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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SACV09-800 DOC(ANX)

Federal Trade Commission,

Case No.:

Plaintiff,

MEMORANDUM IN SUPPORT
OF FTC'S MOTION FOR
TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE
AND OTHER EQUITABLE
RELIEF, AND ORDER TO
SHOW CAUSE WHY A
PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE

v.

Loss Mitigation Services, *et al.*

Defendants.

BY:

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

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EXHIBITS TO PLAINTIFF'S MEMORANDUM IN SUPPORT OF FTC'S
MOTION FOR TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE
AND OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD NOT ISSUE

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INTRODUCTION

1
2 Defendants target consumers across the country in what for many is their
3 moment of greatest financial distress – when they are no longer able to afford their
4 monthly mortgage payments and face the loss of their homes to foreclosure. To
5 obtain an advance fee, typically \$2,500 to \$5,500, Defendants deceptively tell these
6 consumers that in all or virtually all cases, Defendants can lower consumers’
7 mortgage payments and save their homes from foreclosure. Defendants deceptively
8 claim to be so certain of their ability to get results that, if consumers pay the fee but
9 do not receive a loan modification, the fee will be refunded. Defendants also
10 deceptively lead many consumers to believe that Defendants are actually a
11 department of the consumers’ lender or servicer, or are affiliated with, working with,
12 or authorized by the consumers’ lender or servicer, and that Defendants are making
13 consumers a last-chance offer to save their homes.

14 The effects of Defendants’ deception are devastating for many consumers.
15 Once Defendants collect their advance fee, they do little, if anything, to help
16 consumers obtain a loan modification. They string consumers along, telling them
17 that a modification is in the works and that consumers need not worry about
18 foreclosure. Yet, Defendants fail to obtain loan modifications in numerous cases.
19 Many consumers have gone into foreclosure while waiting for Defendants to deliver
20 the promised results. Others have discovered that they could more effectively
21 negotiate a loan modification or other workout on their own. When these consumers
22 request refunds after realizing that Defendants have failed to deliver the services or
23 produce the results they promised, Defendants routinely deny the requests. Adding
24 insult to injury, after hiring Defendants, many consumers have lost not just their
25 homes, but also the thousands of dollars in up-front fees they paid for Defendants’
26 false promises.

27 Defendants’ practices violate Section 5 of the Federal Trade Commission Act
28 (“FTC Act”), 15 U.S.C. § 45. To immediately halt Defendants’ illegal practices and

1 preserve assets necessary for consumer redress, Plaintiff Federal Trade Commission
2 (“FTC”) seeks, under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), issuance of a
3 temporary restraining order (“TRO”) with an asset freeze and an order to show cause
4 why a preliminary injunction should not issue. The proposed TRO would enjoin
5 Defendants’ illegal conduct and their collection of advance fees before performing
6 the promised services, preserve assets and documents, and require Defendants
7 promptly to report limited information about their business. This relief is necessary
8 to prevent continued harm to consumers, dissipation of assets, and destruction of
9 evidence, thereby preserving the Court’s ability to provide effective final relief to
10 consumers injured by Defendants’ illegal practices.

11 **I. THE PARTIES**

12 **A. Plaintiff**

13 The FTC is an independent agency of the United States government created by
14 the FTC Act. 15 U.S.C. § 41. The FTC enforces Section 5(a) of the FTC Act, 15
15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
16 commerce. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC,
17 through its own attorneys, to initiate federal district court proceedings to enjoin
18 violations of the FTC Act and secure appropriate equitable relief, including rescission
19 of contracts and restitution, the refund of monies paid, and the disgorgement of ill-
20 gotten gains.

21 **B. Defendants**

22 Defendants consist of a group of interconnected individuals and corporations,
23 some of which were involved in marketing and brokering mortgage loans before
24 beginning to market mortgage loan modification and foreclosure relief services.

