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9 Attorneys for Plaintiff

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 **UNITED STATES OF AMERICA,**

14 **Plaintiff,**

15 **v.**

16 **DIRECT LENDING SOURCE, INC.,**
17 **a corporation,**

18 **BAILEY & ASSOCIATES ADVERTISING,**
19 **INC., a corporation,**

20 **VIRTUAL LENDING SOURCE, LLC,**
a limited liability company,

21 **ROBERT M. BAILEY, JR., individually and**
22 **as an officer of DIRECT LENDING SOURCE,**
23 **INC., BAILEY & ASSOCIATES**
ADVERTISING, INC., and VIRTUAL
LENDING SOURCE, LLC, and

24 **LINDA GIORDANO, individually and as an**
25 **officer of DIRECT LENDING SOURCE, INC.,**
26 **BAILEY & ASSOCIATES ADVERTISING,**
INC., and VIRTUAL LENDING SOURCE,
LLC,

27 **Defendants.**
28

Civil Action No. 3:12-cv-02441

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR CIVIL PENALTIES,
PERMANENT INJUNCTION,
AND OTHER EQUITABLE
RELIEF**

1 Plaintiff, the United States of America, acting upon notification and authorization to the
2 Attorney General by the Federal Trade Commission (“FTC” or “Commission”), is concurrently
3 filing its Complaint herein, which alleges that Defendants Direct Lending Source, Inc., Bailey &
4 Associates Advertising, Inc., Virtual Lending Source, LLC, Robert M. Bailey, Jr., and Linda
5 Giordano have engaged in violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§
6 1681-1681x, and in unfair or deceptive acts or practices in violation of Section 5 of the Federal
7 Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a) and (n). The parties have agreed to entry
8 of this Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other
9 Equitable Relief (“Order”) to resolve all matters in dispute in this action without trial or
10 adjudication of any issue of law or fact herein. Defendant has waived service of the Summons
11 and Complaint.

12 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as
13 follows:

14 **FINDINGS**

15 1. This Court has jurisdiction over the subject matter of this case and over
16 Defendants Direct Lending Source, Inc., Bailey & Associates Advertising, Inc., Virtual Lending
17 Source, LLC, Robert M. Bailey, Jr., and Linda Giordano.

18 2. Venue in this district is proper under 15 U.S.C. § 53(b), and 28 U.S.C.
19 §§ 1391(b) - (c) and 1395(a).

20 3. On June 22, 2011, Bailey & Associates Advertising, Inc. filed a voluntary petition
21 for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq., in the United States
22 Bankruptcy Court for the Western District of Texas, El Paso Division, Case No. 11-31202-hcm
23 (“Bankruptcy Case”). On October 26, 2011, the Bankruptcy Case was converted to a Chapter 7
24 liquidation case and J. Marshall Miller was appointed as the Bankruptcy Trustee.

25 4. If the Bankruptcy Case is pending as of the date of entry of this Order, then this
26 action against Defendant Bailey & Associates Advertising, Inc., including the entry of judgment
27 and enforcement of a judgment other than a money judgment, is not stayed by 11 U.S.C. §
28 362(a)(1),(2),(3) or (6) because it is an action brought by the United States pursuant to referral by

1 the Commission, to enforce the Commission's police and regulatory power as a governmental
2 unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exemption to the automatic stay.

3 5. The acts and practices of Defendants are in or affecting commerce, as
4 "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5 6. The Complaint states claims upon which relief may be granted against
6 Defendants under sections 5(a), 5(n), 13(b), and 16(a) of the Federal Trade Commission Act, 15
7 U.S.C. §§ 45(a), 45(n), 53(b), and 56(a); and under sections 604(f), 607(e)(1), 607(e)(2),
8 615(d)(3), and 621 of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681b(f), 1681e(e)(1),
9 1681e(e)(2), 1681m(d)(3), and 1681s.

10 7. Defendants make no admissions to the allegations in the Complaint except for the
11 facts necessary to establish jurisdiction and as otherwise specifically stated in this Order.

12 8. Defendants waive: (a) all rights to seek appellate review or otherwise challenge
13 or contest the validity of this Order; (b) any claim Defendants may have against the Commission,
14 its employees, representatives, or agents that relate to the matter stated herein; (c) all claims
15 under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110
16 Stat. 847, 863-64 (1996); and (d) any rights to attorneys' fees that may arise under said provision
17 of law.

18 9. The Bankruptcy Trustee has obtained bankruptcy court approval to enter into this
19 Order and take any and all actions necessary to implement the terms and conditions of this Order
20 applicable to Bailey & Associates Advertising, Inc.

21 10. Entry of this Order is in the public interest.

