

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,		
v.	}	FINAL ORDER FOR PERMANENT INJUNCTION AND SETTLEMENT OF CLAIMS AS TO DEFENDANT DEAN SHAFER
Loss Mitigation Services, Inc., et al.		
Defendants.		

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’ violations of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the marketing and sale of mortgage loan modification and foreclosure relief services. The Court entered a Temporary Restraining Order as to all parties on July 20, 2009 (“TRO”) [Docket Itm. #14], a Preliminary Injunction Order as to Defendants Loss Mitigation Services, Inc. (“LMS”) and Synergy Financial Management Corporation, also d/b/a Direct Lender and DirectLender.com (“Synergy” or “Direct Lender”) on August 18, 2009 [Docket Itm. #41], a Preliminary Injunction Order as to Bernadette

1 Perry (a.k.a. Bernadette Carr and Bernadette Carr-Perry) and Marion Anthony (a.k.a.
2 “Tony”) Perry on August 19, 2009 [Docket Itm. #43], and a Preliminary Injunction
3 Order as to Dean Shafer on August 19, 2009 [Docket Itm. #44] (“Shafer PI Order”).

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

12 Plaintiff FTC and Defendant *Pro Se* Dean Shafer have now stipulated to entry
13 of this Final Order for Permanent Injunction and Settlement of Claims as to
14 Defendant Dean Shafer. This Court, having considered the Complaint, exhibits,
15 memoranda, declarations, and other submissions of the parties, and now being
16 advised in the premises, hereby enters this Order:

17 **FINDINGS**

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

23 2. The FTC has authority under Section 13(b) of the FTC Act to seek the
24 relief it has requested, and the Complaint states a claim upon which relief can be
25 granted against the Defendants.

1 potential customers; (D) performing marketing services of any kind; or (E) acting or
2 serving as an owner, officer, director, manager, or principal of such entity.

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

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

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

18 5. **“Financial related good or service”** means any good, service, plan, or
19 program that is represented, expressly or by implication, to (A) provide any
20 consumer, arrange for any consumer to receive, or assist any consumer in receiving,
21 credit, debit, or stored value cards; (B) improve, or arrange to improve, any
22 consumer’s credit record, credit history, or credit rating; (C) provide advice or
23 assistance to any consumer with regard to any activity or service the purpose of
24 which is to improve a consumer’s credit record, credit history, or credit rating; (D)
25 provide any consumer, arrange for any consumer to receive, or assist any consumer
26 in receiving, a loan or other extension of credit; (E) provide any consumer, arrange
27 for any consumer to receive, or assist any consumer in receiving, debt relief services;
28

1 (F) provide any consumer, arrange for any consumer to receive, or assist any
2 consumer in receiving any service represented, expressly or by implication, to
3 renegotiate, settle, or in any way alter the terms of payment or other terms of the debt
4 between a consumer and one or more secured creditors, servicers, or debt collectors.

5 6. ***“Federal homeowner relief or financial stability program”*** means any
6 program (including its sponsoring agencies, telephone numbers, and Internet
7 websites) operated or endorsed by the United States government to provide relief to
8 homeowners or stabilize the economy, including but not limited to (A) the Making
9 Home Affordable Program; (B) the Financial Stability Plan; (C) the Troubled Asset
10 Relief Program and any other program sponsored or operated by the United States
11 Department of the Treasury; (D) the HOPE for Homeowners program, any program
12 operated or created pursuant to the Helping Families Save Their Homes Act, and any
13 other program sponsored or operated by the Federal Housing Administration; or (E)
14 any program sponsored or operated by the United States Department of Housing and
15 Urban Development (“HUD”), the HOPE NOW Alliance, the Homeownership
16 Preservation Foundation, or any other HUD-approved housing counseling agency.

17 7. ***“Material fact”*** means any fact that is likely to affect a person’s choice
18 of, or conduct regarding, goods or services.