25 Defendant Synergy Financial Management Corporation, doing business under
26 the fictitious business names Direct Lender and DirectLender.Com (“Synergy” or
27 “Direct Lender”), is a California corporation. PX 24 (Redding), Att. A, at 683. Its
28 principal place of business is 8700 Warner Avenue, Suite 200, Fountain Valley,

1 California 92708. *Id.*, Atts. A, I, at 683, 707; PX 04 (Dondi), Att. B, at 55. Prior to
2 late 2007, Direct Lender operated primarily as a branch network of mortgage
3 brokerages, resembling a mortgage banking franchisor. PX 24 (Redding), Att. V, at
4 1049-53. In or around late 2007, concurrent with a sharp decline in the mortgage
5 brokerage market, Direct Lender expanded its operations to include the advertising,
6 marketing and/or selling of mortgage loan modification and foreclosure relief
7 services. *Id.*, Att. W, at 1055-61; PX 04 (Dondi) ¶ 2 & Att. A, at 44, 52; PX 14
8 (Studt) ¶ 3, at 280; PX 05 (Hall) ¶¶ 2-3 & Att. A, at 94, 98-112. In or around late
9 March 2008, Direct Lender informed customers that these “loss mitigation services”
10 would begin operating under a separate California corporation, Loss Mitigation
11 Services, Inc. PX 24 (Redding), Att. U, at 1047.

12 Defendant Loss Mitigation Services, Inc. (“LMS”) is a California corporation
13 incorporated on February 13, 2008. *Id.*, Att. H, at 704. After purportedly assuming
14 the loan modification operations of Direct Lender, LMS initially remained at the
15 same location as Direct Lender and maintained the same personnel and phone
16 numbers. *Id.*, Att. U, at 1047; PX 16 (Turley), Att. D, at 328. Additionally, through
17 at least May 2008, LMS corresponded with customers using stationery with emblems
18 for both LMS and Direct Lender. PX 16 (Turley), Att. D, at 328. Thereafter, and
19 continuing to the present, LMS maintained its principal place of business at 1700
20 Carnegie Avenue, Suite 250, Santa Ana, California 92705. *Id.*, Att. H.1, at 345; PX
21 08 (Osorio), Att. E, at 189; PX 24 (Redding), Att. J, at 734.

22 Defendant Dean Shafer co-founded LMS with Defendant Bernadette Perry.
23 PX 24 (Redding), Att. W, at 1055-61. He initially registered the corporation to his
24 home address, and listed himself in corporate registration documents as CEO, CFO,
25 Secretary, and a director of LMS. *Id.*, Att. C, at 688. Mr. Shafer has a background in
26 marketing, and has been credited with creating the direct mail solicitation that LMS
27 has used since late 2007. *Id.*, Att. W, at 1055-61; *see also* PX 04 (Dondi), Att. A, at
28 52 (early solicitation); PX 16 (Turley), Att. V, at 434 (substantially similar later

1 solicitation). Mr. Shafer is signatory on numerous bank accounts registered to LMS.
2 PX 24 (Redding), Att. N, at 752-64. Mr. Shafer also opened bank accounts, using
3 LMS's business address, for The National Loss Mitigation Association ("TNLMA").
4 *Id.*, Att. P, at 774. Mr. Shafer is a signatory on the TNLMA bank accounts and listed
5 an LMS email address for his contact information. *Id.*¹

6 Defendant Bernadette Perry, a.k.a. Bernadette Carr, co-founded LMS with
7 Defendant Dean Shafer. *Id.*, Att. W, at 1055-61. Ms. Perry has a background in
8 mortgage banking, having worked for Direct Lender prior to 2008. *Id.*; *see also* PX
9 03 (Browne), Att. B, at 41. Ms. Perry became CEO, CFO, Secretary, and a director
10 of Direct Lender in late 2007, at approximately the time when Defendant Direct
11 Lender was beginning to market loan modifications. PX 24 (Redding), Att. G, at
12 701. Ms. Perry also is actively involved in LMS's operations, serving as its "Senior
13 Negotiator" for loan modifications, and interacting with consumers and government
14 officials on behalf of LMS. PX 03 (Browne), Att. B, at 41; PX 16 (Turley) ¶¶ 31-34
15 & Atts. T.1-T.4, T.6-T.8, at 294-95, 406-16, 420-25; PX 20 (Lockwood) ¶¶ 6-7 &
16 Att. B, at 540, 546.