22 **DEFINITIONS**

23 11. For the purpose of this Order:

- 24 a. "Individual Defendants" means Robert M. Bailey, Jr. and Linda Giordano.
25 b. "Corporate Defendants" means Direct Lending Source, Inc.; Bailey &
26 Associates Advertising, Inc.; Virtual Lending Source, LLC; and their
27 successors and assigns.
28 c. "Defendants" means all of the Individual Defendants and the Corporate

1 Defendants, individually, collectively, or in any combination. *Provided*
2 *that*, Bailey & Associates Advertising, Inc. is excluded from the definition
3 of “Defendants” and “Corporate Defendants” as follows:

4 (i) for purpose of Section I of this Order, and

5 (ii) for purposes of Sections III-VI of this Order, but only for the
6 period from the date of entry of this Order until the date the
7 Bankruptcy Case is closed, unless the Bankruptcy Trustee obtains
8 authorization from the bankruptcy court to operate the business of
9 Bailey & Associates Advertising, Inc. pursuant to 11 U.S.C. § 721
10 or abandons property of the estate to Bailey & Associates
11 Advertising, Inc. pursuant to 11 U.S.C. § 554 before the
12 Bankruptcy Case is closed, in which case Section III-VI of this
13 Order shall apply to Bailey & Associates Advertising, Inc. as of the
14 date such an event occurs.

15 d. The definitions set forth in the FCRA, 15 U.S.C. § 1681a, which is
16 attached as Attachment A to this order, shall apply.

17 e. “Debt relief product or service” means any product, service, plan, or
18 program represented, expressly or by implication, to renegotiate, settle, or
19 in any way alter the terms of payment or other terms of the debt or
20 obligation, including but not limited to a tax debt or obligation, between a
21 person and one or more unsecured creditors or debt collectors, including
22 but not limited to, a reduction in the balance, interest rate, or fees owed by
23 a person to an unsecured creditor or debt collector by any person other
24 than the unsecured creditor who holds the debt at issue.

25 f. “Mortgage assistance relief product or service” means any product,
26 service, plan, or program, offered or provided to the consumer in exchange
27 for consideration, expressly or by implication, to assist or attempt to assist
28 the consumer with any of the following:

- 1 1. stopping, preventing, or postponing any mortgage or deed of trust
- 2 foreclosure sale for the consumer's dwelling, any repossession of
- 3 the consumer's dwelling, or otherwise saving the consumer's
- 4 dwelling from foreclosure or repossession;
- 5 2. negotiating, obtaining, or arranging a modification of any term of a
- 6 dwelling loan, including a reduction in the amount of interest,
- 7 principal balance, monthly payments, or fees;
- 8 3. obtaining any forbearance or modification in the timing of
- 9 payments from any dwelling loan holder or servicer on any
- 10 dwelling loan;
- 11 4. negotiating, obtaining, or arranging any extension of the period of
- 12 time within which the consumer may: (a) cure his or her default on
- 13 a dwelling loan, (b) reinstate his or her dwelling loan, (c) redeem a
- 14 dwelling, or (d) exercise any right to reinstate a dwelling loan or
- 15 redeem a dwelling;
- 16 5. obtaining any waiver of an acceleration clause or balloon payment
- 17 contained in any promissory note or contract secured by any
- 18 dwelling; or
- 19 6. negotiating, obtaining, or arranging: (a) a short sale of a dwelling,
- 20 (b) a deed-in-lieu of foreclosure, or (c) any other disposition of a
- 21 dwelling loan other than a sale to a third party that is not the
- 22 dwelling loan holder.
- 23 g. "Prescreening" or "prescreened list" shall refer to the process and the
- 24 resulting lists covered by Sections 603(l), 604(c), 604(e), or 615(d) of the
- 25 FCRA. 15 U.S.C. §§ 1681a(l), 1681b(c), 1681b(e), or 1681m(d).
- 26
- 27
- 28

ORDER

I. CIVIL PENALTY

IT IS ORDERED that:

A. Defendants shall pay to Plaintiff, pursuant to Section 621(a) of the FCRA, 15 U.S.C. § 1681s(a), a civil penalty in the amount of one million, two hundred thousand dollars (\$1,200,000).

B. Defendants shall pay the judgment in Section I.A in installments as follows:

1. Within seven (7) business days of the date of service of this Order, Defendants' shall turn over two hundred thousand dollars (\$200,000) ("First Installment") to the Treasurer of the United States by wire transfer in accordance with instructions provided by the Consumer Protection Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition. Written confirmation of the wire transfer shall be delivered in accordance with the procedures specified by the Consumer Protection Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.
2. After the First Installment, Defendants shall pay to the Treasurer of the United States the remaining balance of one million dollars (\$1,000,000) in two yearly installments of one-half (½) of the remaining balance plus interest ("Yearly Installments");
3. The interest shall be computed on the unpaid balance and from the entry date of this Order pursuant to 28 U.S.C. § 1961; and
4. The first Yearly Installment shall be paid no later than one year from the date of entry of this Order, and the second Yearly Installment shall be paid no later than two years from the date of entry of this Order.

C. To effect the civil penalty payments required by Section I.B., the Court directs that Defendants shall transfer such funds in the form of a wire transfer to the Treasurer of the United States. Written confirmation of the wire transfer shall be delivered in accordance with the

1 procedures specified by the Consumer Protection Branch, Civil Division, U.S. Department of
2 Justice, Washington, D.C. 20530.

3 D. In the event of any default in any payment required by this order, which default
4 continues for ten (10) days beyond the due date of the payment, the entire unpaid penalty, together
5 with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of
6 payment, shall immediately become due and payable, and the Commission shall be entitled to
7 exercise immediately any and all rights and remedies against Defendants and their assets to collect
8 the full amount of the judgment and interest thereon, less any amounts already paid. Along these
9 lines, in the event of any default in payment, Defendants will consent to any judicial sale of the
10 Collateral.

