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

Federal Trade Commission,) Case No. SACV09-800 DOC (ANx)
Plaintiff,) DEFAULT JUDGMENT AND
v.) ORDER FOR PERMANENT
Loss Mitigation Services, Inc., <i>et al.</i> ,) INJUNCTION AND
Defendants.) MONETARY RELIEF AS TO
) CORPORATE DEFENDANTS
) LOSS MITIGATION SERVICES,
) INC. AND SYNERGY
) FINANCIAL MANAGEMENT
) CORPORATION

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 Loss Mitigation Services, Inc. (“LMS”), Synergy Financial

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1 be granted against Defendants.

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

4 4. The FTC served the Summons and Complaint on Defendant LMS on
5 July 14, 2009, as evidenced by the Proof of Service filed with this Court [Dkt. 13].
6 The FTC served the Summons and Complaint on Direct Lender on July 28, 2009,
7 as evidenced by the Proof of Service filed with this Court [Dkt. 38].

8 5. Defendants LMS and Direct Lender have failed to answer or
9 otherwise respond to the Complaint. On December 23, 2009, pursuant to Rule
10 55(a), the FTC filed a Request for Entry of Clerk's Default as to the Corporate
11 Defendants [Dkt. 72]. The Clerk of Court entered default against LMS and Direct
12 Lender on December 23, 2009. [Dkt. 76].

13 6. The FTC is now entitled to a default judgment as to Corporate
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1 final default judgment as to Corporate Defendants would aid in the expeditious
2 resolution of the case and is not likely to lead to inconsistent adjudications or
3 logically inconsistent results, there is no just reason for delay in certifying this
4 Order as final pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

5 **DEFINITIONS**

6 For the purpose of this Order, the following definitions shall apply:

7 1. ***“Assisting others”*** includes, but is not limited to, providing any of the
8 following goods or services to another pe

1 (“Direct Lender”); (c) Dean Shafer; (D) Bernadette Perry (a.k.a Bernadette Carr
2 and Bernadette Carr-Perry) and (E) Marion Anthony (a.k.a. “Tony”) Perry.

3 **“Corporate Defendants”** means, individually or collectively, LMS and Direct
4 Lender and their successor and assigns.

5 5. **“Financial related good or service”** means any good, service, plan, or
6 program that is represented, expressly or by implication, to (A) provide any
7 consumer, arrange for any consumer to receive, or assist any consumer in
8 receiving, credit, debit, or stored value cards; (B) improve, or arrange to improve,
9 any consumer’s credit record, credit history, or credit rating; (C) provide advice or
10 assistance to any consumer with regard to any activity or service the purpose of
11 which is to improve a consumer’s credit record, credit history, or credit rating;
12 (D) provide any consumer, arrange for any consumer to receive, or assist any
13 consumer in receiving, a loan or other extension of credit; (E) provide any
14 consumer, arrange for any consumer to receive, or assist any consumer in
15 receiving, debt relief services; (F) provide any consumer, arrange for any consumer
16 to receive, or assist any consumer in receiving any service represented, expressly
17 or by implication, to renegotiate, settle, or in any way alter the terms of payment or
18 other terms of the debt between a consumer and one or more secured creditors,
19 servicers, or debt collectors.

20 6. **“Federal homeowner relief or financial stability program”** means
21 any program (including its sponsoring agencies, telephone numbers, and Internet
22 websites) operated or endorsed by the United States government to provide relief
23 to homeowners or stabilize the economy, including but not limited to (A) the
24 Making Home Affordable Program; (B) the Financial Stability Plan; (C) the
25 Troubled Asset Relief Program and any other program sponsored or operated by
26 the United States Department of the Treasury; (D) the HOPE for Homeowners
27 program, any program operated or created pursuant to the Helping Families Save
28 Their Homes Act, and any other program sponsored or operated by the Federal

1 Housing Administration; or (E) any program sponsored or operated by the United
2 States Department of Housing and Urban Development (“HUD”), the HOPE NOW
3 Alliance, the Homeownership Preservation Foundation, or any other
4 HUD-approved housing counseling agency.

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

7 8. **“Mortgage loan modification or foreclosure relief service”** means
8 any good, service, plan, or program that is represented, expressly or by implication,
9 to assist a consumer in any manner to (A) stop, prevent, or postpone any home
10 mortgage or deed of trust foreclosure sale; (B) obtain or arrange a modification of
11 any term of a home loan, deed of trust, or mortgage; (C) obtain any forbearance
12 from any mortgage loan holder or servicer; (D) exercise any right of reinstatement
13 of any mortgage loan; (E) obtain, arrange, or attempt to obtain or arrange any
14 extension of the period within which the owner of property sold at foreclosure may
15 cure his or her default or reinstate his or

1 for sale or sale of any financial related good or service, are hereby permanently
2 restrained and enjoined from:

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

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

7 (a) closing costs or other fees;
8 (b) the payment schedule, the monthly payment amount(s),
9 or other payment terms, or whether there is a balloon payment; interest rate(s),
10 annual percentage rate(s), or finance charge; the loan amount, the amount of credit,
11 the draw amount, or outstanding balance; the loan term, the draw period, or
12 maturity; or any other term of credit;

