

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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 Management Corporation, also d/b/a Direct Lender and DirectLender.com (collectively known as “Direct Lender”), Dean Shafer, Bernadette Perry, and Marion Anthony Perry’s violations of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the advertising, marketing, promotion, offering for sale, and sale of mortgage loan modification and foreclosure relief services.

1 The Court entered a Temporary Restraining Order (“TRO”) as to all parties
2 on July 20, 2009 [Dkt. 14], a Preliminary Injunction Order as to Defendants LMS
3 and Direct Lender on August 18, 2009 [Dkt. 41], a Preliminary Injunction Order as
4 to Bernadette Perry and Tony Perry on August 19, 2009 [Dkt. 43], and a
5 Preliminary Injunction Order as to Dean Shafer on August 19, 2009 [Dkt. 44].

6 The TRO in this case enjoined Defendants from, among other things,
7 collecting advance fees from consumers, and making certain representations about
8 Defendants’ services. The TRO also contained an asset freeze. The Preliminary
9 Injunction Order as to Defendants LMS and Direct Lender enjoined them from,
10 among other things, collecting advance fees from consumers, and collecting
11 payments from consumers for services prior to the date of the Order, as well as
12 continuing the asset freeze and appointing a Permanent Receiver for Defendants
13 LMS and Direct Lender.

14 The FTC now has moved for entry of a default judgment on all counts of the
15 Complaint against the Defendants LMS and Direct Lender (collectively,
16 “Corporate Defendants”) pursuant to Rules 54(b) and 55(b)(2) of the Federal Rules
17 of Civil Procedure. Upon consideration of the FTC’s Motion for Entry of Default
18 Judgment Against Corporate Defendants Loss Mitigation Services, Inc. and
19 Synergy Financial Management Corporation, the Court **GRANTS** the FTC’s
20 motion, and **IT IS THEREFORE ORDERED** as follows:

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 Defendants’ alleged deceptive acts or
25 practices in connection with the marketing and sale of mortgage loan modification
26 and foreclosure relief services.

27 2. The FTC has the authority under Section 13(b) of the FTC Act to seek
28 the relief it has requested, and the Complaint states a claim upon which relief can

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
14 Defendants pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.

15 7. The factual allegations in the Commission's Complaint are taken as
16 true against Corporate Defendants. Those allegations and the evidence supporting
17 them establish that Corporate Defendants violated Section 5(a) of the FTC Act, 15
18 U.S.C. § 45(a).

19 8. The Court now finds that Corporate Defendants are likely to continue
20 to engage in the acts and practices alleged in the Complaint unless they are
21 permanently enjoined from such acts and practices.

22 9. The Court now finds that the FTC is entitled to equitable monetary
23 relief against Corporate Defendants in the amount of six million two hundred
24 sixty-two thousand five hundred nine dollars and sixty-two cents (\$6,262,509.62)
25 for which Corporate Defendants are jointly and severally liable.

26 10. Entry of this Order resolves Plaintiff's claims as to Corporate
27 Defendants. Because Corporate Defendants are in default and unrepresented and
28 thus unlikely to make any further filings before this Court, and because entry of

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 person: (A) performing customer service
9 functions, including, but not limited to, receiving or responding to consumer
10 complaints; (B) formulating or providing, or arranging for the formulation or
11 provision of, any telephone sales script or any other marketing material, including
12 but not limited to direct mail, the text of any Internet website, email, or other
13 electronic communication; (C) providing names of, or assisting in the generation
14 of, potential customers; (D) performing marketing services of any kind; or
15 (E) acting or serving as an owner, officer, director, manager, or principal of such
16 entity.

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

19 3. *“Debt relief good or service”* means any good, service, plan, or
20 program, including debt management plans, debt settlement, debt negotiation, and
21 for-profit credit counseling, represented, expressly or by implication, to
22 renegotiate, settle, or in any way alter the terms of payment or other terms of the
23 debt between a consumer and one or more unsecured creditors, servicers, or debt
24 collectors, including but not limited to, a reduction in the balance, interest rate, or
25 fees owed by a consumer to an unsecured creditor, servicer, or debt collector.