11 E. As security for the payments required by Section I.B., Defendants, individually
12 and on behalf of their respective successors and assigns, hereby grant the Commission liens on
13 and security interests in the real and/or personal property described in Attachment B to this Order,
14 together with all dwelling houses, other structures, improvements, appurtenances, hereditaments,
15 and other rights appertaining or belonging thereto, or which hereafter may be added or attached
16 thereto, and all replacements, substitutions therefore or thereto, and proceeds thereof, whether
17 presently existing or hereafter arising (collectively, the "Collateral").

18 Defendants shall be responsible for timely payment of all taxes, fees, association dues, and
19 all other attendant expenses related to maintenance and ownership of the Collateral until such
20 time as the Collateral is sold or auctioned. Defendants are required to continue and maintain in
21 full force insurance coverage on the Collateral.

22 Defendants expressly agree that the Collateral does not consist of any homestead
23 properties.

24 Defendants represent and acknowledge that the Commission is relying on the material
25 representations that the Individual Defendants are the sole owners in fee simple of the Collateral,
26 title to the Collateral is marketable, and the Collateral currently is not encumbered by any other
27 lien, mortgage, deed of trust, assignment, pledge, security interest or other interest except as set
28 forth in Attachment B to this Order. Defendants agree to subordinate any liens, mortgages, deeds

1 of trust, assignments, pledges, security interests, or other interests that Defendants have in the
2 Collateral to the liens and security interests granted herein to the Commission. Defendants further
3 agree that as of the date on which they sign this Order they shall refrain from transferring,
4 converting, encumbering, selling, assigning, or otherwise disposing of the Collateral, except with
5 the express prior written permission of counsel for the Commission or in accordance with the
6 release provisions of this Order.

7 Defendants shall cooperate fully with the Commission and be responsible (at their
8 expense, through counsel reasonably acceptable to the Commission) for preparing, executing, and
9 recording the necessary instruments and documents, including but not limited to financing
10 statements and continuation statements, taking whatever additional actions the Commission
11 deems reasonably necessary or desirable to perfect, evidence, and continue its liens on and
12 security interest in the Collateral, and paying all related fees and costs, including but not limited to
13 attorneys' fees and filing fees. To this end, on July 2, 2012, Defendants prepared (at their
14 expense), executed, and delivered to the Commission documents granting liens on the property
15 listed on Attachment B. These documents were recorded (at their expense) on July 2, 2012.

16 Defendants shall be responsible for paying all fees and costs relating to the preparation,
17 execution, delivery, filing, recording, continuation, and termination of the liens and security
18 interests granted herein, including but not limited to attorneys' fees and filing fees.

19 F. Defendants relinquish all dominion, control, and title to the funds paid to the
20 fullest extent permitted by law. Defendants shall make no claim to or demand for return of the
21 funds, directly or indirectly, through counsel or otherwise.

22 G. Defendants agree that the facts as alleged in the Complaint filed in this action
23 shall be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf
24 of the Commission to enforce its rights to any payment or money judgment pursuant to this Order,
25 including but not limited to a nondischargeability complaint in any bankruptcy case. Defendants
26 agree that the judgment represents a civil penalty owed to the United States Government, is not
27 compensation for actual pecuniary loss, and, therefore, as to the Defendants, it is not subject to
28 discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7), and that this Order shall

1 have collateral estoppel effect for such purposes. This Section is not, and is not intended to be,
2 construed as an admission by Defendants of the facts alleged in the Complaint with respect to any
3 claims or demands by any third parties.

4 H. Proceedings initiated under this Part are in addition to, and not in lieu of, any other
5 civil or criminal penalties that may be provided by law, including any other proceedings Plaintiff
6 may initiate to enforce this Order.

7 I. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they
8 have done so already, to furnish to the Commission their taxpayer identification numbers and/or
9 social security numbers, which shall be used for the purposes of collecting and reporting on any
10 delinquent amount arising out of Defendants' relationship with the government.

11 **II. PROHIBITED BUSINESS ACTIVITIES**

12 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents, representatives,
13 and employees, and all persons in active concert or participation with any of them who receive
14 actual notice of this Order by personal service or otherwise, are hereby permanently restrained and
15 enjoined, directly or through any entity, from:

16 A. Using or obtaining consumer reports for any purpose not authorized under section
17 604 of the FCRA, 15 U.S.C. § 1681b, as prohibited by section 604(f) of the FCRA, 15 U.S.C.
18 §1681b(f).

19 B. Failing to disclose to the consumer reporting agency that originally furnishes a
20 report that Defendants procure for purposes of reselling the report: the identity of the end-user of
21 the report (or information) and each permissible purpose under section 604 [§ 1681b] for which
22 the report is furnished to the end-user of the report (or information), pursuant to section 607(e)(1)
23 of the FCRA, 15 U.S.C. § 1681e(e)(1).