17 Defendant Marion Anthony ("Tony") Perry, is President and Acting COO of
18 LMS. PX 03 (Browne), Att. B, at 41. He has been a licensed real estate agent in
19 California, and although his license has expired, LMS has marketed its loan
20 modification services using his expired license. PX 24 (Redding), Att. Y, at 1070-77.

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26 ¹ Although TNLMA appears to be substantially controlled by LMS and its
27 associates, *see infra* Part IV.4, TNLMA purports to be an industry association, *see*
28 *id.*, and LMS markets itself as a "Premier Certified Member of TNLMA." PX 19
(White), Att. E, at 538; PX 24 (Redding), Att. Q, S, at 780, 802.

1 **II. JURISDICTION AND VENUE**

2 This Court has subject matter jurisdiction over the FTC’s claims pursuant to 28
3 U.S.C. §§ 1331, 1337(a), and 1345. Personal jurisdiction over Defendants exists
4 pursuant to the FTC Act. 15 U.S.C. § 53(b). Additionally, venue is proper in the
5 Central District of California. Under the FTC Act, an action may be brought where a
6 corporation or person “resides or transacts business.” *Id.* As noted above,
7 Defendants do business in this district in Santa Ana and Fountain Valley, among
8 other places, which are located in Orange County.

9 **III. BACKGROUND ON THE MORTGAGE FORECLOSURE CRISIS**

10 Over the past year and a half, the nation has confronted an unprecedented
11 downturn in the housing and mortgage markets. Home sales and housing starts are
12 stagnant. Home prices are in steep decline, causing many homeowners to owe more
13 on their mortgages than their homes are worth. Concurrently, mortgage
14 delinquencies and foreclosures have accelerated. The joined effects of falling home
15 prices, resetting adjustable rate mortgages, tighter underwriting standards, and the
16 worsening job market have led to a mortgage credit meltdown.

17 In response to this crisis, numerous mortgage lenders and servicers have
18 instituted free programs to assist financially distressed homeowners by offering them
19 the opportunity to modify loans that have become unaffordable. The availability of
20 these “loan modification” programs have expanded dramatically as lenders have
21 increased participation in the President’s “Making Home Affordable” plan.
22 Moreover, numerous major mortgage lenders and servicers, non-profit and
23 community-based organizations, the federal government, and the news media have
24 helped publicize the availability of these free mortgage loan modification programs.
25 Lenders often notify consumers of their eligibility for these programs through their
26 “loss mitigation” departments. Defendants divert consumers from these free
27 programs and induce them instead to spend thousands of dollars in up-front fees on
28 their purported “Loss Mitigation Services.”

1 **IV. DEFENDANTS’ DECEPTIVE PRACTICES**

2 Defendants make three primary deceptive representations to induce consumers
3 to pay up-front fees and enroll in their program. First, they represent that they will
4 obtain mortgage loan modifications for consumers or stop foreclosure on their homes
5 in all or virtually all instances. *See, e.g.*, PX 04 (Dondi) ¶¶ 5, 12 & Att. F, at 45, 46,
6 76; PX 14 (Studt) ¶ 3, at 280; PX 05 (Hall) ¶ 3, at 94; PX 16 (Turley) ¶¶ 4, 7, 15 &
7 Att. D, at 287-88, 290, 328; PX 10 (Ruiz) ¶ 4, at 193; PX 13 (Stewart) ¶¶ 3-4, at 249-
8 50; PX 18 (Wells) ¶ 4, at 439; PX 02 (Bavadi) ¶ 4, at 20; PX 06 (Luke) ¶ 5, at 115.
9 Second, Defendants represent that they will refund consumers’ money if Defendants
10 do not succeed in obtaining a loan modification or stopping foreclosure. *See, e.g.*,
11 PX 14 (Studt) ¶ 4, at 280; PX 10 (Ruiz) ¶ 5, at 193; PX 03 (Browne) ¶ 4 & Att. B, at
12 27, 34; PX 08 (Osorio) ¶ 4, at 170; PX 19 (White) ¶ 4, at 492-93; PX 12 (Sciutti)
13 ¶¶ 5,7 & Att. A, at 212, 213, 220; PX 23 (Budich), Atts. A, F, at 636, 667; PX 24
14 (Redding), Att. AA, at 1100-05. Third, Defendants lead numerous consumers to
15 believe that Defendants are the consumers’ lender or servicer, or that they are
16 affiliated with, working with, or authorized by, the consumers’ lender or servicer.
17 *See, e.g.*, PX 16 (Turley) ¶¶ 3-4 & Att. A, at 287, 298; PX 10 (Ruiz) ¶ 2 & Att. A, at
18 193, 200; PX 02 (Bavadi) ¶ 3, at 20; PX 08 (Osorio) ¶ 2 & Att. A, at 170, 178; PX 01
19 (Anderson) ¶ 3 & Att. A, at 1, 6. Defendants make these deceptive representations
20 orally and in writing throughout the marketing and sales process that leads up to
21 consumers’ payment of Defendants’ up-front fee.

