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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 Federal Trade Commission,
18 Plaintiff,
19 v.
20 Loss Mitigation Services, Inc.
21 and
22 Synergy Financial Management
Corporation, also d/b/a Direct Lender
23 and DirectLender.com
24 and
25 Dean Shafer
26 and
27 Bernadette Perry (a.k.a. Bernadette Carr
and Bernadette Carr-Perry)
28 and

SACV09-800 DOC(ANX)

Case No.
**COMPLAINT FOR
PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

1 Marion Anthony (a.k.a. "Tony") Perry,
2 Defendants. }

3 Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:
4

5 1. The FTC brings this action under Section 13(b) of the Federal Trade
6 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain temporary,
7 preliminary, and permanent injunctive relief, rescission or reformation of contracts,
8 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other
9 equitable relief for Defendants' acts or practices in violation of Section 5(a) of the
10 FTC Act, 15 U.S.C. § 45(a).

11 **JURISDICTION AND VENUE**

12 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
13 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

14 3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and
15 15 U.S.C. § 53(b).

16 **PLAINTIFF**

17 4. Plaintiff FTC is an independent agency of the United States
18 Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section
19 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or
20 practices in or affecting commerce. The FTC is authorized to initiate federal
21 district court proceedings, by its own attorneys, to enjoin violations of the FTC Act
22 and to secure such equitable relief as may be appropriate in each case, including
23 restitution and disgorgement. 15 U.S.C. §§ 53(b), 56(a)(2)(A).

24 **DEFENDANTS**

25 5. Defendant Synergy Financial Management Corporation ("Synergy"),
26 also doing business under the fictitious business names Direct Lender and
27 DirectLender.Com, is a California corporation with its principal place of business
28 at 8700 Warner Avenue, Suite 200, Fountain Valley, CA 92708. Synergy transacts

1 business in this district and throughout the United States. From at least late 2007
2 through at least May 2008, Synergy, acting alone or in concert with others,
3 advertised, marketed, distributed, or sold purported mortgage loan modification
4 and foreclosure relief services to consumers throughout the United States.

5 6. Defendant Loss Mitigation Services, Inc. ("LMS") is a California
6 corporation with its current principal place of business at 1700 Carnegie Avenue,
7 Suite 250, Santa Ana, CA 92705. Previously, LMS's principal place of business
8 was at 8700 Warner Avenue, Suite 200, Fountain Valley, CA 92708. LMS
9 transacts business in this district and throughout the United States. Beginning in at
10 least February 2008, LMS, acting alone or in concert with others, has advertised,
11 marketed, distributed or sold purported mortgage loan modification and
12 foreclosure relief services to consumers throughout the United States.

13 7. Defendant Dean Shafer is CEO of LMS and is or has served as an
14 officer of the company, including but not limited to, in the capacity of CFO,
15 Secretary and a director. At all times material to this Complaint, acting alone or in
16 concert with others, he has formulated, directed, controlled, had the authority to
17 control, or participated in the acts and practices of Defendants set forth in this
18 Complaint. Defendant Shafer resides in this district and in connection with the
19 matters alleged herein, transacts or has transacted business in this district.

20 8. Defendant Bernadette Perry, a.k.a. Bernadette Carr and Bernadette
21 Carr-Perry, is or has served as an officer of Synergy, including, but not limited to,
22 in the capacity of President, Vice President and Secretary, and is or has served as a
23 member of the "Operational Executive Team" of LMS. At all times material to
24 this Complaint, acting alone or in concert with others, she has formulated, directed,
25 controlled, had authority to control, or participated in the acts and practices of
26 Defendants set forth in this Complaint. Defendant Bernadette Perry resides in this
27 district and in connection with the matters alleged herein, transacts or has
28 transacted business in this district.

1 9. Defendant Marion Anthony (a.k.a. "Tony") Perry is or has served as
2 President and Acting Chief Operations Officer of LMS. At all times material to
3 this Complaint, acting alone or in concert with others, he has formulated, directed,
4 controlled, or had authority to control, or participated in the acts and practices of
5 Defendants set forth in this Complaint. Defendant Tony Perry resides in this
6 district and in connection with the matters alleged herein, transacts or has
7 transacted business in this district.

8 10. From at least February 2008 through at least May 2008, Synergy and
9 LMS operated as a common enterprise while engaging in the deceptive acts and
10 practices alleged below. During this time, Synergy and LMS shared office space
11 and employees, were commonly controlled, and participated in a common scheme
12 to deceive consumers. Because Synergy and LMS operated as a common
13 enterprise, each of them is jointly and severally liable for the acts and practices
14 alleged below beginning no later than February 2008 and ending no earlier than
15 May 2008. Individual defendants Dean Shafer, Bernadette Perry, and Tony Perry
16 formulated, directed, controlled, had the authority to control, or participated in the
17 acts and practices of the common enterprise.