24 C. Failing to establish and comply with reasonable procedures designed to ensure
25 that a report (or information), procured for purposes of reselling the report, is resold by
26 Defendants only for a purpose for which the report may be furnished under section 604 [§ 1681b],
27 including by:

28 1. Failing to require that each person to which the report (or information) is

1 resold and that resells or provides the report (or information) to any other
2 person: (i) identifies each end user of the resold report (or information); (ii)
3 certifies each purpose for which the report (or information) will be used;
4 and (iii) certifies that the report (or information) will be used for no other
5 purpose; and

6 2. Before reselling the report, failing to make reasonable efforts to verify the
7 identifications and certifications above as required by section 607(e)(2) of
8 the FCRA, 15 U.S.C. § 1681e(e)(2).

9 D. For any firm offer of credit, failing to maintain on file the criteria used to select
10 the consumer to receive the offer, all criteria bearing on credit worthiness that are the basis for
11 determining whether or not to extend credit pursuant to the offer, and any requirement for the
12 furnishing of collateral as a condition of the extension of credit, until the expiration of the 3-year
13 period beginning on the date on which the offer is made to the consumer for any consumer whose
14 consumer report is used in connection with any credit transaction that is not initiated by that
15 consumer, as required by section 615(d)(3) of the FCRA, 15 U.S.C. § 1681m(d)(3).

16 E. Using or selling consumer reports in connection with solicitations for debt relief
17 products or services, or mortgage assistance relief products or services, offered by entities that
18 charge advance fees.

19 III. ORDER ACKNOWLEDGMENTS

20 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of receipt of this
21 Order:

22 A. Each Defendant, within 7 days of entry of this Order, must submit to the
23 Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

24 B. For 5 years after entry of this Order, each Individual Defendant for any business
25 that such Defendant, individually or collectively with any other Defendant, is the majority owner
26 or directly or indirectly controls, and each Corporate Defendant, must deliver a copy of this Order
27 to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and
28 representatives who participate in conduct related to the subject matter of the Order; and (3) any

1 business entity resulting from any change in structure as set forth in the Section titled Compliance
2 Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all
3 others, delivery must occur before they assume their responsibilities.

4 C. From each individual or entity to which a Defendant delivered a copy of this Order,
5 that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this
6 Order.

7 IV. COMPLIANCE REPORTING

8 **IT IS FURTHER ORDERED** that Defendants make timely submissions to the
9 Commission:

10 A. 180 days after entry of this Order, each Defendant must submit a compliance
11 report, sworn under penalty of perjury.

12 1. Each Defendant must: (a) designate at least one telephone number and an
13 email, physical, and postal address as points of contact, which
14 representatives of the Commission and Plaintiff may use to communicate
15 with Defendant; (b) identify all of that Defendant's businesses by all of
16 their names, telephone numbers, and physical, postal, email, and Internet
17 addresses; (c) describe the activities of each business, including the
18 products and services offered, the means of advertising, marketing, and
19 sales, and the involvement of any other Defendant (which Individual
20 Defendants must describe if they know or should know due to their own
21 involvement); (d) describe in detail whether and how that Defendant is in
22 compliance with each Section of this Order; and (e) provide a copy of each
23 Order Acknowledgment obtained pursuant to this Order, unless previously
24 submitted to the Commission;

25 2. Additionally, each Individual Defendant must: (a) identify all telephone
26 numbers and all email, Internet, physical, and postal addresses, including
27 all residences; (b) identify all titles and roles in all business activities,
28 including any business for which such Defendant performs services

1 whether as an employee or otherwise and any entity in which such
2 Defendant has any ownership interest; and (c) describe in detail such
3 Defendant's involvement in each such business, including title, role,
4 responsibilities, participation, authority, control, and any ownership.

5 B. For 20 years following entry of this Order, each Defendant must submit a
6 compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

- 7 1. Each Defendant must report any change in: (a) any designated point of
8 contact; or (b) the structure of any Corporate Defendant or any entity that
9 Defendant has any ownership interest in or directly or indirectly controls
10 that may affect compliance obligations arising under this Order, including:
11 creation, merger, sale, or dissolution of the entity or any subsidiary, parent,
12 or affiliate that engages in any acts or practices subject to this Order;
- 13 2. Additionally, each Individual Defendant must report any change in: (a)
14 name, including aliases or fictitious name, or residence address; or (b) title
15 or role in any business activity, including any business for which such
16 Defendant performs services whether as an employee or otherwise and any
17 entity in which such Defendant has any ownership interest, and identify its
18 name, physical address, and Internet address, if any.

19 C. Each Defendant must submit to the Commission notice of the filing of any
20 bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such
21 Defendant within 14 days of its filing.

22 D. Any submission to the Commission required by this Order to be sworn under
23 penalty of perjury must be true and accurate and comply with 18 U.S.C. § 1746, such as by
24 concluding: "I declare under penalty of perjury under the laws of the United States of America
25 that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full
26 name, title (if applicable), and signature.

27 E. Unless otherwise directed by a Commission representative in writing, all
28 submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or

1 sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,
2 Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,
3 Washington, DC 20580. The subject line must begin: FTC v. Direct Lending Source, Inc, Bailey
4 & Associates Advertising, Inc., Virtual Lending Source, LLC, Robert Bailey & Linda Giordano.