19 8. ***“Mortgage loan modification or foreclosure relief service”*** means any
20 good, service, plan, or program that is represented, expressly or by implication, to
21 assist a consumer in any manner to (A) stop, prevent, or postpone any home
22 mortgage or deed of trust foreclosure sale; (B) obtain or arrange a modification of
23 any term of a home loan, deed of trust, or mortgage; (C) obtain any forbearance from
24 any mortgage loan holder or servicer; (D) exercise any right of reinstatement of any
25 residential mortgage loan; (E) obtain, arrange, or attempt to obtain or arrange any
26 extension of the period within which the owner of property sold at foreclosure may
27 cure his or her default or reinstate his or her obligation; (F) obtain any waiver of an
28

1 acceleration clause contained in any promissory note or contract secured by a deed of
2 trust or mortgage on a residence in foreclosure or contained in that deed of trust; (G)
3 obtain a loan or advance of funds that is connected to the consumer's home
4 ownership; (H) avoid or ameliorate the impairment of the consumer's credit record,
5 credit history, or credit rating that is connected to the consumer's home ownership;
6 (I) save the consumer's residence from foreclosure; (J) assist the consumer in
7 obtaining proceeds from the foreclosure sale of the consumer's residence; (K) obtain
8 or arrange a pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure; (L) obtain
9 or arrange a refinancing, recapitalization, or reinstatement of a home loan, deed of
10 trust, or mortgage; (M) audit or examine a consumer's mortgage or home loan
11 application; or (N) obtain, arrange, or attempt to obtain or arrange any extension of
12 the period within which the renter of property sold at foreclosure may continue to
13 occupy the property. The foregoing shall include any manner of claimed assistance,
14 including, but not limited to, debt, credit, budget, or financial counseling; receiving
15 money for the purpose of distributing it to creditors; contacting creditors or servicers
16 on behalf of the consumer; and giving advice of any kind with respect to filing for
17 bankruptcy.

18 9. "**Person**" means a natural person, organization, or other legal entity,
19 including a corporation, partnership, proprietorship, association, cooperative, or any
20 other group or combination acting as an entity.

21 10. "**Servicer**" means any beneficiary, mortgagee, trustee, loan servicer,
22 loan holder, or any entity performing loan or credit account administration or
23 processing services and/or its authorized agents.

24

25

26

27

28

ORDER

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

I. IT IS THEREFORE ORDERED that Defendant Dean Shafer, whether acting directly or through any other person, is permanently restrained and enjoined from

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

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

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

II. IT IS FURTHER ORDERED that Defendant Dean Shafer 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 financial related good or service, are hereby permanently restrained and enjoined from:

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

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

- (a) closing costs or other fees;
- (b) the payment schedule, the monthly payment amount(s), or other payment terms, or whether there is a balloon payment; interest rate(s), annual

1 percentage rate(s), or finance charge; the loan amount, the amount of credit, the draw
2 amount, or outstanding balance; the loan term, the draw period, or maturity; or any
3 other term of credit;

4 (c) the savings associated with the credit;

5 (d) the amount of cash to be disbursed to the borrower out of
6 the proceeds, or the amount of cash to be disbursed on behalf of the borrower to any
7 third parties;

8 (e) whether the payment of the minimum amount specified
9 each month covers both interest and principal, and whether the credit has or can
10 result in negative amortization;

11 (f) that the credit does not have a prepayment penalty or that
12 no prepayment penalty and/or other fees or costs will be incurred if the consumer
13 subsequently refinances; and

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

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

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

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

27 5. That a consumer will receive legal representation;

28

1 **PROHIBITIONS ON USE OF CUSTOMER INFORMATION**

2 **IV. IT IS FURTHER ORDERED** that Defendant Dean Shafer and his
3 successors, assigns, officers, agents, servants, employees, and attorneys, and those
4 persons or entities in active concert or participation with any of them who receive
5 actual notice of this Order by personal service, facsimile transmission, email, or
6 otherwise, whether acting directly or through any corporation, subsidiary, division,
7 or other device, are permanently restrained and enjoined from:

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

15 B. failing to dispose of such customer information in all forms in their
16 possession, custody, or control within thirty (30) days after entry of this Order.
17 Disposal shall be by means that protect against unauthorized access to the customer
18 information, such as by burning, pulverizing, or shredding any papers, and by
19 erasing or destroying any electronic media, to ensure that the customer information
20 cannot practicably be read or reconstructed.