22 Most consumers’ first contact with Defendants occurs when consumers receive
23 Defendants’ direct mail solicitation. The solicitation is targeted at distressed
24 homeowners, whom Defendants identify through mortgage and property data they
25 purchase. The overall design of the solicitation deceives many consumers into
26 believing that they are receiving a notice from their mortgage lender or servicer
27 offering them a last chance to save their home. The letter prominently includes the
28 name of the consumer’s mortgage lender, specifies the original loan amount, and

1 purports to be a “**FINAL NOTICE**,” making an offer that will expire in
2 approximately three weeks to renegotiate the consumer’s mortgage. The solicitation
3 invites consumers to call Defendants’ toll-free number.

4 Defendants also market via the website www.lmslossmit.com. The website
5 urges consumers to “[g]et started” by calling LMS at a toll-free number or to input
6 personal information directly on screen. PX 24 (Redding), Att. Q, at 780. The
7 website warns homeowners that “Representing Yourself Can Be Hazardous!” and
8 that, if they do, “you will be offered less of a modification or short sale than you
9 could really get.” *Id.* The website also claims that “[m]any times we can
10 substantially improve your loan modification or short sale. We know how to
11 communicate with your lender.” *Id.* Defendants’ marketing efforts yield
12 approximately 500 inbound calls per day from consumers, *id.*, Att. W, 1055-61.
13 LMS’s profit and loss statement reflects that it collected an average of approximately
14 \$741,000 per month in “Loan Mod Fees” between October 2008 and April 2009. PX
15 21 (Sibner), Att. D, at 580 (CD-ROM). With typical advance fees of \$3,500 (though
16 they range between \$2,500 and \$5,500), this amounts to approximately 200
17 consumers per month.

18 In actuality, Defendants do not live up to their promises. Once consumers pay
19 the up-front fee, Defendants do little, if anything, to negotiate with the consumers’
20 lenders and often fail to obtain the promised modifications. The consequences of
21 Defendants’ deceptive conduct are devastating. Many consumers have gone into
22 foreclosure and lost their homes while they waited for Defendants to obtain them a
23 loan modification. Many have lost valuable time they could have spent working
24 directly with their lenders or servicers to save their homes, or getting help from a free
25 housing counseling service. Many have fallen behind on mortgage payments after
26 paying Defendants’ up-front fee, while others have missed payments acting on
27 Defendants’ advice.

1 **A. Defendants Misrepresent that They Will Obtain a Loan**
2 **Modification or Stop Foreclosure in All or Virtually All Instances**

3 Defendants make numerous misrepresentations to convince consumers that
4 Defendants will secure loan modifications or stop foreclosure in all or virtually all
5 instances, and that a loan modification in the consumer’s particular case is assured or
6 virtually assured. Defendants make the majority of these misrepresentations at the
7 beginning of the marketing process to extract their advance fee from consumers.
8 However, even after Defendants have collected their advance fee, they continue to
9 mislead consumers to assuage their concerns about the lack of apparent progress in
10 obtaining loan modifications, and thereby to forestall or avoid having to pay refunds.