5 **V. RECORDKEEPING**

6 **IT IS FURTHER ORDERED** that Defendants must create certain records for 20 years
7 after entry of the Order, and to retain each such record for 5 years. Specifically, Corporate
8 Defendants and each Individual Defendant for any business in which that Defendant, individually
9 or collectively with any other Defendants, is a majority owner or directly or indirectly controls,
10 must maintain the following records:

11 A. Accounting records showing the revenues from all goods or services sold, all costs
12 incurred in generating those revenues, and the resulting net profit or loss;

13 B. Personnel records showing, for each person providing services, whether as an
14 employee or otherwise, that person's: name, addresses, and telephone numbers; job title or
15 position; dates of service; and, if applicable, the reason for termination;

16 C. Customer files showing the names, addresses, telephone numbers, dollar amounts
17 paid, and the quantity and description of goods or services purchased;

18 D. Copies of each unique prescreened solicitation used in Defendants' prescreening
19 operation;

20 E. Files containing the names, addresses, telephone numbers, and all certifications
21 made by persons pursuant to section II.C.1. of this Order, and all materials considered by
22 Defendants in connection with their verification of the identity of the persons and verification of
23 the certifications made under section II.C.1. of this Order, as required by section II.C.2. of this
24 Order;

25 F. Consumer complaints (whether received in written or electronic form, directly,
26 indirectly, or through any third party), and any responses to those complaints, whether in written
27 or electronic form, that relate to Defendants' activities as alleged in the Complaint and
28 Defendant's compliance with the provisions of this Order;

1 G. Copies of all training materials and marketing materials that relate to Defendants'
2 activities as alleged in the Complaint and Defendants' compliance with the provisions of this
3 Order;

4 H. Copies of all subpoenas and other communications with law enforcement entities
5 or personnel, whether in written or electronic form, if such documents bear in any respect on
6 Defendants' use or sale of consumer reports or other personal information of consumers; and

7 I. All records necessary to demonstrate full compliance with each provision of this
8 Order, including all submissions to the Commission.

9 **VI. COMPLIANCE MONITORING**

10 IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance
11 with this Order:

12 A. Within 14 days of receipt of a written request from a representative of the
13 Commission or Plaintiff, each Defendant must: submit additional compliance reports or other
14 requested information, which must be sworn under penalty of perjury; appear for depositions; and
15 produce documents, for inspection and copying. The Commission and Plaintiff are also
16 authorized to obtain discovery, without further leave of court, using any of the procedures
17 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33,
18 34, 36, 45, and 69.

19 B. For matters concerning this Order, the Commission and Plaintiff are authorized to
20 communicate directly with each Defendant. Defendant must permit representatives of the
21 Commission and Plaintiff to interview any employee or other person affiliated with any Defendant
22 who has agreed to such an interview. The person interviewed may have counsel present.

23 C. The Commission and Plaintiff may use all other lawful means, including posing,
24 through their representatives, as consumers, suppliers, or other individuals or entities, to
25 Defendants or any individual or entity affiliated with Defendants, without the necessity of
26 identification or prior notice. Nothing in this Order limits the Commission's lawful use of
27 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.
28

1 **VII. RETENTION OF JURISDICTION**

2 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for
3 purposes of construction, modification, and enforcement of this Order.

4 **VIII. COSTS AND ATTORNEYS' FEES**

5 **IT IS FURTHER ORDERED** that each party shall bear its own costs and attorneys' fees
6 incurred in connection with this action.

7 The parties hereby stipulate to the entry of the foregoing Order, which shall constitute a
8 final Order in this action.

9
10 **IT IS SO ORDERED:**

11 Dated this _____ day of _____, 2012.

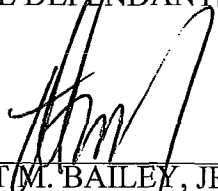
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13 UNITED STATES DISTRICT JUDGE
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15 The parties, by their respective counsel, hereby consent to the terms and conditions of the
16 Stipulated Order as set forth above and consent to the entry thereof.

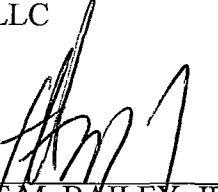
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1 FOR THE DEFENDANTS:
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4 ROBERT M. BAILEY, JR., individually
5 and as an officer of Direct Lending
6 Source, Inc. and Virtual Lending
7 Source, LLC



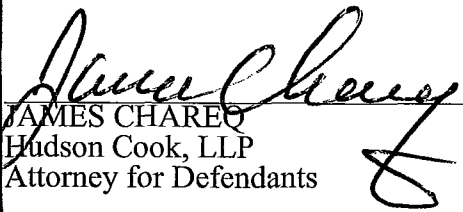
8 ROBERT M. BAILEY, JR., as an officer of
9 Bailey & Associates Advertising, Inc., after
10 the date the bankruptcy case is closed.



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13 LINDA GIORDANO, individually and as
14 an officer of Direct Lending Source,
15 Inc. and Virtual Lending Source, LLC



16
17 LINDA GIORDANO, as an officer of
18 Bailey & Associates Advertising, Inc., after
19 the date the bankruptcy case is closed.



