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

Federal Trade Commission,

Plaintiff,

v.

Loss Mitigation Services, Inc., et al.

) Case No. SACV09-800 DOC (ANx)

) **FINAL ORDER FOR
PERMANENT INJUNCTION AND
SETTLEMENT OF CLAIMS
AS TO DEFENDANT
MARION ANTHONY
(A.K.A. "TONY") PERRY**

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2 Mitigation Services, Inc. (“LMS”) and Synergy Financial Management Corporation,
3 also d/b/a Direct Lender and DirectLender.com (“Synergy” or “Direct Lender”) on
4 August 18, 2009 [Docket Itm. #41], a Preliminary Injunction Order as to Bernadette
5 Perry and Tony Perry on August 19, 2009 [Docket Itm. #43] (“Perry PI Order”), and
6 a Preliminary Injunction Order as to Dean Shafer on August 19, 2009 [Docket Itm.
7 #44].

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

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

21 **FINDINGS**

22 1. This is an action by the FTC brought pursuant to Sections 5 and 13(b)
23 of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Complaint seeks both permanent
24 injunctive relief and consumer redress for the Defendants’ alleged deceptive acts or
25 practices in connection with the marketing and sale of mortgage loan modification
26 and foreclosure relief services.

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2 complaints; (B) formulating or providing, or arranging for the formulation or
3 provision of, any telephone sales script or any other marketing material, including
4 but not limited to direct mail, the text of any Internet website, email, or other
5 electronic communication; (C) providing names of, or assisting in the generation of,
6 potential customers; (D) performing marketing services of any kind; or (E) acting or
7 serving as an owner, officer, director, manager, or principal of such entity.

8 2. “*Credit*” means the right granted by a creditor to a debtor to defer
9 payment of debt or to incur debt and defer its payment.

10 3. “*Debt relief service*” means any service, including debt management
11 plans, debt settlement, debt negotiation, and for-profit credit counseling,
12 represented, expressly or by implication, to renegotiate, settle, or in any way alter the
13 terms of payment or other terms of the debt between a consumer and one or more
14 unsecured creditors, servicers, or debt collectors, including but not limited to, a
15 reduction in the balance, interest rate, or fees owed by a consumer to an unsecured
16 creditor, servicer, or debt collector.

17 4. “*Defendants*” means, individually, collectively, or in any combination:
18 (a) Loss Mitigation Services, Inc. (“LMS”); (b) Synergy Financial Management
19 Corporation, also d/b/a Direct Lender and Direct Lender.com (“Direct Lender”); (c)
20 Dean Shafer; (D) Bernadette Perry (a.k.a Bernadette Carr and Bernadette Carr-Perry)
21 and (E) Marion Anthony (a.k.a. “Tony”) Perry. “*Corporate Defendants*” means,
22 individually or collectively: (a) LMS; and (b) Direct Lender.

23 5. “*Financial related good or service*” means any good, service, plan, or
24 program that is represented, expressly or by implication, to (A) provide any
25 consumer, arrange for any consumer to receive, or assist any consumer in receiving,
26 credit, debit, or stored value cards; (B) improve, or arrange to improve, any
27 consumer’s credit record, credit history, or credit rating; (C) provide advice or
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2 assistance to any consumer with regard to any activity or service the purpose of
3 which is to improve a consumer's credit record, credit history, or credit rating; (D)
4 provide any consumer, arrange for any consumer to receive, or assist any consumer
5 in receiving, a loan or other extension of credit; (E) provide any consumer, arrange
6 for any consumer to receive, or assist any consumer in receiving, debt relief services;
7 (F) provide any consumer, arrange for any consumer to receive, or assist any
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2 of this Order by personal service, facsimile transmission, email, or otherwise,
3 whether acting directly or through any corporation, subsidiary, division, or other
4 device, in connection with the advertising, marketing, promotion, offering for sale or
5 sale of any financial related good or service, are hereby permanently restrained and
6 enjoined from:

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

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

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

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

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

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

5. That a consumer will receive legal representation;

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

PROHIBITED REPRESENTATIONS RELATING TO ANY GOODS OR SERVICES

III. IT IS FURTHER ORDERED that Defendant Tony Perry and his successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any good, service, plan, or program are hereby permanently restrained and

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2 enjoined from misrepresenting or assisting others in misrepresenting, expressly or by
3 implication, any material fact, including but not limited to:

4 A. Any material aspect of the nature or terms of any refund, cancellation,
5 exchange, or repurchase policy, including, but not limited to, the likelihood of a
6 consumer obtaining a full or partial refund, or the circumstances in which a full or
7 partial refund will be granted to the consumer;

8 B. That any person is affiliated with, endorsed or approved by, or
9 otherwise connected to any other person, government entity, any federal homeowner
10 relief or financial stability program, or any other program;