18 **COMMERCE**

19 11. At all times relevant to this complaint, Defendants have maintained a
20 substantial course of trade in or affecting commerce, as "commerce" is defined in
21 Section 4 of the FTC Act, 15 U.S.C. § 44.

22 **AVAILABILITY OF FREE LOAN MODIFICATION**
23 **AND FORECLOSURE RELIEF SERVICES**

24 12. Numerous mortgage lenders and servicers have instituted free
25 programs to assist financially distressed homeowners by offering them the
26 opportunity to modify loans that have become unaffordable. Many of these "loan
27 modification" programs have expanded dramatically as lenders have increased
28 participation in the President's "Making Home Affordable" plan. Moreover,

1 numerous major mortgage lenders and servicers, non-profit and community-based
2 organizations, the federal government, and the news media have helped publicize
3 the availability of these free mortgage loan modification programs. Lenders often
4 notify consumers of the availability of these programs, or of consumers' eligibility,
5 through their "loss mitigation" departments. Proposed defendants divert
6 consumers from these free programs and induce them to spend thousands of dollars
7 on their purported "Loss Mitigation Services."

8 DEFENDANTS' BUSINESS PRACTICES

9 13. Since at least late 2007, Defendants have engaged in a course of
10 conduct to advertise, market, offer to sell, and sell to homeowners purported
11 mortgage loan modification and foreclosure relief services.

12 14. Defendants typically have charged homeowners between \$2,500 and
13 \$5,500 in up-front fees and have purported that they will modify homeowners'
14 mortgages in all or virtually all cases. Defendants also have represented that they
15 can prevent foreclosure.

16 15. Defendants have marketed their services to homeowners who are in
17 financial distress, delinquent on their mortgage loans, or in danger of losing their
18 homes to foreclosure.

19 16. Defendants' primary means of making initial contact with
20 homeowners has been to send direct mail solicitations targeted to homeowners who
21 may be in financial distress, including but not limited to those with mortgage loans
22 scheduled to reset to higher payment levels, those who are late on their payments,
23 and those who have received notices of default. Defendants also have marketed to
24 such homeowners using telemarketers, email, and the internet.

25 17. Defendants Synergy and LMS have marketed mortgage loan
26 modification and foreclosure relief services both individually and together.
27 Beginning in or about late 2007, Defendant Synergy, operating through the
28 fictitious business name Direct Lender, engaged in a course of conduct to

1 advertise, market, offer to sell, and sell such services using the name “Loss
2 Mitigation Department.” Beginning in or about April 2008, Direct Lender
3 purported to transfer its loss mitigation operations to LMS. Following the
4 purported transfer, LMS remained at the same location where Direct Lender had
5 been, and maintained the same personnel and phone numbers, and used
6 substantially the same marketing material. Additionally, through at least May
7 2008, LMS corresponded with customers using stationery with emblems for both
8 LMS and Direct Lender.

9 ***Initial Contact: Direct Mail Marketing***

10 18. In numerous instances, Defendants have initiated contact with
11 homeowners by sending them direct mail solicitations that have represented,
12 expressly or by implication, that Defendants would reduce consumers’ mortgage
13 interest rates and/or loan amounts, saving consumers thousands of dollars.

14 19. Defendants have mailed their solicitations to consumers whom they
15 have had reason to believe are facing mortgage rate resets, delinquency, and/or
16 foreclosure.

17 20. In numerous instances, the design and overall presentation of
18 Defendants’ direct mail solicitations have caused consumers to believe they were
19 being contacted by their mortgage lenders or servicers, or an entity affiliated with,
20 working with, or authorized by their mortgage lenders or servicers.

21 21. In numerous instances, the solicitations arrive in a window-type
22 envelope, addressed so that showing through the window just above the
23 homeowner’s name and address, in bold print, is the name of the homeowner’s
24 mortgage lender or servicer followed by a hyphen and the phrase “Loan
25 Modification Notice.” Immediately above that notation is what appears to be a
26 serial number or account number.

27 22. Upon opening the envelope, the homeowner finds a one-page notice
28 which includes, at the top left, in bold lettering where a company name or logo

1 typically would appear, only the generic name "Loss Mitigation Services."
2 Immediately below this line, proposed defendants print the phrase "Original Loan
3 Amount," followed by the homeowner's loan amount. Immediately below that is a
4 purported "Customer Code." Below the customer code is the address block, which
5 shows through the envelope window.