20 JAMES CHAREO
21 Hudson Cook, LLP
22 Attorney for Defendants

23
24 J. MARSHALL MILLER
25 Solely in his capacity as Bankruptcy
26 Trustee of Bailey & Associates
27 Advertising, Inc.
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FOR THE DEFENDANTS:

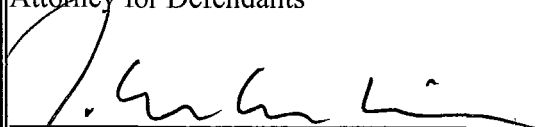
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Source, Inc. and Virtual Lending
Source, LLC

ROBERT M. BAILEY, JR., as an officer of
Bailey & Associates Advertising, Inc., after
the date the Bankruptcy Case is closed.

LINDA GIORDANO, individually and as
an officer of Direct Lending Source,
Inc. and Virtual Lending Source, LLC

LINDA GIORDANO, as an officer of
Bailey & Associates Advertising, Inc., after
the date the Bankruptcy Case is closed.

JAMES CHAREQ
Hudson Cook, LLP
Attorney for Defendants



J. MARSHALL MILLER
Solely in his capacity as Bankruptcy
Trustee of Bailey & Associates
Advertising, Inc.

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FOR THE FEDERAL TRADE COMMISSION:

MANEESHA MITHAL,
Associate Director, Division of
Privacy and Identity Protection

ROBERT SCHOSHINSKI
Assistant Director, Division of Privacy
and Identity Protection


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1 **FOR THE PLAINTIFF**

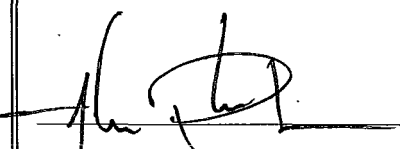
2 **UNITED STATES OF AMERICA:**

3

4 STUART F. DELERY
Acting Assistant Attorney General
5 Civil Division
United States Department of Justice
6

7 MAAME EWUSI-MENSAH FRIMPONG
Deputy Assistant Attorney General
8 Civil Division

9 MICHAEL BLUME
Director
10 Consumer Protection Branch

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16 Washington, D.C. 20044

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1 § 603. Definitions; rules of construction [15 U.S.C. § 1681a]

2
3 (a) Definitions and rules of construction set forth in this section are applicable for the
4 purposes of this title.

5 (b) The term "person" means any individual, partnership, corporation, trust, estate,
6 cooperative, association, government or governmental subdivision or agency, or
7 other entity.

8 (c) The term "consumer" means an individual.

9 (d) Consumer Report

10 (1) *In general.* The term "consumer report" means any written, oral, or other
11 communication of any information by a consumer reporting agency
12 bearing on a consumer's credit worthiness, credit standing, credit capacity,
13 character, general reputation, personal characteristics, or mode of living
14 which is used or expected to be used or collected in whole or in part for
15 the purpose of serving as a factor in establishing the consumer's eligibility
16 for

17 (A) credit or insurance to be used primarily for personal, family, or
18 household purposes;

19 (B) employment purposes; or

20 (C) any other purpose authorized under section 604 [§ 1681b].

21 (2) *Exclusions.* Except as provided in paragraph (3), the term "consumer
22 report" does not include

23 (A) subject to section 624, any

24 (i) report containing information solely as to transactions or
25 experiences between the consumer and the person making
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27 Attachment A

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the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615 [§ 1681m]; or

(D) a communication described in subsection (o) or (x).

(3) *Restriction on sharing of medical information.* Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or

1 affiliated by corporate control, if the information is—

2 (A) medical information;

3 (B) an individualized list or description based on the payment
4 transactions of the consumer for medical products or services; or

5 (C) an aggregate list of identified consumers based on payment
6 transactions for medical products or services.

7 (e) The term “investigative consumer report” means a consumer report or portion
8 thereof in which information on a consumer's character, general reputation,
9 personal characteristics, or mode of living is obtained through personal interviews
10 with neighbors, friends, or associates of the consumer reported on or with others
11 with whom he is acquainted or who may have knowledge concerning any such
12 items of information. However, such information shall not include specific factual
13 information on a consumer's credit record obtained directly from a creditor of the
14 consumer or from a consumer reporting agency when such information was
15 obtained directly from a creditor of the consumer or from the consumer.

16 (f) The term “consumer reporting agency” means any person which, for monetary
17 fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in
18 part in the practice of assembling or evaluating consumer credit information or
19 other information on consumers for the purpose of furnishing consumer reports to
20 third parties, and which uses any means or facility of interstate commerce for the
21 purpose of preparing or furnishing consumer reports.

22 (g) The term “file,” when used in connection with information on any consumer,
23 means all of the information on that consumer recorded and retained by a
24 consumer reporting agency regardless of how the information is stored.

25 (h) The term “employment purposes” when used in connection with a consumer
26

27 Attachment A

1 report means a report used for the purpose of evaluating a consumer for
2 employment, promotion, reassignment or retention as an employee.

3 (i) The term “medical information” –

4 (1) means information or data, whether oral or recorded, in any form or
5 medium, created by or derived from a health care provider or the
6 consumer, that relates to –

7 (A) the past, present, or future physical, mental, or behavioral health or
8 condition of an individual;

9 (B) the provision of health care to an individual; or

10 (C) the payment for the provision of health care to an individual.