13 (c) the savings associated with the credit;
14 (d) the amount of cash to be disbursed to the borrower out of
15 the proceeds, or the amount of cash to be disbursed on behalf of the borrower to
16 any third parties;

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

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

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

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

1 homeowner relief or financial stability program, or any other program;

2 C. The total costs to purchase, receive, or use, and the quantity of, the
3 good or service;

4 D. Any material restriction, limitation, or condition to purchase, receive,
5 or use the good or service; and

6 E. Any material aspect of the performance, efficacy, nature, or
7 characteristics of the good or service.

8 **PROHIBITION ON DISCLOSING CUSTOMER INFORMATION**

9 **IV. IT IS FURTHER ORDERED** that the Corporate Defendants, and their
10 officers, agents, servants, employees and attorneys, and all other persons in active
11 concert or participation with any of them who receive actual notice of this Order by
12 personal service or otherwise, are permanently restrained and enjoined from:

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15 **bers, other**

16 **enables ccreyn toa custroinc**
17 **other financial account)e, fm**

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

4 D. **Provided, however,** that the Receiver shall retain, or otherwise
5 arrange for the retention, of such documents that the Receiver has secured in
6 connection with its duties as a receiver until final disposition of this action as to all
7 Defendants.

8 MONETARY JUDGMENT

9 V. **IT IS FURTHER ORDERED** that:

10 A. Judgment is hereby entered against the Corporate Defendants, jointly
11 and severally, in the amount of six million two hundred sixty-two thousand five
12 hundred nine dollars and sixty-two cents (\$6,262,509.62). This amount shall
13 become immediately due and payable by the Corporate Defendants upon entry of
14 this Order, and interest computed at the rate prescribe under 28 U.S.C. § 1961, as
15 amended, shall immediately begin to accrue on the unpaid balance;

16 B. All funds paid pursuant to this Order shall be deposited into a fund
17 administered by the Commission or its agent to be used for equitable relief,
18 including, but not limited to, consumer redress, and any attendant expenses for the
19 administration of such equitable relief. If the Commission determines, in its sole
20 discretion, that redress to consumers is wholly or partially impracticable or funds
21 remain after redress is completed, the Commission may apply any remaining funds
22 for such other equitable relief as it determines to be reasonably related to the
23 Corporate Defendants' practices alleged in the Complaint. Any funds not used for
24 such equitable relief shall be deposited to the United States Treasury as
25 disgorgement. The Corporate Defendants shall have no right to challenge the
26 Commission's choice of remedies under this Section, and shall have no right to
27 contest the manner of distribution chosen by the Commission; *provided however,*
28 that nothing in this paragraph shall affect or alter the distribution of the funds in the

1 Monterrey County Bank account ending in the four digits pursuant to the
2 priorities set forth in CoueC0's dcl1fh5elie four di[our dig13.9sz13.9815 0 135.8(3)T7

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

3 ***Provided however,*** that nothing in this Order shall limit the FTC's lawful use of
4 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
5 §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or
6 information relevant to unfair or deceptive acts or practices in or affecting

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

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

8 **RECORD KEEPING PROVISIONS**

9 **VIII. IT IS FURTHER ORDERED** that, for a period of ten (10) years from the
10 date of entry of this Order, the Corporate Defendants, and any business in which
11 they, individually or collectively, are the majority owner or directly or indirectly
12 control, are hereby restrained and enjoined from failing to create and retain the
13 following records:

14 A. Accounting records that reflect th
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1 E. Copies of all sales scripts, training materials, advertisements, direct
2 mail solicitations, contracts sent to consumers, or other marketing materials; and

3 F. All records and documents necessary to demonstrate full compliance
4 with each provision of this Order, including but not limited to, copies of
5 acknowledgments of receipt of this Order required by the Sections titled
6 "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports
7 submitted to the FTC pursuant to the Section titled "Compliance Reporting."

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9 **DISTRIBUTION OF ORDER**

10 **IX. IT IS FURTHER ORDERED** that, for a period of seven (7) years from the
11 date of entry of this Order, Corporate Defendants must deliver copies of the Order
12 as directed below:

13 A. Each Corporate Defendant must deliver a copy of this Order to (1) all
14 of its principals, officers, directors, and managers; (2) all of its employees, agents,
15 and representatives of that business who engage in conduct related to the subject
16 matter of the Order; and (3) any business entity resulting from any change in
17 structure set forth in Subsection A.2 of the Section titled "Compliance Reporting."
18 For current personnel, delivery shall be within five (5) days of service of this Order
19 upon such Corporate Defendants. For new personnel, delivery shall occur prior to
20 them assuming their responsibilities. For any business entity resulting from any
21 change in structure set forth in Subsection A.2 of the Section titled "Compliance
22 Reporting," delivery shall be at least ten (10) days prior to the change in structure.

23 B. Corporate Defendants must secure a signed and dated statement
24 acknowledging receipt of the Order, within thirty (30) days of delivery, from all
25 persons receiving a copy of the Order pursuant to this Section.

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