6 23. At the top right of the letter, in all-capital, bold lettering, Defendants
7 have printed the phrase "**FINAL NOTICE**" and have indicated that the notice was
8 "**FILED ON**" a date that appears to reflect the mailing date of the solicitation.

9 24. In numerous instances, Defendants' initial solicitation letters have led
10 homeowners to believe they had received a communication from their mortgage
11 lender or servicer, or an entity affiliated with, working with, or authorized by, their
12 mortgage lender or servicer.

13 25. In a typical and illustrative solicitation, the top portion of the initial
14 solicitation letter has appeared as follows:

15
16 **LOSS MITIGATION SERVICES**
17 Original Loan Amount: \$xxx,xxx
18 Customer Code: [-----]

FINAL NOTICE
FILED ON:

[DATE]

For Your Information
Call (866) 371-1046

[S E R I A L N U M B E R]

Re: [Lender/Servicer Name] - Loan Modification Notice

[Consumer's Name]

[Consumer's Address]

19
20
21
22 26. The body of the solicitation letter has begun by instructing consumers
23 to "Please contact us today regarding your existing mortgage. Our records indicate
24 that **you may be eligible for a loan modification** which could include a **rate**
25 **reduction** and **loan amount reduction** on your existing loan." (Emphasis in
26 original.)
27
28

1 27. The letter has instructed homeowners to call a toll-free number, and
2 that “[t]his offer is good until” a date typically approximately three weeks after the
3 date of the letter, and that “[n]o other notices will be issued and no
4 **representatives will call you.**” (Emphasis in original.)

5 28. The letter has further represented that “[o]ur loan modification team
6 has searched existing records to make you this comparison offer as it relates to
7 your existing loan.” The letter has advised consumers that “[t]his offer to negotiate
8 your mortgage could **save you thousands of dollars,**” and that “[a] **Senior Loan**
9 **Modification Specialist is waiting to assist you.**” (Emphasis original.)

10 29. At the bottom of the page, in a large but generic font, Defendants
11 again have printed their name, “Loss Mitigation Services.” Below that, in a font
12 no larger than 8-point, and smaller than any other text in the letter, Defendants
13 have included several disclaimers, stating, “Loss Mitigation Services, Inc. is a
14 California Corporation. This information was obtained thru public record. We are
15 not an affiliate of, nor endorsed by, nor associated with your lender.”

16 30. This disclaimer has not been presented in a clear or prominent
17 manner, is not connected to any representation in the text by a footnote or asterisk,
18 and does not remedy the deceptive representations made in the letter.

19 31. Defendants have further reinforced their deceptive representations
20 throughout the marketing process.

21 ***Defendants’ Website***

22 32. Defendants also have marketed their services via the website
23 www.lmslossmit.com. The website urges consumers to “[g]et started” by calling
24 Loss Mitigation Services at a toll-free number. Alternatively, the website requests
25 that homeowners provide their name, email address and phone number to
26 Defendants, presumably so that a telemarketer can call the homeowner.

27 33. Defendants’ website has warned homeowners that “Representing
28 Yourself Can Be Hazardous!” and has cautioned them that “you will be offered

1 less of a modification or short sale than you could really get.” The website further
2 has claimed that “[m]any times we can substantially improve your loan
3 modification or short sale. We know how to communicate with your lender.”

4 ***Inbound Telemarketing Sales***

5 34. In numerous instances, when homeowners have called Defendants’
6 toll-free number, Defendants’ telemarketers have answered the phones,
7 “modification department, can I help you?” Defendants’ telemarketers
8 immediately have requested the homeowner’s phone number and address, and have
9 told the homeowner he or she would be put on hold while the telemarketer pulled
10 up the property record.

11 35. In numerous instances, Defendants’ telemarketers have returned to the
12 line and reported back to homeowners information about their mortgage loans,
13 further leading homeowners to believe Defendants were their lenders or servicers
14 or were affiliated with, working with or authorized by their lenders or servicers.

15 36. In numerous instances, without having communicated with the
16 homeowner’s lender or servicer, Defendants’ telemarketers have advised
17 homeowners that Defendants could obtain specific loan modification results,
18 including conversion of variable-rate loans to fixed rate loans, interest rate
19 reductions and principal reductions.

20 37. In numerous other instances, without having communicated with the
21 homeowner’s lender or servicer, Defendants’ telemarketers have told homeowners
22 they were prime candidates for a loan modification.