11 **1. Defendants Falsely Claim a High Probability of Success**

12 Among the earliest and most powerful claims Defendants make to foster the
13 belief that a loan modification is assured or virtually assured is their claim that they
14 have a high success rate – ninety percent or above – in modifying mortgage loans.
15 PX 14 (Studt) ¶ 3, at 280 (Direct Lender has 100% success rate); PX 04 (Dondi) ¶¶ 5,
16 12 & Att. F, at 45, 46, 76 (Direct Lender has 97% success rate); PX 16 (Turley) ¶¶ 4,
17 15 & Att. D, at 287-88, 290, 328 (LMS has 97% success rate); PX 23 (Budich), Att.
18 A, at 636 (LMS has a 93% success rate); PX 18 (Wells) ¶ 4, at 439 (LMS has 90%
19 success rate).² These claims, which Defendants make both orally and in writing, have
20 induced numerous consumers to pay Defendants’ up-front fees.

21 For example, a representative of LMS told homeowner Bobby Turley by phone
22 that LMS had a 97% success rate in modifying customers’ loans. PX 16 (Turley) ¶ 4,
23 at 287-88. After Mr. Turley provided LMS with detailed personal and financial
24 information, *id.* ¶ 5, at 288, the representative sent him a letter falsely stating, “[y]our

25
26 ² In addition, Defendants tell many consumers that there is a high
27 likelihood that their particular modification will be obtained. PX 05 (Hall) ¶ 3, at
28 94; PX 10 (Ruiz) ¶ 4, at 193; PX 02 (Bavadi) ¶ 4, at 20; PX 19 (White) ¶ 4, at 492-
93; PX 06 (Luke) ¶ 5, at 115.

1 loan modification was approved,” and reiterating that “[w]e have a proven track
2 record with a 97% success rate in modifying our customer’s [sic] loans,” *id.* ¶ 7 &
3 Att. D, at 288, 328. To close the deal, the representative attached a form to the letter
4 so that Mr. Turley could authorize payment to LMS of a \$5,500 advance fee. *Id.* Mr.
5 Turley paid the fee, *id.* ¶ 8, at 288, but LMS failed to obtain a loan modification for
6 him, *id.* ¶ 27, at 293. Mr. Turley’s home was put in foreclosure, and he was left to
7 negotiate a workout plan with his lender on his own. *Id.* ¶¶ 27-29, 35, at 293-94, 295.
8 More than a year after LMS collected its advance fee, it denied Mr. Turley’s request
9 for a refund, claiming LMS “never guaranteed [him] any particular loan modification
10 result.” *Id.*, Att. W, at 438.

11 Numerous other homeowners have similar stories. For example, a
12 representative of Direct Lender told homeowner Elizabeth Dondi orally and in
13 writing that Direct Lender had a 97% success rate in modifying customers’ loans. PX
14 04 (Dondi) ¶¶ 5, 12 & Att. F, at 45, 46, 76. Ms. Dondi paid the requested \$4,995 fee,
15 *id.* ¶ 13, at 46-47, but Direct Lender failed to obtain a loan modification for her, *id.* ¶
16 22, at 49. Ms. Dondi’s home was put in foreclosure, and she was left to negotiate a
17 forbearance agreement on her own. *Id.* ¶¶ 20, 23, at 48, 49. A Direct Lender
18 representative also told homeowner Rainy Studt that it had a 100% success rate, PX
19 14 (Studt) ¶ 3, at 280, after which Ms. Studt paid the requested \$2,995 fee, *id.* ¶ 5, at
20 281, but did not receive a modification, *id.* ¶ 12, at 282. A representative of LMS
21 told homeowner Clifford Wells that LMS had a 90% success rate, PX 18 (Wells) ¶ 4,
22 at 439, after which Mr. Wells paid the requested \$3,500 fee, *id.* ¶ 10, at 441, but did
23 not receive a modification, *id.* ¶ 14, at 442-43.