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

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

15 E. Any material aspect of the performance, efficacy, nature, or
16 characteristics of the good or service.

17 **PROHIBITIONS ON USE OF CUSTOMER INFORMATION**

18 **IV. IT IS FURTHER ORDERED** that Defendant Tony Perry and his successors,
19 assigns, officers, agents, servants, employees, and attorneys, and those persons or
20 entities in active concert or participation with any of them who receive actual notice
21 of this Order by personal service, facsimile transmission, email, or otherwise,
22 whether acting directly or through any corporation, subsidiary, division, or other
23 device, are permanently restrained and enjoined from:

24 A. disclosing, using, or benefitting from customer information, including
25 the name, address, telephone number, email address, social security number, other
26 identifying information, or any data that enables access to a customer's account
27 (including a credit card, bank account, or other financial account), of any person
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2 which any Defendant obtained prior to entry of this Order in connection with the
3 advertising, marketing, promotion, offering for sale or sale of any mortgage loan
4 modification or foreclosure relief service, and

5 B. failing to dispose of such customer information in all forms in their
6 possession, custody, or control within thirty (30) days after entry of this Order.

7 Disposal shall be by means that protect against unauthorized access to the customer
8 information, such as by burning, pulverizing, or shredding any papers, and by
9 erasing or destroying any electronic media, to ensure that the customer information
10 cannot practicably be read or reconstructed.

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

14 **MONETARY RELIEF**

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

16 A. Judgment is hereby entered against Defendant Tony Perry, in the
17 amount of six million two hundred sixty two thousand five hundred nine dollars and
18 sixty two cents (\$6,262,509.62); *provided, however,* that this judgment shall be
19 suspended only as long as the Court makes no finding, as provided in Section VI of
20 this Order, that Defendant Tony Perry materially misrepresented or omitted the
21 nature, existence, or value of any asset;

22 B. Defendant Tony Perry agrees that the facts as alleged in the Complaint
23 filed in this action shall be taken as true without further proof in any bankruptcy case
24 or subsequent civil litigation pursued by the FTC to enforce its rights to any payment
25 or money judgment pursuant to this Order, including but not limited to a
26 nondischargeability complaint in any bankruptcy case. Defendant Tony Perry
27 further stipulates and agrees that the facts alleged in the Complaint establish all
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elements necessary to sustain an action by

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2 proceeding related to or associated with the transactions or the occurrences that are
3 the subject of the Complaint, without the service of a subpoena, *provided, however,*
4 that Defendant Tony Perry shall be entitled to receive any witness fees and expenses
5 allowable pursuant to Federal Rule of Civil Procedure 45.
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7 **COMPLIANCE MONITORING**

8 **VIII. IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and
9 investigating compliance with any provision of this Order, and (ii) investigating the
10 accuracy of Defendant Tony Perry's financial statement or sworn testimony upon
11 which the FTC's agreement to this Order is expressly premised:

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

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

20 1. obtaining discovery from any person, without further leave of
21 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and
22 69;

23 2. posing as consumers and suppliers to Defendant Tony Perry, his
24 employees, or any other entity managed or controlled in whole or in part by
25 Defendant Tony Perry, without the necessity of identification or prior notice; and

26 C. Defendant Tony Perry shall permit representatives of the FTC to
27 interview any employer, consultant, independent contractor, representative, agent, or
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C. Defendant Tony Perry shall notify the FTC of the filing of a bankruptcy

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

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

11 D. Complaints and refund requests (whether received directly, indirectly,
12 or through any third party) and any responses to those complaints or requests;

13 E. Copies of all sales scripts, training materials, advertisements, or other
14 marketing materials; and

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

20 **DISTRIBUTION OF ORDER**

21 **XI. IT IS FURTHER ORDERED** that, for a period of four (4) years from the
22 date of entry of this Order, Defendant Tony Perry shall deliver copies of this Order
23 as directed below:

24 A. Defendant Tony Perry as Control Person: For any business that
25 Defendant Tony Perry controls, directly or indirectly, or in which Defendant Tony
26 Perry has a majority ownership interest, Defendant Tony Perry must deliver a copy
27 of this Order to (1) all principals, officers, directors, and managers of that business;
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(2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of Section I of this Order (entitled Ban on Mortgage Loan Modification and Foreclosure Relief Services) or Section II of this Order (entitled Prohibited Representations Relating to Financial Related Goods and Services); and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled “Compliance Reporting.” For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant Tony Perry. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled “Compliance Reporting,” delivery shall be at least ten (10) days prior to the change in structure.

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RETENTION OF JURISDICTION

XIII. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 14th day of July, 2010.

UNITED STATES DISTRICT JUDGE
David O. Carter