23 38. In numerous instances, to further gain homeowners’ confidence,
24 Defendants’ telemarketers have made one or more of the following typical and
25 illustrative representations:

- 26 ● “We have a 93 percent success rate on loan modifications and a full
27 money back guarantee.”

- 1 ● “[W]e have a team of lawyers here and we have over 300 employees
- 2 that do this. I mean, it’s a major, major operation here.”
- 3 ● “[E]ach modification is approximately 100 man-hours.”
- 4 ● “It is our experience that there is not a nonprofit organization that
- 5 could ever get as much out of a lender as we can.”
- 6 ● “You can’t lose using our team.”
- 7 ● “This is not something people should be trying on their own.”

8 39. In numerous instances, Defendants have told homeowners that their
9 success rate is above ninety percent. Defendants also have represented that they
10 screen consumers to determine eligibility for a modification, that they only accept
11 homeowners who are qualified and whose applications have passed a review, and
12 that for such consumers, the loan modification process is guaranteed.

13 40. In numerous instances, Defendants have represented that they can
14 quickly obtain loan modifications for homeowners, in some instances in as few as
15 30-45 days, in other instances in as few as one to three months.

16 41. In numerous instances, Defendants’ telemarketers have represented
17 that homeowners will be “disqualified” if they do not provide Defendants with
18 detailed personal and financial information under a strict but artificial deadline. In
19 other instances, Defendants’ telemarketers have told consumers that if they do not
20 act quickly, they risk losing the opportunity to modify their loans.

21 42. In numerous instances, at the conclusion of the telemarketing sales
22 call, Defendants have sent consumers worksheets that request detailed personal and
23 financial information by email or overnight delivery.

24 43. In numerous instances, after receiving detailed personal and financial
25 information from homeowners, but without having contacted the homeowners’
26 lender or servicer, Defendants have sent letters or emails advising homeowners:

1 Your loan modification was approved. **I have attached**
2 **the payment form to process the fee for your loan**
3 **modification.** The fee for your loan modification is
4 \$5,500. (Emphasis original.)

5 * * *

6 Your application has passed our underwriting
7 department. The fee required to handle your
8 modification is \$3700.

9 * * *

10 Congratulations! Your application has been accepted for
11 a loan modification. I have attached the payment forms
12 to process the fee for your loan modification. The
13 processing fee for your loan modification is \$3500.

14 * * *

15 Your loan modification application was reviewed and
16 accepted. I have attached the payment form to process
17 the fee for your loan modification. The fee for your loan
18 modification is \$3,500.

19
20 44. In at least one such letter, Defendants represented to the homeowner:

21
22 “We have a proven track record with a 97% success rate
23 in modifying our customer’s loans.”

24
25 45. In numerous instances, Defendants have instructed consumers that
26 they must pay all, or a substantial portion of, Defendants’ fee up-front, before
27 Defendants will begin working on their modifications.

1 46. In other instances, Defendants have told consumers that they would
2 not charge them a fee until their loan modification was complete. However, after
3 receiving consumers' payment information, Defendants nevertheless have
4 processed payment before performing the promised services.

5 47. In numerous instances, Defendants have told homeowners that if they
6 are not satisfied with Defendants' service they are entitled to a full refund of the
7 fees paid.

8 48. In numerous instances, Defendants have encouraged consumers to
9 stop paying their mortgages while their loan modification was being processed.

10 49. In numerous instances, Defendants have told homeowners not to
11 speak to their mortgage lenders or servicers while their loan modification was
12 being processed, and have told homeowners that Defendants would provide them
13 with regular updates.

14 ***Tactics to Gain Consumers' Confidence***

15 50. In furtherance of their deceptive marketing scheme, Defendants
16 directly, and indirectly through related entities, have made representations to instill
17 consumers with a false sense of confidence about Defendants' purported services.

18 51. Defendant LMS's telemarketers have told consumers that Defendants
19 are part of a watchdog committee supported by the state of California to protect
20 homeowners. LMS has further identified this organization by sending
21 homeowners a link by email to the URL of an organization called The National
22 Loss Mitigation Association, www.tnlma.com.

23 52. Defendants' website also tells homeowners that LMS is a "Proud
24 Premier Member of The National Loss Mitigation Association ("TNLMA"™),"
25 and that LMS is "Certified" by TNLMA as a "Loan Modification Specialist." Two
26 seals, one blue and one gold, apparently signify this purported premier membership
27 and certification. The seals also appear on correspondence LMS sends consumers.

