

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
IN RE: PO LUXE HOMES, LLC, and PAOLA MENDEZ ALTAMIRANO aka Paola Mendez, an individual. Respondents.	
CYNTHIA H. COFFMAN, Attorney General JENNIFER MINER DETHMERS, Reg. No. 32519 Senior Assistant Attorney General Colorado Department of Law Consumer Protection Section Ralph L. Carr Colorado Judicial Center 1300 Broadway, 7th Floor Denver, CO 80203	
ASSURANCE OF DISCONTINUANCE UNDER C.R.S. § 6-1-110(2)	

This Assurance of Discontinuance (“Assurance”) is entered into by and between the State of Colorado, *ex rel.* Cynthia H. Coffman, Attorney General for the State of Colorado (“Attorney General” or “State”), and Respondents Po Luxe Homes, LLC, and Paola Mendez Altamirano (collectively, “Respondents”). This Assurance is entered into pursuant to the Attorney General’s powers under C.R.S. § 6-1-110(2) and is a settlement between the Attorney General and Respondents regarding the following allegations.

I. PARTIES

1. Cynthia H. Coffman is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act, C.R.S. §§ 6-1-101, *et seq.* (CCPA).

2. Respondent Po Luxe Homes, LLC (“PoLuxe”) is a Colorado limited liability company with an address of P.O. Box 4302, Englewood, CO 80155.

3. Respondent Paola Mendez Altamirano aka Paola Mendez is an individual residing at 7450 S. Coolidge Way, Centennial, CO 80016. Mendez is an agent member and manager of PoLuxe Homes.

II. STATUTORY FRAMEWORK

4. A person engages in deceptive trade practices when, among other things, in the course of that person's business, vocation, or occupation, the person knowingly passes off goods, services, or property as those of another; knowingly makes a false representation as to the affiliation, connection, or association with another; knowingly makes a false representation as to the characteristics or benefits of goods, services, or property; or fails to disclose material information concerning goods, services, or property that was known at the time of an advertisement or sale if the failure to disclose was intended to induce the consumer to enter into a transaction. See C.R.S. § 6-1-105(1)(a), (c), (e), and (u).

III. FACTUAL ALLEGATIONS

Respondents' Business Activities

5. Respondents entered into business arrangements and partnered with Jordan Head and Colt Holdings, LLC ("Colt Holdings").

6. Respondents acquire title to properties whose owners are delinquent in making unit owners' association ("association")¹ payments and are facing foreclosure. Respondents acquire title in various ways, including but not limited to, purchasing the property by making the winning bid at a sheriff's sale and obtaining an assignment of lien from the association or its attorneys. After obtaining title, Respondents renovate and attempt to sell the property.

7. Respondents evict the homeowners or come to an agreement where the homeowners leave voluntarily. Although Respondents own the property, they acquire the property subject to any underlying mortgage loan or other liens. As the mortgage loans are still in the homeowners' names, Respondents request that homeowners sign third party authorizations allowing them to access homeowners' mortgage loan accounts. Many homeowners agreed to execute these third party authorizations with the understanding that Respondents needed the information to either make the monthly mortgage payments or to pay off the homeowners' mortgage loans.

8. Respondents did not disclose, and homeowners did not understand, that Respondents would pay off the mortgage loan only when they sold the property to a

¹ Unit owners' associations are commonly referred to as homeowners' associations or HOAs.

third party, which could take many months. The homeowners believed that, once they signed the third party authorization, Respondents would either pay off the mortgage loan or put the mortgage loan into Respondents' names.

9. Despite the fact that they obtain and use personal identifying information in the course of their business, neither Respondent has a policy for destroying or properly disposing of paper documents that contain such information.

Overbid Funds

10. Respondents were involved in transactions with Head and/or Colt Holdings, and they participated in recovering overbid funds in at least one transaction. An "overbid" is "the amount a property is sold for at a foreclosure sale that is in excess of the written or amended bid amount executed by the holder of the evidence of debt secured by the deed of trust or other lien being foreclosed." C.R.S. § 38-38-100.3(17.3). After payment to all lienors and the holder entitled to receive a portion of the overbid, any remaining overbid shall be paid to the homeowner. C.R.S. § 38-38-111(2).

11. In one instance, a homeowner owed \$4,866.49 in unpaid assessments and late charges plus interest, costs, and expenses at the time the association filed its complaint for judicial foreclosure. The court granted the motion for default judgment and decree of foreclosure and entered judgment for \$9,662.27 in favor of the association on February 8, 2016.

12. The association submitted an initial bid of \$10,058.34 before the sheriff's sale. Head and Mendez purchased this property at the sale with a winning bid of \$65,000 on August 11, 2016. Head and Mendez obtained title to the property through a sheriff's deed dated August 29, 2016. This sale resulted in an overbid of \$54,941.66.

13. Head and Mendez served a notice to quit on this homeowner on August 11, 2016, the day of the sheriff's sale and prior to obtaining title to the property.