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

24

25

26

27

28

MONETARY RELIEF

V. IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against Defendant Dean Shafer, in the amount of six million two hundred sixty two thousand five hundred nine dollars and sixty two cents (\$6,262,509.62); *provided, however*, that this judgment shall be suspended:

1. Upon completion of each of the following:

a. Bank of America shall transfer to the FTC or its designated agent all cash and other assets currently held in account number xxxx2387;

b. Wells Fargo shall transfer to the FTC or its designated agent all cash and other assets currently held in account numbers xxxx3374;

c. Wachovia shall transfer to the FTC or its designated agent all cash and other assets currently held in account number xxxx0406;

d. JP Morgan Chase shall transfer to the FTC or its designated agent all cash and other assets currently held in account number xxxx7409;

e. Merrill Lynch shall transfer to the FTC or its designated agent all cash and assets (including but not limited to liquidating all holdings and transferring the proceeds of such liquidation) currently held in account numbers xxxx9S70 and xxxx9D27;

f. Defendant Dean Shafer shall transfer to the FTC or its designated agent all cash and other assets currently held in any account to which Defendant Dean Shafer has access that is not identified in subparagraphs a-e above; and

g. Defendant Dean Shafer shall transfer to the FTC or its designated agent all cash and other assets currently held in any safe deposit box to which Defendant Dean Shafer has access;

1 2. Provided that, immediately upon receipt, Defendant Dean Shafer
2 transfers to the FTC or its designated agent the amount of any proceeds Defendant
3 Dean Shafer receives from the sale of property located at 56760 Muirfield Village,
4 La Quinta, CA, 92253;

5 3. As long as the Court makes no finding, as provided in Section VI
6 of this Order, that Defendant Dean Shafer materially misrepresented or omitted the
7 nature, existence, or value of any asset, and as long as the Court does not otherwise
8 reopen the Order and modify the judgment pursuant to Section VI of this Order.

9 B. Defendant Dean Shafer relinquishes all dominion, control, and title to
10 the funds paid to the fullest extent permitted by law. Defendant Dean Shafer shall
11 make no claim to or demand for return of the funds, directly or indirectly, through
12 counsel or otherwise.

13 C. Defendant Dean Shafer agrees that the facts as alleged in the Complaint
14 filed in this action shall be taken as true without further proof in any bankruptcy case
15 or subsequent civil litigation pursued by the FTC to enforce its rights to any payment
16 or money judgment pursuant to this Order, including but not limited to a
17 nondischargeability complaint in any bankruptcy case. Defendant Dean Shafer
18 further stipulates and agrees that the facts alleged in the Complaint establish all
19 elements necessary to sustain an action by the FTC pursuant to, and that this Order
20 shall have collateral estoppel effect for purposes of Section 523(a)(2)(A) of the
21 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A). This subsection is not intended to be,
22 nor shall it be, construed as an admission of liability by Defendant Dean Shafer with
23 respect to the allegations set forth in the Complaint with respect to any claims or
24 demands by any third parties.