1 53. In fact, TNLMA is not an independent organization, but is
2 substantially under the control and direction of Defendants LMS and Synergy. The
3 organization is incorporated at the same address as LMS; its bank account was
4 opened by the president of LMS; its president is Aaron Cuha, founder of Direct
5 Lender; and its URL is registered to Synergy Capital Management Corporation, an
6 apparent affiliate of Defendant Synergy, listing Mr. Cuha as the administrative
7 contact.

8 54. Among other things, TNLMA has published a “consumer alert”
9 advising that “FREE Loan Modifications May Be Hazardous To Your Mortgage,”
10 and has advised consumers in its “Education Center” to disregard Better Business
11 Bureau ratings of mortgage loan modification companies.

12 55. Also as a tactic to gain consumers’ confidence, Defendants have
13 provided homeowners with a “Credibility & Legitimacy Report” for LMS. The
14 report includes three sections: “The Facts About the Better Business Bureau
15 (BBB)””; a “Corporate Bio””; and “Real Life Testimonials.” The report includes a
16 number of misrepresentations about LMS’s rating with the BBB and its corporate
17 good standing, as well as purported consumer endorsements from consumers
18 whose full identities are not provided.

19 56. In addition, in numerous instances, LMS has described its services as
20 “attorney assisted.” However, LMS has refused to provide consumers with the
21 identity, contact information or work product of the attorney who purportedly is
22 working on their account.

23 ***Consumer Harm***

24 57. In numerous instances, after homeowners have paid Defendants’ fee,
25 Defendants have failed to answer or return homeowners’ telephone calls or provide
26 updates about the status of Defendants’ purported communications with the
27 homeowners’ lenders or servicers. Homeowners who have called Defendants often
28 are transferred from one “mitigator” to another. In many instances, Defendants

1 have misrepresented that negotiations were underway, although Defendants had
2 not yet contacted the lender or had only left messages or had non-substantive
3 contacts. In other instances, Defendants have misrepresented that the lender was
4 the cause for delay when, in reality, Defendants have made little, if any, effort to
5 contact the lender. In other instances, Defendants have misrepresented that the
6 process has been delayed because of incomplete information from the homeowner,
7 although LMS had made no attempt to obtain the purportedly missing information
8 before being reached by the homeowner. In other instances, homeowners who
9 have contacted their lenders have been told that the lenders had never heard of
10 Defendants or refused to work with third-party negotiators. In other instances,
11 homeowners who have contacted their lenders have learned that Defendants sent
12 the lenders incomplete information.

13 58. In numerous instances, Defendants have failed to obtain mortgage
14 loan modifications. Some homeowners who have paid for Defendants' services
15 have been able to obtain mortgage loan modifications and avoid foreclosure only
16 through their own efforts and not because of any service provided by Defendants.

17 59. In numerous instances, Defendants have denied refunds to
18 homeowners for whom they failed to obtain modifications. In other instances,
19 Defendants have made it difficult for homeowners to obtain promised refunds, or
20 have given refunds only after homeowners made repeated requests or complained
21 to entities such as the BBB or a state attorney general. In numerous instances,
22 Defendants have purported to require homeowners to remove complaints posted to
23 the BBB, or sign a document purporting to hold Defendants free from all liability
24 and responsibility as a condition of receiving a refund, but then still have not
25 provided the refund.

1 and redress violations of the FTC Act. The Court, in the exercise of its equitable
2 jurisdiction, may award ancillary relief, including rescission or reformation of
3 contracts and restitution, the refund of monies paid, and the disgorgement of ill-
4 gotten monies, to prevent and remedy any violation of any provision of law
5 enforced by the FTC.

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiff Federal Trade Commission, pursuant to Section 13(b)
8 of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests
9 that the Court:

10 A. Award Plaintiff such preliminary injunctive and ancillary relief as
11 may be necessary to avert the likelihood of consumer injury during the pendency
12 of this action and to preserve the possibility of effective final relief, including but
13 not limited to temporary and preliminary injunctions;

14 B. Enter a permanent injunction to prevent future violations of the FTC
15 Act by Defendants;

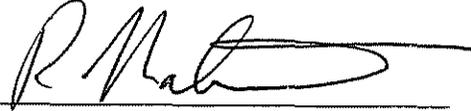
16 C. Award such relief as the Court finds necessary to redress injury to
17 consumers resulting from Defendants' violations of the FTC Act, including but not
18 limited to, rescission or reformation of contracts, restitution, the refund of monies
19 paid, and the disgorgement of ill-gotten monies; and

20 D. Award Plaintiff the costs of bringing this action, as well as such other
21 and additional relief as the Court may determine to be just and proper.

1 Dated: June 10, 2009

Respectfully submitted,

3 Willard K. Tom
4 General Counsel

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