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**FEDERAL TRADE COMMISSION
CENTRAL DISTRICT OF CALIFORNIA**

Federal Trade Commission,

Plaintiff,

v.

Loss Mitigation Services, Inc., et al.

Defendants.

Case No. SACV09-800 DOC (ANx)

**FINAL ORDER FOR
PERMANENT INJUNCTION
AND ELEMENTS OF CLAIMS
AND DEFENDANT
BENADEE E.K.A. (BENADEE CARL
BENADEE CARE)**

Judge: Hon. David O. Carter

Plaintiff Federal Trade Commission (“FTC”) commenced this civil action on July 13, 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’ 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 Court entered a Temporary Restraining Order as to all parties on July 20, 2009 (“TRO”) [Docket Itm. #14], a Preliminary Injunction Order as to Defendants Loss Mitigation Services, Inc. (“LMS”) and Synergy Financial Management Corporation,

1 also d/b/a Direct Lender and DirectLender.com (“Synergy” or “Direct Lender”) on
2 August 18, 2009 [Docket Itm. #41], a Preliminary Injunction Order as to Bernadette
3 Perry and Tony Perry on August 19, 2009 [Docket Itm. #43] (“Perry PI Order”), and
4 a Preliminary Injunction Order as to Dean Shafer on August 19, 2009 [Docket Itm.
5 #44].

6 The TRO in this case enjoined Defendant Bernadette Perry from, among other
7 things, collecting advance fees from consumers, and making certain representations
8 about Defendants’ services. The TRO also contained an asset freeze. The Perry PI
9 Order enjoined Defendant Bernadette Perry from, among other things, collecting
10 advance fees from consumers, and collecting payments from consumers for services
11 prior to the date of the Perry PI Order. The Perry PI Order continued the asset freeze
12 from the TRO, and provided certain allowances, such as reasonable and necessary
13 living expenses.

14 Plaintiff FTC and Defendant Pro Se Bernadette Perry have now stipulated to
15 entry of a Final Order for Permanent Injunction and Settlement of Claims as to
16 Defendant Bernadette Perry (A.K.A. Bernadette Carr and Bernadette Carr-Perry).
17 This Court, having considered the Complaint, exhibits, memoranda, declarations, and
18 other submissions of the parties, and now being advised in the premises, hereby
19 enters this Order:

20 FINDINGS

21 1. This is an action by the FTC brought pursuant to Sections 5 and 13(b)
22 of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Complaint seeks both permanent
23 injunctive relief and consumer

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1 provide any consumer, arrange for any consumer to receive, or assist any consumer
2 in receiving, a loan or other extension of credit, or arrange

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

21 9. "Person" means a natural person, organization, or other legal entity,
22 including a corporation, partnership, proprietorship, association, cooperative, or any
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ORDER
BAN ON MORTGAGE LOAN MODIFICATION AND FORECLOSURE
RELIEF SERVICES

I. INTERFERE WITH ORDER that Defendant Bernadette Perry, whether acting directly or through any other person, is permanently restrained and enjoined from

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

B. Assisting others engaged in advertising

1 actual notice of this Order by personal service, facsimile transmission, email, or
2 otherwise, whether acting directly or through any corporation, subsidiary, division,
3 or other device, in connection with the advertising, marketing, promotion, offering
4 for sale or sale of any financial related good or service, are hereby permanently
5 restrained and enjoined from:

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

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

10 (a) closing costs or other fees;

11 (b) the payment schedule, the monthly payment amount(s), or
12 other payment terms, or whether there is a balloon payment; interest rate(s), annual
13 percentage rate(s), or finance charge; the loan amount, the amount of credit, the draw
14 amount, or outstanding balance; the loan term, the draw period, or maturity; or any
15 other term of credit;

16 (c) the savings associated with the credit;

17 (d) the amount of cash to be disbursed to the borrower out of
18 the proceeds, or the amount of cash to be disbursed on behalf of the borrower to any
19 third parties;

20 (e) whether the payment of the minimum amount specified
21 each month covers both interest and principal, and whether the credit has or can
22 result in negative amortization;

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

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

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

5 3. Any person’s ability to improve or otherwise affect a consumer’s
6 credit record, credit history, or credit rating or ability to obtain credit;

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

12 5. That a consumer will receive legal representation;

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

15 **PROHIBITION REGARDING ANY GOODS OR**

16 **SERVICES**

17 **III. THIS ORDER**

 that Defendant Bernadette Perry and her

18 successors, assigns, officers, agents, servants, employees, and attorneys, and those
19 persons or entities in active concert or participation with any of them who receive
20 actual notice of this Order by personal service, facsimile transmission, email, or
21 otherwise, whether acting directly or through any corporation, subsidiary, division,
22 or other device, in connection with the advertising, marketing, promotion, offering
23 for sale or sale of any good, service, plan, or program are hereby permanently
24 restrained and enjoined from misrepresenting or assisting others in misrepresenting,
25 expressly or by implication, any material fact, including but not limited to:

26 A. Any material aspect of the nature or terms of any refund, cancellation,
27 exchange, or repurchase policy, including, but not limited to, the likelihood of a
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1 C. Defendant Bernadette Perry stipulates and agrees that the judgment
2 ordered by this Section is not dischargeable in bankruptcy, pursuant to Section 523
3 of the Bankruptcy Code, 11 U.S.C. § 523;

4 D. The judgment entered pursuant to this Section is equitable monetary
5 relief, solely remedial in nature, and not a fine, penalty, punitive assessment or
6 forfeiture;

7 E. Upon request, Defendant Bernadette Perry is hereby required, in
8 accordance with 31 U.S.C. § 7701, to furnish to the FTC any tax identification
9 numbers, which shall be used for purposes of collecting and reporting on any
10 delinquent amount arising out of this Order; and

11 F. Upon request, Defendant Bernadette Perry is hereby required to furnish
12 to the FTC with copies of any tax returns submitted for the years 2004 through the
13 present; and

14 G. Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
15 § 1681b(1), any consumer reporting agency may furnish a consumer report
16 concerning Defendant Bernadette Perry to the FTC, which shall be used for purposes
17 of collecting and reporting on any delinquent amount arising out of this Order.