25 D. Defendant Dean Shafer stipulates and agrees that the judgment ordered
26 by this Section is not dischargeable in bankruptcy, pursuant to Section 523 of the
27 Bankruptcy Code, 11 U.S.C. § 523;

28

1 E. The judgment entered pursuant to this Section is equitable monetary
2 relief, solely remedial in nature, and not a fine, penalty, punitive assessment or
3 forfeiture;

4 F. Upon request, Defendant Dean Shafer is hereby required, in accordance
5 with 31 U.S.C. § 7701, to furnish to the FTC any tax identification numbers, which
6 shall be used for purposes of collecting and reporting on any delinquent amount
7 arising out of this Order; and

8 G. Upon request, Defendant Dean Shafer is hereby required to furnish to
9 the FTC with copies of any tax returns submitted for the years 2004 through the
10 present; and

11 H. Pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
12 § 1681b(1), any consumer reporting agency may furnish a consumer report
13 concerning Defendant Dean Shafer to the FTC, which shall be used for purposes of
14 collecting and reporting on any delinquent amount arising out of this Order.

15 **RIGHT TO REOPEN**

16 **VI. IT IS FURTHER ORDERED** that, the FTC's agreement to, and the Court's
17 approval of, this Order is expressly premised on the truthfulness, accuracy and
18 completeness of the revised Financial Statement of Individual Defendant dated
19 February 3, 2010, and the revised Financial Statement of Corporate Defendant dated
20 February 3, 2010, each of which has been submitted to FTC counsel by Defendant
21 Dean Shafer, and the sworn testimony given by Defendant Dean Shafer on or about
22 January 5, 2010. If, upon motion by the FTC, the Court finds that: (1) the financial
23 statement or sworn testimony of Defendant Dean Shafer contains any material
24 misrepresentation or omission of the nature, existence, or value of any asset, or (2)
25 Defendant Dean Shafer receives any money or assets owed to him as of the date of
26 entry of this Order by any Defendant named in this civil action, or their officers,
27 agents, servants, employees, and all persons and entities in active concert or
28

1 participation with them, including pursuant to any chose of action to recover money
2 or assets from such persons, the suspended judgment entered in Section V of this
3 Order shall become immediately due and payable, less any amounts turned over to
4 the FTC pursuant to Section V of this Order. If the form entitled "Financial
5 Statement of Individual Defendant," completed by non-defendant Rebecca Raff, the
6 spouse or ex-spouse of Defendant Dean Shafer, and dated April 6, 2010, contains
7 any material misrepresentation or omission of the nature, existence, or value of any
8 asset, the Commission may request that this Order be reopened for the sole purpose
9 of modifying the amount of equitable monetary relief against Defendant Dean
10 Shafer. *Provided, however*, in all other respects this Order shall remain in full force
11 and effect unless otherwise ordered by the Court; and, *provided further*, that
12 proceedings instituted under this provision would be in addition to, and not in lieu of,
13 any other civil or criminal remedies as may be provided by law, including any other
14 proceedings that the FTC may initiate to enforce this Order. For purposes of this
15 Section, Defendant Dean Shafer waives any right to contest any of the allegations in
16 the Complaint.

17 **COOPERATION WITH FTC**

18 **VII. IT IS FURTHER ORDERED** that Defendant Dean Shafer shall, in
19 connection with this action or any subsequent investigation or litigation related to or
20 associated with the transactions or the occurrences that are the subject of the
21 Complaint, cooperate in good faith with the FTC and appear at such places and times
22 as the FTC shall reasonably request, after written notice, for interviews, conferences,
23 pretrial discovery, review of documents, and for such other matters as may be
24 reasonably requested by the FTC. If requested in writing by the FTC, Defendant
25 Dean Shafer shall appear and provide truthful testimony in any trial, deposition, or
26 other proceeding related to or associated with the transactions or the occurrences that
27 are the subject of the Complaint, without the service of a subpoena, *provided*,

1 *however*, that Defendant Dean Shafer shall be entitled to receive any witness fees
2 and expenses allowable pursuant to Federal Rule of Civil Procedure 45.