14. The homeowner granted Head a power of attorney to secure the release of overbid funds on September 9, 2016.

15. Head hired an attorney, Tammy Alcock, who filed a motion for release of overbid funds on behalf of Head on September 20, 2016. The court granted the motion, and the clerk forwarded the overbid of \$54,941.66 to Head on or about September 27, 2016. Head forwarded the entire amount of the overbid to Mendez.

16. Head and Mendez sold the property to a third party on February 23, 2017, for \$225,000. They received \$116,586.58 in proceeds. At the time of this sale, the payoff on the first mortgage was less than \$91,000. Additionally, there was an

owners' association account balance of \$1,043, indicating that Head and Mendez did not pay the required assessments for several months.

17. Mendez did not give any of the overbid funds to this homeowner; instead, she kept the entire amount of the overbid.

IV. INJUNCTIVE RELIEF

18. Respondents assure the Attorney General that they, as well as any principals, officers, directors, members, agents, employees, representatives, successors, affiliates, contractors, consultants, or any person acting on their behalf will comply with all provisions of the CCPA, including the Colorado Foreclosure Protection Act, C.R.S. §§ 6-1-1101 – 1121 (CFPA), as now constituted or as may hereafter be amended.

19. Respondents agree to develop a policy for destroying or properly disposing of paper documents containing personal identifiable information (PII) in accordance with C.R.S. § 6-1-713 within 30 days of the Effective Date of this Assurance.

20. Respondents agree to cease and refrain from obtaining or assisting, or offering to assist homeowners in obtaining overbid funds on behalf of any homeowner or other person entitled to receive overbid funds.

21. If Respondents request that homeowners enter into third-party authorizations to allow them access to homeowners' mortgage loan accounts or other financial information, they agree to explain fully the reasons they are requesting such access and to comply with the terms of the authorization.

22. If Respondents request that homeowners give them a power of attorney for any reason, they agree to explain fully the reasons they need power of attorney and to comply with all obligations set forth within the power of attorney.

23. Respondents agree to make accurate statements in court filings, to public authorities such as public trustees and sheriffs' offices, to homeowners, to prospective sellers of properties, and to renters.

24. Respondents agree not to post a notice to quit or take steps to evict homeowners until after they obtain legal title to real property.

V. MONETARY RELIEF

25. Respondents jointly and severally agree to pay \$31,696.70 to the Colorado Department of Law to resolve this investigation within seven days of the Effective Date of this Assurance.

26. All payments shall be made by electronic funds transfer according to written payment processing instructions provided by the State with a reference to "*Po Luxe Homes, LLC/Mendez Settlement.*" Respondents shall provide written notice to the State at or around the time that they initiate the electronic funds transfer.

27. All payments will be held, along with any interest thereon, in trust by the Attorney General to be used for reimbursement of the Attorney General's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement actions, or to support consumer education and public welfare.

VI. GENERAL PROVISIONS

28. Scope of Assurance. Unless otherwise provided, this Assurance shall apply to Respondents and their officers, directors, agents, servants, employees, affiliates, subsidiaries, successors, and assigns, together with the other parties described in C.R.C.P. 65(d).

29. Effective Date. The Effective Date of this Assurance shall be the date of signature of the last signatory to this Assurance.

30. Release of Claims.

30.1 Subject to the conditions in paragraph 30.2, the State agrees and acknowledges that execution of this Assurance is a complete settlement and release of all claims that the State could have asserted through the Effective Date against Respondents for violations of the CCPA that arise from or relate to the conduct described in the Factual Allegations.

30.2 The State will release all existing monetary claims not otherwise paid upon full and timely completion of payments in accordance with paragraph 25; provided, however, that if Respondents fail to fully and timely complete such payments, or if any Respondent files bankruptcy within 91 days after the full and timely completion of such payments, no release shall be granted and Respondents shall remain liable for the full unpaid

balance of the State's claim. That amount may be asserted by the State in any subsequent proceeding to enforce this Assurance, whether through execution, garnishment, or other legal proceedings, or through a proof of claim in any bankruptcy proceeding filed by any Respondent.

31. No Admission of Liability. All parties are entering into this Assurance for the purpose of compromising and resolving the investigation and to avoid the expense of further litigation. It is expressly understood that nothing contained in this Assurance shall be construed as an admission by Respondents for any purpose.

32. Preservation of Law Enforcement Action. Nothing herein precludes the State from enforcing the provisions of this Assurance or from pursuing any non-released claims, including instituting any law enforcement action with respect to any acts or practices of Respondents not covered by this Assurance or any acts or practices in which Respondents engage after entry of this Assurance.

33. Compliance With and Application of State Law. Nothing herein relieves Respondents of their duty to comply with applicable laws of the state of Colorado nor constitutes authorization by the State for Respondents to engage in acts and practices prohibited by such laws. This Assurance shall be governed by the laws of the state of Colorado.

34. Non-Approval of Conduct. Nothing herein constitutes approval by the State of any of the Respondents' past, present, or future business practices, and Respondents shall not make any representation to the contrary.

35. Preservation of Private Claims. Nothing in this Assurance shall limit, constrain, abridge, abrogate, waive, release, or otherwise prejudice any private rights, causes of action, or remedies of any person against Respondents with respect to the acts and practices covered by this Assurance.