11 (2) does not include the age or gender of a consumer, demographic
12 information about the consumer, including a consumer's residence address
13 or e-mail address, or any other information about a consumer that does not
14 relate to the physical, mental, or behavioral health or condition of a
15 consumer, including the existence or value of any insurance policy.

16 (j) Definitions Relating to Child Support Obligations

17 (1) The “overdue support” has the meaning given to such term in section
18 666(e) of title 42 [Social Security Act, 42 U.S.C. § 666(e)].

19 (2) The term “State or local child support enforcement agency” means a State
20 or local agency which administers a State or local program for establishing
21 and enforcing child support obligations.

22 (k) Adverse Action

23 (1) *Actions included.* The term “adverse action”

24 (A) has the same meaning as in section 701(d)(6) of the Equal Credit
25 Opportunity Act; and

26
27 Attachment A

1 (B) means

2 (i) a denial or cancellation of, an increase in any charge for, or
3 a reduction or other adverse or unfavorable change in the
4 terms of coverage or amount of, any insurance, existing or
5 applied for, in connection with the underwriting of
6 insurance;

7 (ii) a denial of employment or any other decision for
8 employment purposes that adversely affects any current or
9 prospective employee;

10 (iii) a denial or cancellation of, an increase in any charge for, or
11 any other adverse or unfavorable change in the terms of,
12 any license or benefit described in section 604(a)(3)(D)
13 [§ 1681b]; and

14 (iv) an action taken or determination that is

15 (I) made in connection with an application that was
16 made by, or a transaction that was initiated by, any
17 consumer, or in connection with a review of an
18 account under section 604(a)(3)(F)(ii)[§ 1681b];
19 and

20 (II) adverse to the interests of the consumer.

21 (2) *Applicable findings, decisions, commentary, and orders.* For purposes of
22 any determination of whether an action is an adverse action under paragraph
23 (1)(A), all appropriate final findings, decisions, commentary, and orders
24 issued under section 701(d)(6) of the Equal Credit Opportunity Act by the
25 Bureau or any court shall apply.

26
27 Attachment A

1 (l) The term “firm offer of credit or insurance” means any offer of credit or insurance
2 to a consumer that will be honored if the consumer is determined, based on
3 information in a consumer report on the consumer, to meet the specific criteria used
4 to select the consumer for the offer, except that the offer may be further conditioned
5 on one or more of the following:

6 (1) The consumer being determined, based on information in the consumer's
7 application for the credit or insurance, to meet specific criteria bearing on
8 credit worthiness or insurability, as applicable, that are established

9 (A) before selection of the consumer for the offer; and

10 (B) for the purpose of determining whether to extend credit or insurance
11 pursuant to the offer.

12 (2) Verification

13 (A) that the consumer continues to meet the specific criteria used to
14 select the consumer for the offer, by using information in a
15 consumer report on the consumer, information in the consumer's
16 application for the credit or insurance, or other information bearing
17 on the credit worthiness or insurability of the consumer; or

18 (B) of the information in the consumer's application for the credit or
19 insurance, to determine that the consumer meets the specific criteria
20 bearing on credit worthiness or insurability.

21 (3) The consumer furnishing any collateral that is a requirement for the
22 extension of the credit or insurance that was

23 (A) established before selection of the consumer for the offer of credit
24 or insurance; and

25 (B) disclosed to the consumer in the offer of credit or insurance.
26

27 Attachment A

1 (m) The term “credit or insurance transaction that is not initiated by the consumer”
2 does not include the use of a consumer report by a person with which the consumer
3 has an account or insurance policy, for purposes of

4 (1) reviewing the account or insurance policy; or

5 (2) collecting the account.

6 (n) The term “State” means any State, the Commonwealth of Puerto Rico, the District
7 of Columbia, and any territory or possession of the United States.

8 (o) *Excluded communications.* A communication is described in this subsection if it is
9 a communication

10 (1) that, but for subsection (d)(2)(D), would be an investigative consumer
11 report;

12 (2) that is made to a prospective employer for the purpose of

13 (A) procuring an employee for the employer; or

14 (B) procuring an opportunity for a natural person to work for the
15 employer;

16 (3) that is made by a person who regularly performs such procurement;

17 (4) that is not used by any person for any purpose other than a purpose
18 described in subparagraph (A) or (B) of paragraph (2); and

19 (5) with respect to which

20 (A) the consumer who is the subject of the communication

21 (i) consents orally or in writing to the nature and scope of the
22 communication, before the collection of any information for
23 the purpose of making the communication;

24 (ii) consents orally or in writing to the making of the
25 communication to a prospective employer, before the
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27 Attachment A

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making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) The term "consumer reporting agency that compiles and maintains files on

1 consumers on a nationwide basis” means a consumer reporting agency that regularly
2 engages in the practice of assembling or evaluating, and maintaining, for the
3 purpose of furnishing consumer reports to third parties bearing on a consumer’s
4 credit worthiness, credit standing, or credit capacity, each of the following regarding
5 consumers residing nationwide:

- 6 (1) Public record information.
7 (2) Credit account information from persons who furnish that information
8 regularly and in the ordinary course of business.