3 **COMPLIANCE MONITORING**

4 **VIII. IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and
5 investigating compliance with any provision of this Order, and (ii) investigating the
6 accuracy of Defendant Dean Shafer's financial statement or sworn testimony upon
7 which the FTC's agreement to this Order is expressly premised:

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

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

16 1. obtaining discovery from any person, without further leave of
17 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and
18 69;

19 2. posing as consumers and suppliers to Defendant Dean Shafer, his
20 employees, or any other entity managed or controlled in whole or in part by
21 Defendant Dean Shafer, without the necessity of identification or prior notice; and

22 C. Defendant Dean Shafer shall permit representatives of the FTC to
23 interview any employer, consultant, independent contractor, representative, agent, or
24 employee who has agreed to such an interview, relating in any way to any conduct
25 subject to this Order. The person interviewed may have counsel present.

26 D. *Provided however*, that nothing in this Order shall limit the FTC's
27 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15
28

1 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony,
2 or information relevant to unfair or deceptive acts or practices in or affecting
3 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

4 **COMPLIANCE REPORTING**

5 **IX. IT IS FURTHER ORDERED** that, in order that compliance with the
6 provisions of this Order may be monitored:

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

8 1. Defendant Dean Shafer shall notify the FTC of the following:

9 a. Any changes in his residence, mailing addresses, and
10 telephone numbers, within ten (10) days of the date of such change;

11 b. Any changes in his employment status (including self-
12 employment), and any change in his ownership in any business entity, within ten
13 (10) days of the date of such change. Such notice shall include the name and address
14 of each business that he is affiliated with, employed by, creates or forms, or performs
15 services for; a detailed description of the nature of the business; and a detailed
16 description of his duties and responsibilities in connection with the business or
17 employment; and

18 c. Any changes in his name or use of any aliases or fictitious
19 names;

20 2. Defendant Dean Shafer shall notify the FTC of any changes in
21 structure of any Corporate Defendant or any business entity that he directly or
22 indirectly controls, or has an ownership interest in, that may affect compliance
23 obligations arising under this Order, including but not limited to: incorporation or
24 other organization; a dissolution, assignment, sale, merger, or other action; the
25 creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or
26 practices subject to this Order; or a change in the business name or address, at least
27 thirty (30) days prior to such change, *provided* that, with respect to any proposed
28

1 change in the business entity about which Defendant Dean Shafer learns less than
2 thirty (30) days prior to the date such action is to take place, he shall notify the FTC
3 as soon as is practicable after obtaining such knowledge.

4 B. One hundred eighty (180) days after the date of entry of this Order and
5 annually thereafter for a period of seven (7) years, Defendant Dean Shafer shall
6 provide a written report to the FTC, which is true and accurate and sworn to under
7 penalty of perjury, setting forth in detail the manner and form in which he has
8 complied and is complying with this Order. This report shall include, but not be
9 limited to:

10 1. Defendant Dean Shafer's then-current residence address, mailing
11 addresses, and telephone numbers;

12 2. Defendant Dean Shafer's then-current employment status
13 (including self-employment), including the name, addresses, and telephone numbers
14 of each business that he is affiliated with, employed by, or performs services for; a
15 detailed description of the nature of the business; and a detailed description of his
16 duties and responsibilities in connection with the business or employment; and

17 3. A copy of each acknowledgment of receipt of this Order,
18 obtained pursuant to the Section titled "Distribution of Order;" and

19 4. Any other changes required to be reported under Subsection A of
20 this Section.

21 C. Defendant Dean Shafer shall notify the FTC of the filing of a
22 bankruptcy petition by him within fifteen (15) days of filing.

23 D. For the purposes of this Order, Defendant Dean Shafer shall, unless
24 otherwise directed by the FTC's authorized representatives, send by overnight
25 courier all reports and notifications required by this Order to the FTC, to the
26 following address:

27 Associate Director for Enforcement
28 Bureau of Consumer Protection

1 Federal Trade Commission
2 600 Pennsylvania Avenue, N.W.
3 Washington, D.C. 20580
4 RE: *FTC v. Loss Mitigation Services, Inc.*, Case No. SACV09-
5 800 DOC (ANx) (C.D. Ca.)