26 4. *“Defendants”* means, individually, collectively, or in any
27 combination: (a) Loss Mitigation Services, Inc. (“LMS”); (b) Synergy Financial
28 Management Corporation, also d/b/a Direct Lender and Direct Lender.com

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 her obligation; (F) obtain any waiver of an
16 acceleration clause contained in any promissory note or contract secured by a deed
17 of trust or mortgage on a residence in foreclosure or contained in that deed of trust;
18 (G) obtain a loan or advance of funds that is connected to the consumer’s home
19 ownership; (H) avoid or ameliorate the impairment of the consumer’s credit record,
20 credit history, or credit rating that is connected to the consumer’s home ownership;
21 (I) save the consumer’s residence from foreclosure; (J) assist the consumer in
22 obtaining proceeds from the foreclosure sale of the consumer’s residence;
23 (K) obtain or arrange a pre-foreclosure sale, short sale, or deed-in-lieu of
24 foreclosure; (L) obtain or arrange a refinancing, recapitalization, or reinstatement
25 of a home loan, deed of trust, or mortgage; (M) audit or examine a consumer’s
26 mortgage or home loan application; or (N) obtain, arrange, or attempt to obtain or
27 arrange any extension of the period within which the renter of property sold at
28 foreclosure may continue to occupy the property. The foregoing shall include any

1 manner of claimed assistance, including, but not limited to, debt, credit, budget, or
2 financial counseling; receiving money for the purpose of distributing it to creditors;
3 contacting creditors or servicers on behalf of the consumer; and giving advice of
4 any kind with respect to filing for bankruptcy.

5 9. “*Person*” means a natural person, organization, or other legal entity,
6 including a corporation, partnership, proprietorship, association, cooperative, or
7 any other group or combination acting as an entity.

8 10. “*Servicer*” means any beneficiary, mortgagee, trustee, loan servicer,
9 loan holder, or any entity performing loan or credit account administration or
10 processing services and/or its authorized agents.

11 **ORDER**

12 **BAN ON MORTGAGE LOAN MODIFICATION
AND FORECLOSURE RELIEF SERVICES**

13 **I. IT IS THEREFORE ORDERED** that Corporate Defendants, whether
14 acting directly or through any other person, are permanently restrained and
15 enjoined from

16 A. Advertising, marketing, promoting, offering for sale, or selling any
17 mortgage loan modification or foreclosure relief service; and

18 B. Assisting others engaged in advertising, marketing, promoting,
19 offering for sale, or selling any mortgage loan modification or foreclosure relief
20 service.

21 **PROHIBITED REPRESENTATIONS RELATING
22 TO FINANCIAL RELATED GOODS AND SERVICES**

23 **II. IT IS FURTHER ORDERED** that Corporate Defendants and their
24 successors, assigns, officers, agents, servants, employees, and attorneys, and those
25 persons in active concert or participation with any of them who receive actual
26 notice of this Order by personal service, facsimile transmission, email, or
27 otherwise, whether acting directly or through any corporation, subsidiary, division,
28 or other device, in connection with the advertising, marketing, promotion, offering

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

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

8 5. That a consumer will receive legal representation;

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

11 **PROHIBITED REPRESENTATIONS**
12 **RELATING TO ANY GOODS OR SERVICES**

13 **III. IT IS FURTHER ORDERED** that Corporate Defendants and their
14 successors, assigns, officers, agents, servants, employees, and attorneys, and those
15 persons or entities in active concert or participation with any of them who receive
16 actual notice of this Order by personal service, facsimile transmission, email, or
17 otherwise, whether acting directly or through any corporation, subsidiary, division,
18 or other device, in connection with the advertising, marketing, promotion, offering
19 for sale or sale of any good, service, plan, or program are hereby permanently
20 restrained and enjoined from misrepresenting or assisting others in
21 misrepresenting, expressly or by implication, any material fact, including but not
22 limited to:

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

27 B. That any person is affiliated with, endorsed or approved by, or
28 otherwise connected to any other person, government entity, any federal

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:

13 A. disclosing, using, or benefitting from customer or prospective
14 customer information, including the name, address, telephone number, email
15 address, social security number, other identifying information, or any data that
16 enables access to a customer's account (including a credit card, bank account, or
17 other financial account), of any person which any Defendant obtained prior to
18 entry of this Order in connection with the advertising, marketing, promotion,
19 offering for sale or sale of any mortgage loan modification or foreclosure relief
20 service, and

21 B. failing to dispose of such customer or prospective customer
22 information in all forms in their possession, custody, or control within thirty (30)
23 days after entry of this Order. Disposal shall be by means that protect against
24 unauthorized access to the customer or proposed customer information, such as by
25 burning, pulverizing, or shredding any papers, and by erasing or destroying any
26 electronic media, to ensure that the customer or prospective customer information
27 cannot practicably be read or reconstructed.

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 7028 pursuant to the
2 priorities set forth in Court's Order Regarding TK Global Partners, LP's Claims
3 Regarding Reserve Account [Dkt.. 95];

4 C. Corporate Defendants relinquish all dominion, control, and title to the
5 funds paid to the fullest extent permitted by law. Defendants shall make no claim
6 to or demand for return of the funds, directly or indirectly, through counsel or
7 otherwise.

