order, Defendant is hereby restrained and enjoined from failing
7 to create and retain the following records:

8 A. Accounting records that reflect the cost of goods or services sold,
9 revenues generated, and the disbursement of such revenues;

10 B. Personnel records accurately reflecting: the name, address, email
11 address (if any) and telephone number of each person employed in any capacity by
12 such business, including as an independent contractor; that person's job title or
13 position; the date upon which the person commenced work; and the date and reason
14 for the person's termination, if applicable;

15 C. Customer files containing the names, addresses, phone numbers, dollar
16 amounts paid, quantity of items or services purchased, and description of items or
17 services purchased, to the extent such information is obtained in the ordinary course
18 of business;

19 D. Complaints and refund requests (whether received directly, indirectly or
20 through any third party) and any responses to those complaints or requests;

21 E. Copies of all sales scripts, training materials, advertisements, website
22 printouts, or other marketing materials; and

23 F. All records and documents necessary to demonstrate full compliance
24 with each provision of this Order, including but not limited to, copies of
25 acknowledgments of receipt of this Order, required by Paragraph XI.B, below, and all
26 reports submitted to the FTC pursuant to Paragraph IX, above (entitled "Compliance
27 Reporting By Defendant").
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1 **XI.**

2 **DISTRIBUTION OF ORDER BY DEFENDANT**

3 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date
4 of entry of this Order, Defendant shall deliver copies of this Order as directed below:

5 A. Defendant must deliver a copy of this Order to (1) all of its principals,
6 officers, directors, and managers, (2) all of its employees, agents, and representatives
7 who engage in conduct related to the subject matter of the Order, and (3) any
8 business entity resulting from any change in structure set forth in Paragraph IX.A
9 above. For current personnel, delivery shall be within five (5) days of service of this
10 Order upon such Defendant. For new personnel, delivery shall occur prior to them
11 assuming their responsibilities. For any business entity resulting from any change in
12 structure set forth in Paragraph IX.A, delivery shall be at least ten (10) days prior to
13 the change in structure.

14 B. Defendant must secure a signed and dated statement acknowledging
15 receipt of the Order, within thirty (30) days of delivery, from all persons receiving a
16 copy of the Order pursuant to this Paragraph.

17 **XII.**

18 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**
19 **BY DEFENDANT**

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

23 **XIII.**

24 **COOPERATION WITH FTC COUNSEL**

25 **IT IS FURTHER ORDERED** that Defendant shall, in connection with this
26 action or any subsequent investigations related to or associated with the transactions
27 or the occurrences that are the subject of the FTC's Complaint, cooperate in good
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1 faith with the FTC and appear, or cause its officers, employees, representatives, or
2 agents to appear, at such places and times as the FTC shall reasonably request, after
3 written notice, for interviews, conferences, pretrial discovery, review of documents,
4 and for such other matters as may be reasonably requested by the FTC. If requested
5 in writing by the FTC, Defendant shall appear, or cause its officers, employees,
6 representatives, or agents to appear, and provide truthful testimony in any trial,
7 deposition, or other proceeding related to or associated with the transactions or the
8 occurrences that are the subject of the Complaint, without the service of a subpoena.

9 **XIV.**

10 **SEVERABILITY**

11 **IT IS FURTHER ORDERED** that the provisions of this Order are separate
12 and severable from one another. If any provision is stayed or determined to be
13 invalid, all of the remaining provisions shall remain in full force and effect.

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XV.

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: April 20, 2010



DAVID O. CARTER
United States District Judge

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