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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.