8 COMPLIANCE MONITORING

9 **VI. IT IS FURTHER ORDERED** that, for the purpose of monitoring and
10 investigating compliance with any provision of this Order:

11 A. Within ten (10) days of receipt of written notice from a representative
12 of the FTC, Corporate Defendants each shall submit additional written reports,
13 which are true and accurate and sworn to under penalty of perjury; produce
14 documents for inspection and copying; appear for deposition; and provide entry
15 during normal business hours to any business location in the Corporate
16 Defendants' possession or direct or indirect control to inspect the business
17 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. having its representatives pose as consumers and suppliers to
24 the Corporate Defendants, their employees, or any other entity managed or
25 controlled in whole or in part by the Corporate Defendants, without the necessity
26 of identification or prior notice; and

27 C. Corporate Defendants shall permit representatives of the FTC to
28 interview any consultant, independent contractor, representative, agent, or

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
7 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

8 **COMPLIANCE REPORTING**

9 **VII. IT IS FURTHER ORDERED** that, in order that compliance with the
10 provisions of this Order may be monitored:

11 A. For a period of seven (7) years from the date of entry of this Order,

12 1. Each Corporate Defendant shall notify the FTC of the
13 following:

14 a. Any changes in such Corporate Defendant's business
15 premises, mailing addresses, and telephone numbers, within ten (10) days of the
16 date of such change;

17 b. Any changes in such Defendant's ownership in any
18 business entity within ten (10) days of the date of such change. Such notice shall
19 include the name and address of each new business that such Defendant is
20 affiliated with, creates or forms, or performs services for; and a detailed description
21 of the nature of the business; and

22 c. any changes in such Corporate Defendant's name or use
23 of any aliases or fictitious names within ten (10) days of the date of such change;

24 2. Each Corporate Defendant shall notify the FTC of any changes
25 in its structure or any business entity that it directly or indirectly controls, or has an
26 ownership interest in, that may affect compliance obligations arising under this
27 Order, including but not limited to: incorporation or other organization; a
28 dissolution, assignment, sale, merger, or other action; the creation or dissolution of

1 a subsidiary, parent, or affiliate that engages in any acts or practices subject to this
2 Order; or a change in the business name or address, at least thirty (30) days prior to
3 such change, *provided that*, with respect to any such change in the business entity
4 about which a Corporate Defendant learns less than thirty (30) days prior to the
5 date such action is to take place, such Corporate Defendant shall notify the
6 Commission as soon as is practicable after obtaining such knowledge.

7 B. One hundred eighty (180) days after the date of entry of this Order
8 and annually thereafter for a period of five (5) years, Corporate Defendants each
9 shall provide a written report to the FTC, which is true and accurate and sworn to
10 under penalty of perjury, setting forth in detail the manner and form in which they
11 have complied and are complying with this Order. This report shall include, but
12 not be limited to:

13 1. Corporate Defendants' then-current addresses for any business
14 premises and mailing address, and any telephone numbers;

15 2. A copy of each acknowledgment of receipt of this Order,
16 obtained pursuant to the Section titled "Distribution of Order;" and

17 3. Any other changes required to be reported under Subsection A
18 of this Section.

19 C. Each Corporate Defendants shall notify the FTC of the filing of a
20 bankruptcy petition by such Defendant within fifteen (15) days of filing.

21 D. For the purposes of this Order, Corporate Defendants shall, unless
22 otherwise directed by the FTC's authorized representatives, send by overnight
23 courier all reports and notifications required by this Order to the Commission, to
24 the following address:

25 Associate Director for Enforcement
26 Bureau of Consumer Protection
27 Federal Trade Commission
28 600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580
RE: *FTC v. Loss Mitigation Services, Inc.*, Case No.
SACV09-800 DOC (ANx) (C.D. Cal.)

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 the cost of goods or services sold,
15 revenues generated, and the disbursement of such revenues;

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

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

25 D. Complaints and refund requests (whether received directly or
26 indirectly, such as through a third party,) and any responses to those complaints or
27 requests;

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."

8
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.

RETENTION OF JURISDICTION

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

ENTRY OF JUDGMENT

XI. IT IS FURTHER ORDERED that pursuant to Federal Rule of Civil Procedure 54(b), the Clerk shall enter this Order immediately.

IT IS SO ORDERED.

DATED this 19th day of April, 2010.

David O. Carter

U.S. DISTRICT JUDGE DAVID O. CARTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28