9 (q) Definitions relating to fraud alerts.

10 (1) The term “active duty military consumer” means a consumer in military
11 service who—

12 (A) is on active duty (as defined in section 101(d)(1) of title 10, United
13 States Code) or is a reservist performing duty under a call or order to
14 active duty under a provision of law referred to in section 101(a)(13)
15 of title 10, United States Code; and

16 (B) is assigned to service away from the usual duty station of the
17 consumer.

18 (2) The terms “fraud alert” and “active duty alert” mean a statement in the file
19 of a consumer that —

20 (A) notifies all prospective users of a consumer report relating to the
21 consumer that the consumer may be a victim of fraud, including
22 identity theft, or is an active duty military consumer, as applicable;
23 and

24 (B) is presented in a manner that facilitates a clear and conspicuous view
25 of the statement described in subparagraph (A) by any person

1 of the consumer at such financial institution, for the purpose of
2 transferring money between accounts or obtaining money, property, labor,
3 or services.

4 (4) The terms "account" and "electronic fund transfer" have the same
5 meanings as in section 903 of the Electronic Fund Transfer Act.

6 (5) The terms "credit" and "creditor" have the same meanings as in section
7 702 of the Equal Credit Opportunity Act.

8 (s) The term "Federal banking agency" has the same meaning as in section 3 of the
9 Federal Deposit Insurance Act.

10 (t) The term "financial institution" means a State or National bank, a State or Federal
11 savings and loan association, a mutual savings bank, a State or Federal credit
12 union, or any other person that, directly or indirectly, holds a transaction account
13 (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.

14 (u) The term "reseller" means a consumer reporting agency that--

15 (1) assembles and merges information contained in the database of another
16 consumer reporting agency or multiple consumer reporting agencies
17 concerning any consumer for purposes of furnishing such information to
18 any third party, to the extent of such activities; and

19 (2) does not maintain a database of the assembled or merged information from
20 which new consumer reports are produced.

21 (v) The term "Commission" means the Federal Trade Commission.

22 (w) The term "Bureau" means the Bureau of Consumer Financial Protection.

23 (x) The term "nationwide specialty consumer reporting agency" means a consumer
24 reporting agency that compiles and maintains files on consumers on a nationwide
25 basis relating to--

26
27 Attachment A

- 1 (1) medical records or payments;
- 2 (2) residential or tenant history;
- 3 (3) check writing history;
- 4 (4) employment history; or
- 5 (5) insurance claims.

6 (y) Exclusion of Certain Communications for Employee Investigations

7 (1) A communication is described in this subsection if--

8 (A) but for subsection (d)(2)(D), the communication would be a
9 consumer report;

10 (B) the communication is made to an employer in connection with an
11 investigation of--

12 (i) suspected misconduct relating to employment; or

13 (ii) compliance with Federal, State, or local laws and
14 regulations, the rules of a self-regulatory organization, or
15 any preexisting written policies of the employer;

16 (C) the communication is not made for the purpose of investigating a
17 consumer's credit worthiness, credit standing, or credit capacity;
18 and

19 (D) the communication is not provided to any person except--

20 (i) to the employer or an agent of the employer;

21 (ii) to any Federal or State officer, agency, or department, or
22 any officer, agency, or department of a unit of general local
23 government;

24
25 (iii) to any self-regulatory organization with regulatory authority
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27 Attachment A

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over the activities of the employer or employee;

(iv) as otherwise required by law; or

(v) pursuant to section 608.

(2) *Subsequent disclosure.* After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

(3) For purposes of this subsection, the term “self-regulatory organization” includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), any entity established under title I of the Sarbanes-Oxley Act of 2002, any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

Property Address	Legal Description	Owner	Encumbrance
141 AirStream Lane Tavernier, Florida	Lot 7, Block 3, of Amended and Extended Plat of Vacation Village, according to the Plat thereof, as recorded in Plat Book 5, at Page 69, of the Public Records of Monroe County, Florida.	Linda Giordano	None
181 AirStream Lane Tavernier, Florida	Lot 12, Block 3, of Amended Plat of Vacation Village, according to the Plat thereof, as recorded in Plat Book 5, at Page 69, of the Public Records of Monroe County, Florida.	Linda Giordano	None
29517 Flying Cloud Big Pine, Florida	Lot 31, Block 4, of PINE CHANNEL ESTATES, SECTION 2, according to the Plat thereof, as recorded in Plat Book 6, at Page 2, of the Public Records of Monroe County, Florida.	Linda Giordano	None
75 N. Bay Drive Key Largo, Florida	Lot 14 and the Easterly 25 feet of Lot 13, Block 1, SUNSET POINT, according to the Plat thereof, as recorded in Plat Book 2, at Page 81, of the Public Records of Monroe County, Florida.	Linda Giordano	None

Attachment B

1 126 S. Bay Drive	Lot 48, Block 1, of AMENDED PLAT	Linda	None
2 Key Largo, Florida	OF BAY HARBOR, according to the	Giordano	
3	Plat thereof, as recorded in Plat Book		
4	2, at Page 91, of the Public Records of		
5	Monroe County, Florida.		

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