24 An LMS representative made a similar claim to an FTC investigator who
25 called LMS’s toll-free number in March 2009. The representative told the
26 investigator, “[w]e have a 93 percent success rate on loan modifications and a full
27 money back guarantee. So, you called probably the best people in the country to do
28 this for you.” PX 23 (Budich), Att. A, at 636.

1 Despite Defendants' success rate claims, they have not secured loan
2 modifications for consumers in anything approaching all or virtually all instances.
3 Numerous declarants have stated that they did not receive the loan modification or
4 services they were promised after paying Defendants their up-front fee. See PX 14
5 (Studt) ¶ 12, at 282; PX 05 (Hall) ¶ 10, at 95; PX 16 (Turley) ¶ 27, at 293; PX 10
6 (Ruiz) ¶ 26, at 198; PX 18 (Wells) ¶ 16, at 443; PX 02 (Bavadi) ¶¶ 13-14, at 22-23;
7 PX 19 (White) ¶ 25, at 497; PX 06 (Luke) ¶ 26, at 120. In addition to these
8 declarants, the FTC has collected complaints from approximately 70 consumers who
9 were dissatisfied with their dealings with Defendants. PX 24 (Redding) ¶ 38, at 678.
10 Approximately half of these consumers reported that they signed up with Defendants
11 but did not receive the promised results. *Id.* Further, in direct contradiction to
12 Defendants' oral and written success rate claims, Defendant Dean Shafer, the
13 President and co-founder of LMS, admitted in a news interview published in late
14 March 2009 that LMS's 97% success rate claim was untrue. *Id.*, Att. W, at 1055-61.
15 Moreover, in an internal email in late May 2009, he wrote that LMS's customers are
16 "now hammering for refunds." PX 21 (Sibner), Att. A, at 572.

17 **2. Defendants Deceptively Promise Attractive Lender** 18 **Concessions**

19 In numerous instances, Defendants' phone representatives have led consumers
20 to believe they would receive loan modifications by telling them of attractive lender
21 concessions or specific loan modification outcomes consumers could expect to
22 receive if they hired Direct Lender or LMS. Defendants' representatives make these
23 claims without possessing sufficient financial information about the consumers to
24 know whether the concessions were plausible, and without having contacted
25 consumers' lenders, who actually would have to make the decision whether to grant
26 any such concessions.

27 In one instance, for example, an LMS phone representative told homeowner
28 Clifford Wells that LMS could reduce his mortgage payment from approximately

1 \$2,400 or \$2,500 per month to \$1,500 per month. PX 18 (Wells) ¶¶ 3-4, at 439. At
2 the time, the representative had asked Mr. Wells only for his monthly mortgage
3 payment, his interest rate, and whether he was current on his payments. *Id.* ¶ 4, at
4 439. After hearing these representations, Mr. Wells paid LMS an up-front fee of
5 \$3,500. *Id.* ¶ 10, at 441. He did not receive a loan modification. *Id.* ¶ 22, at 444-45.
6 Other consumers have reported similar experiences. *See, e.g.*, PX 14 (Studt) ¶¶ 3, 12,
7 at 280, 282 (without requesting financial information, Direct Lender claimed it could
8 obtain a 30-year fixed-rate mortgage with 4% interest and \$2,300 monthly payments,
9 but failed to do so); PX 05 (Hall) ¶¶ 3, 10, at 94, 95 (without requesting financial
10 information, Direct Lender claimed it could obtain a lower interest rate, a lower
11 monthly payment, and a reduction of the mortgage principal amount, but failed to do
12 so).

13 Defendants have made similar representations to FTC investigators who have
14 called LMS’s toll-free number. For example, an LMS representative twice told an
15 FTC investigator that she had “hit the trifecta” for a loan modification, PX 23
16 (Budich), Att. A, at 642, 647, without having asked whether she had a job or any
17 source of household income at all, or for an estimate of her monthly expenses.³ The
18 representative added that, if the investigator hired LMS, “you’ll be really pleased”
19 with the result. *Id.*, at 647. Another LMS telephone representative told an FTC
20 investigator that LMS could reduce his mortgage payments from \$2,600 per month to
21 \$1,200 per month, reduce the interest rate and principal amount owed, and convert a
22 variable rate mortgage to a 30-year fixed rate mortgage. PX 22 (Figueroa), Att. A, at
23 591-92. The representative made these statements without having asked the
24

25 ³ The representative asked the investigator only: the name of her mortgage
26 lender; her interest rate and whether it had increased; her monthly payment and
27 whether it had increased; the balance of her mortgage; whether her home had lost
28 value; whether her income had decreased; and whether she had filed for
bankruptcy. PX 23 (Budich), Att. A, at 635-39.