36. No Third-Party Beneficiaries Intended. This Assurance is for the benefit of the parties only and does not create or confer rights or remedies upon any other person, including rights as a third-party beneficiary. This Assurance does not create a private right of action on the part of any person or entity, whether to enforce this Assurance or otherwise, other than the parties hereto.

37. Execution in Counterparts. This Assurance may be executed in counterparts, each of which is an original and all of which are one and the same.

38. Severability. If any provision of this Assurance is held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity,

legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

39. Amendment. This Assurance may be amended solely by written agreement signed by the State and Respondents or their authorized representatives.

40. Complete Agreement. This Assurance represents the entire agreement between the parties hereto and a complete merger of prior negotiations and agreements. No other written or oral terms or agreements exist except for those contained in this Assurance.

41. Attorneys' Fees and Costs. Except as otherwise provided herein, each party shall bear its own attorneys' fees and costs in connection with this matter.

42. Public Record. Pursuant to C.R.S. § 6-1-110(2), this Assurance shall be a matter of public record.

43. Voluntary Agreement. Respondents acknowledge that they have had an adequate opportunity to review this Assurance and consult with legal counsel in connection with the negotiation, drafting, and execution of this Agreement. Each party and signatory to this Agreement represents that he, she, or it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

44. Assurance Jointly Drafted. For purposes of construing this Assurance, this Assurance shall be deemed to have been drafted jointly by both parties and, in the event of any dispute arising out of this Assurance, shall not be construed against or in favor of any party.

45. Entire Agreement. Respondents agree and represent that they have read and understand this Assurance, accept the legal consequences involved in signing this Assurance, and that there are no other representations, agreements, or understandings between Respondents and the Attorney General that are not stated in writing herein.

46. Violation. A violation of any term of this Assurance shall constitute a prima facie violation of the CCPA under C.R.S. § 6-1-110(2).

46.1 Upon Respondents' violation of any term of this Assurance, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

46.2 In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against any Respondent as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General that such Respondent(s) violated this Assurance. In such event, each Respondent agrees to waive any and all defenses and counterclaims that they may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

47. Notice. All notices to the State shall be sent to the following:

Jennifer Miner Dethmers
Senior Assistant Attorney General
Colorado Department of Law
Consumer Protection Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203
Email: jennifer.dethmers@coag.gov

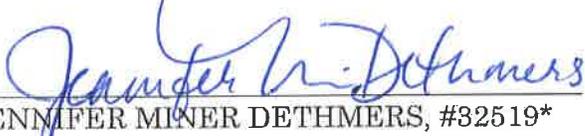
All notices to Respondents shall be sent to the following:

Donald C. Sisson
Elkus & Sisson, P.C.
501 S. Cherry St., Suite 920
Denver, CO 80246
Email: dsisson@elkusandsisson.com

48. Signatures. Facsimiles of signatures and signatures provided by portable document format (“*.pdf*”) shall constitute acceptable, binding signatures for all purposes of this Agreement.

For the State

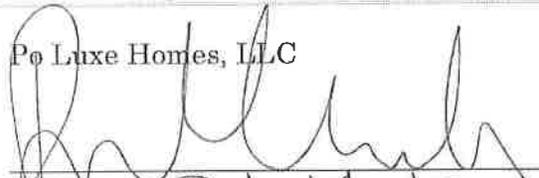
STATE OF COLORADO, *ex rel.*
CYNTHIA H. COFFMAN, Attorney General


JENNIFER MINER DETHMERS, #32519*
Senior Assistant Attorney General
Colorado Department of Law, Consumer Protection Section

Dated: 10.30.18

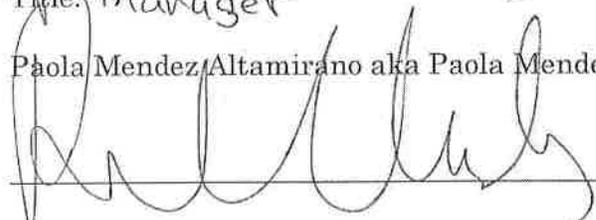
For the Respondents

Peo Luxe Homes, LLC

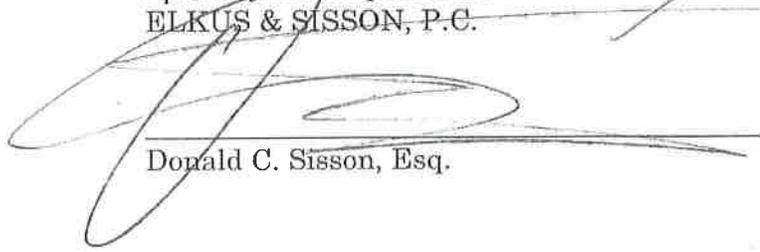

Print Name: Paola Mendez
Title: Manager

Dated: 10/29/18

Paola Mendez Altamirano aka Paola Mendez, individually


Attorney for Respondents
ELKUS & SISSON, P.C.

Dated: 10/29/18


Donald C. Sisson, Esq.

Dated: 10/30/18