6 *Provided* that, in lieu of overnight courier, Defendant Dean Shafer may send such
7 reports or notifications by first-class mail, but only if he contemporaneously sends an
8 electronic version of such report or notification to the FTC at: DEBrief@ftc.gov.

9 E. For purposes of the compliance reporting and monitoring required by
10 this Order, the FTC is authorized to communicate directly with Defendant Dean
11 Shafer.

12 **RECORD KEEPING PROVISIONS**

13 **X. IT IS FURTHER ORDERED** that, for a period of ten (10) years from the
14 date of entry of this Order, in connection with any business where Defendant Dean
15 Shafer is the majority owner of the business or directly or indirectly manages or
16 controls the business, Defendant Dean Shafer and his agents, employees, officers,
17 corporations, and those persons in active concert or participation with him who
18 receive actual notice of this Order by personal service or otherwise, are hereby
19 restrained and enjoined from failing to create and retain the following records:

20 A. Accounting records that reflect the cost of goods or services sold,
21 revenues generated, and the disbursement of such revenues;

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

27 C. Customer files containing the names, addresses, phone numbers, dollar
28 amounts paid, quantity of items or services purchased, and description of items or

1 services purchased, to the extent such information is obtained in the ordinary course
2 of business;

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

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

7 F. All records and documents necessary to demonstrate full compliance
8 with each provision of this Order, including but not limited to, copies of
9 acknowledgments of receipt of this Order required by the Sections titled
10 “Distribution of Order” and “Acknowledgment of Receipt of Order” and all reports
11 submitted to the FTC pursuant to the Section titled “Compliance Reporting.”

12 **DISTRIBUTION OF ORDER**

13 **XI. IT IS FURTHER ORDERED** that, for a period of seven (7) years from the
14 date of entry of this Order, Defendant Dean Shafer shall deliver copies of this Order
15 as directed below:

16 A. Defendant Dean Shafer as Control Person: For any business that
17 Defendant Dean Shafer controls, directly or indirectly, or in which Defendant Dean
18 Shafer has a majority ownership interest, Defendant Dean Shafer must deliver a copy
19 of this Order to (1) all principals, officers, directors, and managers of that business;
20 (2) all employees, agents, and representatives of that business who engage in conduct
21 related to the subject matter of this Order; and (3) any business entity resulting from
22 any change in structure set forth in Subsection A.2 of the Section titled “Compliance
23 Reporting.” For current personnel, delivery shall be within five (5) days of service
24 of this Order upon Defendant Dean Shafer. For new personnel, delivery shall occur
25 prior to them assuming their responsibilities. For any business entity resulting from
26 any change in structure set forth in Subsection A.2 of the Section titled “Compliance
27 Reporting,” delivery shall be at least ten (10) days prior to the change in structure.
28

1 B. Defendant Dean Shafer as Employee or Non-Control Person: For any
2 business where Defendant Dean Shafer is not a controlling person of a business but
3 otherwise engages in conduct related to the subject matter of this Order, Defendant
4 Dean Shafer must deliver a copy of this Order to all principals and managers of such
5 business before engaging in such conduct.

6 C. Defendant Dean Shafer must secure a signed and dated statement
7 acknowledging receipt of this Order, within thirty (30) days of delivery, from all
8 persons receiving a copy of this Order pursuant to this Section.

9 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

10 **XII. IT IS FURTHER ORDERED** that Defendant Dean Shafer, within five (5)
11 business days of receipt of this Order as entered by the Court, must submit to the
12 FTC a truthful sworn statement acknowledging receipt of this Order.

13 **RETENTION OF JURISDICTION**

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

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

17
18 
19 UNITED STATES DISTRICT JUDGE
20 David O. Carter
21
22
23
24
25
26
27
28