1 investigator whether he had a job or any source of household income at all, or for an
2 estimate of his monthly expenses.⁴

3
4 **3. Defendants Falsely Claim that Consumers' Modifications
Have Been "Approved"**

5 At the conclusion of the initial telemarketing call, Defendants typically send
6 consumers an email or letter attaching various documents, including a loan
7 modification application that requests detailed personal and financial information. In
8 numerous instances, after consumers return the completed application, Defendants
9 send the consumers letters and emails falsely implying – or stating outright – that
10 LMS already has obtained a loan modification for the consumer. In reality,
11 Defendants have not even contacted consumers' lenders at the time they make these
12 representations. Defendants use these deceptive representations as a way to close the
13 deal – in the same communication, they ask consumers to pay the up-front fee:

14 Your loan modification was approved. **I have attached the**
15 **payment form to process the fee for your loan**
16 **modification.** The fee for your loan modification is
17 \$5,500. PX 16 (Turley), Att. D, at 328 (emphasis in
18 original).

19 * * *

20 Your application has passed our Underwriting Department.
21 The fee required to handle your modification is \$3700. PX
22 13 (Stewart), Att. C, at 270.

23 * * *

24
25
26

⁴ The representative asked the investigator for only: his mortgage balance;
27 his total monthly payment amount; his interest rate and whether the rate had
28 changed; whether he had filed for bankruptcy; and whether he was late on his
payments. PX 22 (Figueroa), Att. A, at 590-91.

1 Congratulations! Your application has been accepted for a
2 loan modification. I have attached the payment forms to
3 process the fee for your loan modification. The processing
4 fee for your loan modification is \$3,500. PX 18 (Wells),
5 Att. E, at 475.

6 * * *

7 Your loan modification application was reviewed and
8 accepted. I have attached the payment form to process the
9 fee for your loan modification. The fee for your loan
10 modification is \$3,500. PX 19 (White), Att. B, at 523.

11 These misrepresentations are particularly pernicious. They exploit consumers'
12 hope that someone can help them find a way out of a financial predicament that
13 threatens their home. In each case above, the consumer paid LMS its requested up-
14 front fee. PX 16 (Turley) ¶ 8, at 288; PX 13 (Stewart) ¶ 9, at 251; PX 18 (Wells)
15 ¶ 10, at 441; PX 19 (White) ¶ 10, at 494. In each case, LMS failed to obtain the
16 promised loan modification. PX 16 (Turley) ¶ 27, at 293; PX 13 (Stewart) ¶ 13, at
17 252; PX 18 (Wells) ¶ 16, at 443; PX 19 (White) ¶ 16, at 495. In one case, the
18 consumer lost her home. PX 13 (Stewart) ¶ 17, at 253.

19 **4. Defendants Make Various Other Misrepresentations to Entice**
20 **Consumers to Pay an Up-Front Fee**

21 Defendants make numerous other misrepresentations to further entice
22 consumers to pay an up-front fee, and to cover up their lack of work on behalf of
23 consumers once the fee is paid.

24 Defendants convince consumers that the process will be “quick and easy” if
25 they hire Direct Lender or LMS, PX 02 (Bavadi) ¶ 4, at 20, often by telling
26 consumers that their loan modifications will be complete within 30-90 days. PX 14
27 (Studt) ¶ 3, at 280 (six weeks); PX 16 (Turley) ¶ 4, at 288 (30-45 days); PX 10 (Ruiz)
28 ¶ 7, at 194 (three months); PX 23 (Budich), Att. A, at 646 (30 days to a few months);