18 **RIGHT ROEN**

19 **IN WITNESS WHEREOF** that, the FTC's agreement to, and the Court's
20 approval of, this Order is expressly premised on the truthfulness, accuracy and
21 completeness of the revised financial statement submitted to FTC counsel by
22 Defendant Bernadette Perry on April 8, 2010 and the sworn testimony given by
23 Defendant Bernadette Perry on or about December 11, 2009. If, upon motion by the
24 FTC, the Court finds that: (1) the financial statement or sworn testimony of
25 Defendant Bernadette Perry contain any material misrepresentation or omission, or
26 (2) Defendant Bernadette Perry receives any money or assets owed to her as of the
27 date of entry of this Order by any Defendant named in this civil action, or their
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1 officers, agents, servants, employees, and all persons and entities in active concert or
2 participation with them, including pursuant to any chose of action to recover money
3 or assets from such persons, the suspended judgment entered in Section V of this
4 Order shall become immediately due and payable. Provided, however, in all other
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1 accuracy of Defendant Bernadette Perry's financial statement or sworn testimony
2 upon which the FTC's agreement to this Order is expressly premised:

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

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

11 1. obtaining discovery from any person, without further leave of
12 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and
13 69;

14 2. posing as consumers and suppliers to Defendant Bernadette
15 Perry, her employees, or any other entity managed or controlled in whole or in part
16 by Defendant Bernadette Perry, without the necessity of identification or prior
17 notice; and

18 C. Defendant Bernadette Perry shall permit representatives of the FTC to
19 interview any employer, consultant, independent contractor, representative, agent, or
20 employee who has agreed to such an interview, relating in any way to any conduct
21 subject to this Order. The person interviewed may have counsel present.

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

COMPLIANCE ORDER

IX INTERORDER that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of seven (7) years from the date of entry of this Order,

1. Defendant Bernadette Perry shall notify the FTC of the following:

a. Any changes in her residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in her employment status (including self-employment), and any change in her 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 she 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 her duties and responsibilities in connection with the business or employment; and

c. Any changes in her name or use of any aliases or fictitious names;

2. Defendant Bernadette Perry shall notify the FTC of any changes in structure of any Corporate Defendant or any business entity that she 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 proposed change in the business entity about which Defendant Bernadette Perry learns less than thirty (30) days prior to the date such action is to take place, she shall notify the FTC as soon as is practicable after obtaining such knowledge.

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1 Provided that, in lieu of overnight courier, Defendant Bernadette Perry may send
2 such reports or notifications by first-class mail, but only if she contemporaneously
3 sends an electronic version of such report or notification to the FTC at:
4 DEBrief@ftc.gov.

5 E. For purposes of the compliance reporting and monitoring required by
6 this Order, the FTC is authorized to communicate directly with Defendant Bernadette
7 Perry.

8 **RECORD KEEPING PROVISIONS**

9 **X IT IS HEREBY ORDERED** that, for a period of ten (10) years from the
10 date of entry of this Order, in connection with any business where Defendant
11 Bernadette Perry is the majority owner of the business or directly or indirectly
12 manages or controls the business, Defendant Bernadette Perry and her agents,
13 employees, officers, corporations, and those persons in active concert or participation
14 with him who receive actual notice of this Order by personal service or otherwise,
15 are hereby restrained and enjoined from failing to create and retain the following
16 records:

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

19 B. Personnel records accurately reflecting: the name, address, and
20 telephone number of each person employed in any capacity by such business,
21 including as an independent contractor; that person's job title or position; the date
22 upon which the person commenced work; and the date and reason for the person's
23 termination, if applicable;

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

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1 change in structure set forth in Subsection A.2 of the Section titled “Compliance
2 Reporting,” delivery shall be at least ten (10) days prior to the change in structure.

3 B. Defendant Bernadette Perry as Employee or Non-Control Person: For
4 any business where Defendant Bernadette Perry is not a controlling person of a
5 business but otherwise engages in conduct related to the subject matter of Section I
6 of this Order (entitled Ban on Mortgage Loan Modification and Foreclosure Relief
7 Services) or Section II of this Order (entitled Prohibited Representations Relating to
8 Financial Related Goods and Services), Defendant Bernadette Perry must deliver a
9 copy of this Order to all principals and managers of such business before engaging in
10 such conduct.

11 C. Defendant Bernadette Perry must secure a signed and dated statement
12 acknowledging receipt of this Order, within

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RETENTION OF JURISDICTION

VI. ITSELF ORDER that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

ITSELF ORDER, this 14th day of July, 2010.

UNITED STATES DISTRICT JUDGE
David O. Carter